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NOTE

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to : Europol working group

Subject : Draft rules of procedure of joint supervisory body
- Text prepared by European Data Protection Commissioners

The joint supervisory body,

pursuant to Article 24 paragraph 7 of the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention) (hereinafter called "the Convention"), adopts the following rules of procedure:

A. Tasks and powers of the joint supervisory body

Article 1 - Tasks

- (1) The joint supervisory body shall have the task of reviewing, in accordance with the Convention, the activities of Europol in order to ensure that the rights of the individual are not violated by the storage, processing and utilization of the data held by Europol. In addition, it shall monitor the permissibility of the transmission of data originating from Europol (Art. 24 para. 1 sentences 1 and 2 of the Convention).

- (2) For this purpose, the joint supervisory body shall have the following tasks in particular:
- a) examination of orders opening a data file (Art. 12 para. 1 sentence 2 and para. 2 sentence 3 of the Convention);
 - b) examination of provisions concerning the drawing up of reports on the retrieval of personal data (Art. 16 sentence 1 of the Convention);
 - c) examination of general rules for the communication of personal data by Europol to third States and third bodies (Art. 18 para. 2 sentence 2 of the Convention);
 - d) examination of questions relating to:
 - the implementation and interpretation of the Convention in connection with Europol's activities as regards the processing and utilization of personal data (Art. 24 para. 3, first alternative, of the Convention),
 - questions relating to checks carried out independently by the national supervisory bodies of the Member States (Art. 24 para. 3, second alternative, of the Convention),
 - questions relating to the exercise of the right to information (Art. 24 para. 3, third alternative, of the Convention),
 - the drawing up of harmonized proposals for common solutions to existing problems (Art. 24, para. 3, fourth alternative, of the Convention);
 - e) examination of the lawfulness and accuracy of a possible collection, storage, processing and utilization of personal data by Europol at the request of an individual (Art. 24 para. 4 of the Convention);
 - f) drawing up of activity reports at regular intervals (Art. 24 para. 6 of the Convention).
- (3) In the framework of its competence, the joint supervisory body shall carry out data protection checks.

- (4) In the framework of its competence, it may examine internal regulations providing for data processing by Europol and may state its position before the introduction of new data processing technologies.

Article 2 - Powers

- (1) The joint supervisory body, for the discharge of its tasks, shall have the powers provided for in the Convention.
- (2) In particular, the joint supervisory body shall be authorized to obtain information from Europol, to access all documents, paper files, hardware and software and any data stored by Europol, and to have free access to all Europol premises at any time (Art. 24 para. 2 of the Convention).

Article 3 - Committees

- (1) The joint supervisory body shall set up the committee required by Article 24 paragraph 7 of the Convention (hereinafter called "the appeals committee").
- (2) It may set up one or more other internal committees and determine their composition and terms of reference (Art. 24 para. 8 of the Convention).

B. Rules of Procedure for the joint supervisory body

Article 4 - Membership

- (1) The joint supervisory body shall be composed of not more than two members or representatives of each of the national supervisory bodies, appointed for five years by each Member State (Art. 24 para. 1, sentence 3 of the Convention), which term shall be renewable. Each delegation shall be entitled to one vote (Art. 24 para. 1 sentence 5 of the Convention).

- (2) The members of the joint supervisory body shall be independent, not bound by directions in the exercise of their duties and subject only to the law. In particular, they must not at the same time be members of another body set up under the Convention or staff members of Europol. Where a conflict of interest arises, the member concerned shall withdraw from taking part in the discussion concerned and may, where necessary, be excluded by a majority of the delegations' votes. The member concerned shall be heard before such exclusion.
- (3) Only persons having the necessary abilities may be appointed to serve as members of the joint supervisory body. Particular regard shall be had to the requirements for the committee at Article 3 paragraph 1 above.
- (4) A member of the joint supervisory body who is unable to attend a meeting may be represented by an alternate, who shall be equally qualified.
- (5) Membership of the joint supervisory body shall cease when the person concerned ceases to serve as member or officer of the national supervisory body.

