

**Decision of the Joint Supervisory Body of Eurojust regarding the appeal filed on behalf of Mr T**

**Procedural considerations**

-The Joint Supervisory Body of Eurojust (JSB) received, via a letter of BCL Burton Copeland Solicitors of 18 March 2011, an appeal on behalf of Mr T, Russian citizen, against the decision of Eurojust communicated to him by the Eurojust Data Protection Officer (DPO) on 22 February 2011.

- The decision of Eurojust related to the request of Mr T of 11 January 2011 concerning access to any personal data on him processed by Eurojust, deletion of such data, undertaking not to further process any data on him and notification on the same subject to any relevant third party.

The decision of Eurojust, as communicated to the applicant by the DPO of Eurojust, was worded as follows: *In accordance with Article 19.7 of the Eurojust Decision, I hereby notify you that checks have been carried out, but I am unable to give any information which could reveal whether or not your client is known.*

- In accordance with article 15 of the Act of the JSB of Eurojust of 23 June 2009 laying down its rules of procedure (JSB rules of procedure<sup>1</sup>), the JSB secretariat sent an acknowledgment of receipt to the applicant on 22 March 2011 confirming that the JSB considered the appeal admissible and would deal with in line with the procedure as set out in Articles 11 to 26 of the JSB rules of procedure within the prescribed time limits.

- In accordance with the procedure stated in Article 16.2 of JSB rules of procedure, the JSB informed the College of the appeal on the 21 March and kindly invited it to submit any observations regarding the case subject of appeal to the JSB.

- By letter of 31 March 2011 the president of the College of Eurojust, Mr Aled Williams, provided the following observations of the College to the JSB: *Following the Decision of the*

---

<sup>1</sup> Official Journal of the European Union C 182/3 of 7.7.2010.

*Joint Supervisory Body of Eurojust of 26 April 2007 (on the so-called S case) on the interpretation of Article 19(7) of the Eurojust Council Decision, the College considered the specific case of Mr T during its plenary meeting of 17 February 2011. After a thorough discussion in which all aspects of the case at stake were considered, the College decided to provide the applicant (Mr T) with an answer based on Article 19(7) of the Eurojust Council Decision. The College does not have any additional considerations at this stage.*

- At its meeting of 7 April 2011 the JSB discussed the case at stake, taking note of all documents related to it. After deliberations, the JSB reached an unanimous decision.

### **Legal and content considerations**

1. The case at stake relates to the application of Article 19.7 of the of Council Decision 2002/187/JHA on the setting up Eurojust, as amended by Council Decision 2003/659/JHA, and Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust<sup>2</sup> (Eurojust decision), which refers to the cases in which either access is denied on the basis of one of the exception enumerated in Article 19.4 of the Decision or when no personal data concerning the applicant are processed by Eurojust. In such case the Decision mentions that Eurojust *shall notify the applicant that it has carried out checks, without giving any information which could reveal whether or not the applicant is known*. The reply given to Mr T by Eurojust complied with the letter of this Article.
2. However, as the JSB already stated in its decision of 26 April 2007 in the S case, a systematic application of Article 19.7 without further examination of the specific details of the individual cases might lead in practice to a systematic denial of the rights of the individuals. As already stated in the S decision, the Joint Supervisory Body of Eurojust considers that *in all cases where an individual seeks access to personal data concerning him processed by Eurojust, including those cases where there are no data processed, the College of Eurojust shall decide whether in the specific case the disclosure of the data or of the non-existence of data concerning the applicant*

---

<sup>2</sup> OJ L 138/14 of 4.06.2009.

*processed by Eurojust may contravene any interests of Eurojust or of one of the Member States. If this is not the case, Eurojust shall reveal to the individual the requested data or inform him that in fact there are no data concerning him.*

3. The decision of the JSB in the S case has been recently confirmed by the European Court of Justice in the case T-277/10 AJ, K v Eurojust. The order of the president of the General Court of 25 November 2010 dismissing the application of Mr K contains the following consideration:

In the present case, it must be concluded that the contested decisions duly fulfil the requirements of that provision and even exceed them, since they provide a detailed answer to the applicant's allegations, which remain rather vague. Indeed, it is apparent from the contested decisions, especially from the decisions of 14 and 21 June 2010, that Eurojust did not merely notify the applicant that it had carried out checks, but specified that it had never been in possession of any data concerning him. Furthermore, it affirmed that the National Member for the United Kingdom at Eurojust had never taken any decision about the applicant and that the information provided to the applicant was based on careful consideration and necessary checks.

4. In the specific case, the JSB welcomes the fact that the College of Eurojust considered the request of Mr T at its plenary meeting of 17 February 2011 and that a thorough discussion took place regarding all aspects of the specific case at stake, as stated in the written observations provided by Mr Williams on the 31 March 2011. It is regrettably however that the decision of Eurojust does not seem to take account of the interests at stake in this case or of the impact for the data subject of the mere provision of a standard answer. Neither the reply of Eurojust to the data subject nor the written observations submitted to the JSB contain any consideration as to how the disclosure of the data or of the non-existence of data concerning the applicant processed by Eurojust may contravene any interests of Eurojust or of one of the Member States.
5. It should further be considered that Mr T had not only applied for access to his data but had also requested deletion, blocking and communication to third parties. The

JOINT SUPERVISORY BODY OF EUROJUST

SECRETARIAT: P.O. BOX 16183  
2500 BD THE HAGUE  
THE NETHERLANDS  
TEL +31 70 412 5512  
FAX +31 70 412 5515  
E-MAIL: jsb@eurojust.europa.eu  
www.eurojust.europa.eu /jsb

exercise of these additional rights is rendered impossible by the standard reply given by Eurojust while no evidence has been provided of any interest of Eurojust or of one of the Member States which could be affected if Eurojust were to inform the applicant of the result of the checks carried out. This is particularly the case given the fact that Eurojust have no personal data concerning the individual and is not implicated in any of the legal proceedings in which Mr T is involved in the Member States and therefore there seems to be no possible harm to Eurojust in informing the data subject of the existence of no data in its possession.

### Decision

In the light of the specific circumstances and complexity of the case as well as of the big interest at stake for the data subject, who has been de facto denied the possibility to exercise his rights, as guaranteed by articles 19 and 20 of the Eurojust Decision, by the provision of the standard answer by Eurojust, and, in the absence of any evidence that Eurojust could suffer any harm by providing the individual a clear and unambiguous answer, the JSB decides, in accordance with Article 23.7 of the Eurojust Decision, to refer the matter to Eurojust for reconsideration.

Eurojust is required, in line with Article 23.8 of the Eurojust Decision, to provide Mr T a clear and unambiguous answer as to the fact that no personal data on him are processed by Eurojust and to clarify that, therefore, there is no object for the exercise of of any other of the rights invoked by the individual.

The Hague, 7 April 2011



Hans Frennered  
Chair of the Joint Supervisory Body