Article 5 - Chair

- (1) The joint supervisory body shall appoint a chairman and a deputy-chairman from among its members by a majority of two thirds of the votes cast in a secret ballot by the delegations attending the meeting. They shall be appointed for a term of two years; extension for one year shall be possible. The term of office of the chairman and his deputy shall, where necessary, be prolonged until the election of a new chairman, which shall take place during the first meeting following the expiration of the term of office.
- (2) The deputy-chairman shall not be a member of the chairman's delegation. He shall act for the chairman if he is unable to attend.
- (3) In the event of a vacancy before the expiration of the chairman's term of office, the deputy-chairman shall act as chairman for the rest of such term. In the absence of the deputy-chairman the most senior member shall act as deputy-chairman.

(4) The chairman shall represent the joint supervisory body.

He shall monitor the smooth functioning of its work. He shall convene the meetings of the joint supervisory body and determine the venue, date and time of such meetings. He shall open and close the meetings. He shall chair the meetings. He shall prepare the provisional agenda.

(5) In order to prepare the work of the joint supervisory body with regard to a particular issue, it may appoint from among its members, on the proposal of the chairman, one or several rapporteurs. If the matter is urgent, such an appointment may be made by the chairman by virtue of his office. In this case he shall inform the members of the joint supervisory body without delay.

(6) The chairman or a majority of the delegations may request the attendance of the director, other persons or staff members of Europol, and also request that national experts and liaison officers be present.

Article 6 - Working method

(1) The joint supervisory body shall meet at least four times a year. Furthermore, it shall meet at the initiative of the chairman and whenever a minimum of three delegations submit a written proposal stating reasons, or present an oral proposal in a meeting. The chairman of the Management Board and the director of Europol shall be entitled to propose subjects for inclusion on the agenda and to propose that the joint supervisory body be convened.

(2) With the exception of cases which the chairman deems to be urgent, the letters of convocation shall be transmitted at least two weeks before the meeting. The letter of convocation shall include the provisional agenda and, unless the nature of these documents does not allow this, the documents needed for the meeting. The final agenda shall be adopted at the beginning of each meeting.

(3) A meeting of the joint supervisory body shall only be effective, if at least two thirds of the delegations attend. Decisions shall be taken by a simple majority, unless provided otherwise. In case of a tied vote, the chairman shall have a casting vote.

- (4) The meetings of the joint supervisory body shall be non-public. All documents shall be confidential, unless the joint supervisory body decides otherwise.
- (5) The joint supervisory body shall meet on the basis of documents and draft papers submitted in all official languages of the Contracting parties of the Europol Convention. Exceptions from this rule shall be admissible, where they are justified for compelling reasons.
- (6) Decisions of the joint supervisory body may be taken by written procedure in so far as all delegations have approved this procedure in a meeting. In urgent cases the chairman shall be entitled to initiate the written procedure. In both cases the chairman shall transmit a draft decision to the members of the joint supervisory body. If the delegations do not object to the draft decision, translated into the respective official languages, within a period specified by the chairman of at least 14 days after receipt, the proposal shall be deemed to be adopted. If a delegation, within five working days after receipt of the draft decision, requests that it be orally discussed by the joint supervisory body, the written procedure shall be discontinued.

Article 7 - Checks on location and experts

- (1) The joint supervisory body may appoint one or more members for carrying out data protection checks at Europol. Such members may be assisted by outside experts as deemed appropriate by the joint supervisory body, drawn from a list of experts established by it before and communicated to Europol. Outside experts have to meet the security requirements applying under their national law. Where the chairman deems a case to be urgent, he may appoint such members and experts by virtue of his office. In this case he shall inform the members of the joint supervisory body without delay.
- (2) The members of the joint supervisory body entrusted with a check shall report to the joint supervisory body on the results of their work.

Article 8 - Procedure in the event of violations

If the joint supervisory body notes violations of the provisions of the Convention with regard to the storage, processing or utilization of personal data, or if there are controversies with Europol to that effect, it shall inform the director of Europol accordingly and shall request him in writing to reply within a given period. If the joint supervisory body considers the reply to be insufficient or not submitted in time, or if any other difficulty arises, the joint supervisory body shall refer the matter in writing to the Management Board (Art. 24 para. 5 third sentence of the Convention).

Article 9 - Minutes

Minutes shall be taken at any meeting of the joint supervisory body. The draft minutes shall be prepared by the secretariat under the direction of the chairman and be submitted to the joint supervisory body for adoption at the next meeting. The delegations shall have the opportunity to have the minutes amended to reflect comments made by them at the meeting.

Article 10 - Activity report

- (1) The joint supervisory body shall draw up an activity report at least once every two years. At least one month before the activity report is forwarded to the Council, the Management Board shall have the opportunity to state its position, which shall be attached to the report (Art. 24 para. 6 of the Convention).
- (2) The joint supervisory body shall decide whether or not to publish its activity report, and, if it decides to do so, determine how it should be published.

C. Rules of Procedure of the Appeals Committee

I. General rules of procedure

Article 11 - Tasks of the appeals committee

- (1) The committee shall examine appeals relating to:
 - (a) Article 18 paragraph 6, sentence 2,
 - (b) Article 18 paragraph 7, sentences 2 to 5,
 - (c) Article 18 paragraph 7, sentence 6, 1st alternative in conjunction with sentence 7,
 - (d) Article 18 paragraph 7, sentence 6, 2nd alternative in conjunction with sentence 7,
 - (e) Article 18 paragraph 7, sentences 8 and 9,
 - (f) Article 18 paragraph 7, sentence 10, 1st and 2nd alternative,
 - (g) Article 18 paragraph 8,
 - (h) Article 20 paragraph 4, sentence 3, 1st and 2nd alternative, and
 - (i) Article 22 paragraph 3 of the Convention
- (2) The committee shall take final decisions in respect of the matters referred to in paragraph 1 above.
- (3) In addition to the powers referred to in Article 2 paragraph 2, it shall have the powers delegated to it in this chapter.
- (4) The proceedings of the committee shall not be in public unless the committee decides otherwise.

Article 12 - Membership

- (1) The committee shall be composed of one member or representative of each national supervisory body who is also member of the Joint supervisory body. The members shall have the necessary qualifications for examining and deciding the appeals referred to in Article 11 paragraph 1, involving inter alia legal expertise and experience in data protection matters.⁽¹⁾

⁽¹⁾ Further formalisation (e.g. 2/3 university law degree) has been discussed in the Working Party without final result. The German delegation has stated that the legal qualification is of crucial importance.

- (2) A member of the committee who is unable to attend a meeting may be represented by an alternate, who shall be equally qualified.
- (3) Members of the committee and alternates shall be appointed for five years, which term shall be renewable, but for no longer than their term of office in the joint supervisory body.

Article 13 - Independence and impartiality.

- (1) Article 4 paragraph 2 applies likewise. The members shall not be bound by directives of the plenary.
- (2) Where a member of the committee or an alternate has been involved in the case other than in his capacity as a member or officer of a national supervisory body, or any other circumstance arises which might prejudice the proper functioning of the committee, he shall withdraw.
- (3) If a member is challenged by a party, the committee shall hear the member concerned and subsequently decide on the challenge in his absence.
- (4) If the challenge is accepted, the member shall be replaced by his alternate.

Article 14 - Chair.

- (1) The committee shall appoint a chairman and a deputy-chairman from among its members by a majority of two thirds of the votes cast in a secret ballot by the members attending the meeting. They shall be appointed for a term of two years; extension for one year shall be possible. The term of office of the chairman and his deputy shall, where necessary, be prolonged until the election of a new chairman, which shall take place during the first meeting following the expiration of the term of office.
- (2) The deputy-chairman shall act for the chairman if he is unable to attend.

- (3) In the event of a vacancy before the expiration of the chairman's term of office, the deputy-chairman shall act as chairman for the rest of such term. In the absence of the deputy-chairman the most senior member shall act as deputy-chairman.
- (4) The chairman shall preside over the meetings. He shall monitor the smooth and proper functioning of its work. He shall convene the meetings of the appeals committee and determine the venue, date and time of such meetings. He shall prepare the provisional agenda.
- (5) In order to prepare the work of the appeals committee with regard to a particular issue, it may appoint from among its members, on the proposal of the chairman, one or several rapporteurs. If the matter is urgent, such an appointment may be made by the chairman by virtue of his office. In this case he shall inform the members of the committee without delay.

Article 15 - Representation

The applicant may be represented by a lawyer or another adviser. Advisers may be refused in case of incompetence. An adviser shall produce proper authorisation from the applicant, if so requested.

Article 16 - Languages

- (1) The procedure shall be conducted in one or more official languages of the Contracting parties, including the one used by the applicant.
- (2) In cases where none of the community languages is accessible to the applicant, interpretation and translation shall be provided for him. However, in such cases the complaint shall at least be accompanied by a summary in one of the official languages of the Contracting parties.
- (3) Interpretation and translation shall be provided to members of the committee and any other party in the case, where this is appropriate.

Article 17 - Institution of the procedure

- (1) The appeal shall be lodged by submission of a written complaint at the secretariat of the committee. The applicant shall outline the basis of the complaint. It must be clear who is complaining, what he is complaining about and on what grounds. The complaint shall be accompanied by any supporting documentation available.
- (2) If the complaint does not meet the formalities mentioned above, the secretariat shall invite the applicant to rectify any omissions within a month.
- (3) Appeals which do not meet the requirements, may be refused by the chairman, subject to confirmation of this refusal by the committee at its next meeting.

Article 18 - Preliminary consideration

If the complaint meets the requirements, it shall be considered by the committee within the next three months. A copy of the complaint shall be forwarded to Europol and/or the relevant national unit(s) for their observations, which shall be submitted within four weeks, extension for two further weeks being possible. In case of complaints involving (a) national unit(s), the complaint shall simultaneously be sent to the relevant national supervisory body, which may submit further observations.

Article 19 - Additional information

- (1) When Europol, the national unit concerned and/or the national supervisory body concerned have stated their position, the committee may ask them as well as the applicant to provide further information, evidence or comments to the committee.
- (2) The committee may ask the national supervisory bodies to investigate in conformity with its national law and submit a report on the matter.
- (3) The committee may also decide to investigate on location at Europol. Article 7 applies likewise.

Article 20 - Access to file of procedure

All parties shall have access to the file of the procedure. Europol, national units and national supervisory bodies may indicate to what extent the documents they provide, should not be made available to the applicant, stating their reasons. The committee may ask for further reasons. To the extent the committee finds such reasons acceptable, the documents concerned shall be withheld. The committee may require a summary of documents to be made available to the applicant or direct that certain documents shall be provided to the applicant.

Article 21 - Oral procedure

- (1) The committee may invite any party to present oral evidence or hear third parties relevant to the case.
- (2) All involved parties shall be notified in due course of the hearing and have a right to be present.
- (3) The committee may decide to hear any party without other parties being present. The latter shall be informed of proceedings taking place in their absence.

Article 22 - Right to be heard

- (1) Any involved party, assisted by their advisers if they so wish, shall be allowed to make submissions in writing and to present these orally to the committee, unless the committee finds that they are frivolous or vexatious.
- (2) Where neither additional information nor an oral procedure is envisaged by the committee, all parties shall be invited to submit final comments before the committee shall conclude the appeals procedure.

Article 23 - Minutes

Minutes shall be taken of the proceedings of the committee. Article 9 applies likewise. Minutes of proceedings attended by the parties involved shall be added to the file of the case.

Article 24 - Decisions and confidentiality

- (1) Any meeting of the committee shall only be effective if four fifths of the members or alternates attend.
- (2) Decisions shall be taken by a simple majority of the members attending the meeting. In case of a tied vote, the chairman shall have a casting vote.
- (3) The deliberations of the committee shall be confidential.
- (4) The final decision shall be given in public, conveyed to the parties concerned and include reasons.

Article 25 - Costs

The committee may award the necessary costs incurred by the applicant for lodging and processing the complaint to the extent that it considers this equitable.

Article 26 - Due process

In cases not provided for in these rules, the committee shall conduct its procedures in line with the requirements of due process and natural justice as developed on the basis of Article 6 of the European Convention on Human Rights.⁽¹⁾

(1) Further reference to rules of procedure of the ECHR was discussed in the Working Party. DK, Port and several other delegations would not prefer further reference, whereas Ger stressed the courtlike function of the committee.

II. Specific rules of procedure

Article 26 a - Procedure in case of appeals relating to the right of response in due time (Art. 18 para 6 sentence 2 of the convention)

Where the appeal relates to the right to obtain a reply in due time to a request for checking or for access to data, the committee shall request Europol to inform the committee, whether and, if so, why the request was not answered in due time. Europol shall answer within 21 working days.

Article 27 - Procedure in case of appeals relating to the right of access to data entered by a Member State in the information system (Art. 18 para 7, sentences 2 - 5, of the Convention)

- (1) Where the appeal relates to a communication concerning data entered by a Member State in the information system, the committee shall consult the national supervisory body or the competent judicial body of the Member State which was the source of the data. The national supervisory body or the competent judicial body - in so far as the national law provides for a right of access - shall inform the committee whether and, if so, why the right of access to data pursuant to Article 18 paragraph 3 of the Convention was refused.

The committee shall take a decision in close cooperation with the national supervisory body or the competent national judicial body. For this purpose, it shall in particular give the national supervisory body or the competent national judicial body the opportunity to state its position if necessary.

- (2) If the joint supervisory body holds the view that pursuant to national law information has to be provided at least partly, it shall notify the national supervisory body or the competent national judicial body and Europol accordingly. These shall be given a time limit of 21 working days for stating their positions anew. Subsequently the committee shall decide on the obligation to provide information.
- (3) Paragraphs 1 and 2 shall apply likewise in cases, where access has been denied only partly..

Article 28 - Procedure in case of appeals relating to a communication concerning data entered by Europol in the information system (Art. 19 para 7, sentence 6, first alternative, in combination with sentence 7)

- (1) Where the appeal relates to a communication concerning data entered by Europol in the information system, and where Europol or a national unit of a Member State maintains its objection and the committee, upon hearing Europol and the national unit, by a majority of two thirds of its members holds the view that at least a partial information has to be provided, it shall notify Europol and the national unit accordingly, allowing them a time limit of 21 working days for stating their positions anew.
- (2) A majority of two thirds shall be required to overrule the objections of Europol or the national unit concerned.
- (3) If there is no such majority, the committee shall notify the enquirer that it has carried out the checks, without giving any information which might reveal to him whether or not he is known (Art. 19 para 7, sentence 7, of the Convention).

Article 29 - Procedure in case of an appeal relating to information from work files for the purposes of analysis (Art. 19 para 7, sentence 6, second alternative, in combination with sentence 7)

The procedure according to Article 28 of these Rules of Procedure shall be applied also in cases of appeals relating to requests for access to data from the work files kept for purposes of analysis.

Article 30 - Appeals concerning the checking of data entered in the information system by a Member State (Art. 19 para 7, sentences 8 - 9, of the Convention)

Where the national law of a Member State provides for a checking of data instead of access to data and where the Member State concerned has entered data in the information system, the committee, in close cooperation with the national supervisory body of the Member State which entered the data, shall ensure that the necessary checks have been carried out correctly by that Member State.

For this purpose, a rapporteur or other member of the committee, in close cooperation with the national supervisory body of the Member State, may participate in a check carried out by this body.

The committee shall subsequently notify the enquirer that it has carried out the checks without giving any information which might reveal to him whether or not he is known.

Article 31 - Appeals relating to the checking of data entered by Europol in the information system (Art. 18 para 7, sentence 10, first alternative, in combination with sentence 11, of the Convention)

Where the appeal concerns the checking of data which Europol has entered in the information system, the committee shall ensure that the necessary checks have been carried out correctly by Europol.

The committee shall notify the applicant that it has carried out the checks without giving any information which might reveal to him whether or not he is known.

Article 32 - Procedure in case of appeals relating to the checking of data in the work files for the purposes of analysis (Art. 18 para 7, sentence 10, second alternative, in combination with sentence 11, of the Convention)

Where the appeal concerns the checking of data in the work files for the purposes of analysis, the joint supervisory body shall ensure that the necessary checks have been carried out correctly by Europol. Article 31 sentence 2 shall apply *mutatis mutandis*.

The committee shall notify the applicant that it has carried out the checks without giving any information which might reveal to him whether or not he is known.

Article 33 - Procedure in case of appeals concerning the correction or deletion of data (Art. 20 para 4, sentence 3; first and second alternative, of the Convention)

- (1) In case of an appeal where Europol has failed to comply with a request pursuant to Article 20 paragraph 4 sentence 3, second alternative, of the Convention, the committee shall request the Director of Europol to inform the committee within a time limit of 21 working days for which reasons the request for the correction or deletion of data has not been replied to within 3 months.
- (2) Paragraph 1 shall apply *mutatis mutandis* where the applicant, although Europol has replied to his request for the correction or the deletion of data, maintains his request for further correction or deletion.

If upon receipt of the position more than half of the members of the committee hold the view that the request for further correction or deletion should be complied with, it shall inform the Director of Europol accordingly and grant him a time limit of 21 working days to state his position, and shall subsequently decide on the request.

Article 34 - Procedure in case of appeals concerning non-automated data held by Europol (Art. 19 para 8 and Art. 22 para 3 of the Convention)

The above provisions shall apply *mutatis mutandis* where the appeal relates to a request for access to data/communication or checking of data, respectively, or to the correction and deletion of data pursuant to Article 19 paragraph 8 or Article 22 paragraph 3 of the Convention.

D. Final provisions

Article 35 - Secretariat

The joint supervisory body shall have a secretariat to assist it in the performance of its tasks. Members of the secretariat shall not at the same time be staff members of Europol. Recruitment to the secretariat shall be controlled by the joint supervisory body. It shall operate under the direction of the chairman. The secretariat shall also provide services to the appeals committee; in the performance of these functions it shall be under the direction of the chairman of that committee. The secretary shall keep a register of appeals. Correspondence shall be addressed to the secretariat for the attention of the chairman of the relevant committee.

Article 36 - Confidentiality

Members of the joint supervisory body, experts and staff of the secretariat shall be obliged to treat confidentially the circumstances which come to their knowledge in the context of their activity. This obligation shall continue to apply also when they cease to be active in that capacity.

Article 37 - Headquarters

The joint supervisory body shall have its headquarters in⁽¹⁾, but may meet in other locations as appropriate.

Article 38 - Budget and Costs

(1) The secretariat shall prepare proposals for an annual budget for the joint supervisory body, which on approval shall be forwarded to the Management Board in anticipation of the consultation as required in Article 24 paragraph 9 of the Convention.

(1) A very large majority of the Working Party feels that this location should allow the joint supervisory body to work in an independent, effective, efficient, secure and transparent manner.

(2) The joint supervisory body shall decide on the disbursement of the budget allocated to it which will be administered by the secretariat.

Article 39 - Amendment of the rules of procedure

Amendments to these rules of procedure shall be unanimously adopted by the joint supervisory body (Art. 24 para. 7, first sentence of the Convention) and shall be submitted to the Council for approval.