

13257/97

LIMITE

CK4 46

NOTE

from : Presidency

to : K4 Committee

No. prev. doc. : 11330/97 EUROPOL 57

Subject : Rules of procedure of the Joint Supervisory Body

A. Background

- 1 Article 24 (7) of the EUROPOL Convention requires the adoption of the Rules of Procedure of the Joint Supervisory Body (JSB) before EUROPOL can take up its activities (art. 45 (4)). These Rules shall be unanimously adopted by the JSB and unanimously approved by the Council.
2. Under Netherlands presidency the EU Data Protection Commissioners Working Party on Police, chaired by Mr Hustinx, was invited in January 1997 to prepare a draft version of the rules of procedure. A first draft was presented in October 1997 (document 11330/97 EUROPOL 57).
3. This first draft was discussed in three meetings of the Europol Working Group, with Mr Hustinx present, in line with the decision of the K.4 Committee, stressing that the draft should be finalized by the Data Protection Commissioners after an in depth examination by the Europol Working Party.

4. The Europol Group completed its discussions on the topic during its meeting of 24/25 November 1997. A summary of the written remarks of the Member States as well as the most important observations made during the meetings are related in document 12651/1/97 EUROPOL 69 REV 1
5. Document 12651/1/97 EUROPOL 69 REV 1 was transmitted to the Data Protection Commissioners and discussed during their meeting of 26 November 1997. They agreed to prepare a revised draft before the end of January 1997 to be considered by the competent bodies of the Council of the European Union.

B. Summary of the comments made by the Member States

1. Apart from a number of technical remarks regarding specific articles of the draft rules of procedure, it appeared that the main issue relates to the question whether the Appeals Committee should be a court like body or an administrative organ.
2. The main consequences resulting from the court like option are a need for the further protection of the independence of the members and for safeguarding their competence - as well as a need to specify the procedural rules in order to guarantee the right of the individuals to a fair procedure, etc.

C. Outcome of the meeting of the Data Protection Commissioners

1. On basis of the discussions of the Europol Working Party (doc. 12651/1/97 EUROPOL 69 REV 1), the Data Protection Commissioners decided at their meeting on 26 November 1997 to revise the draft according to the following principles:
 - a) It is clearly understood that art. 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR, cf. annex) applies to all activities of the Appeals Committee; art. 6 will therefore guide the work of the Commissioners.

- b) The conflicting approaches related to the nature of the Appeals Committee (administrative body < = > court like organ) will not and can not be resolved by the Commissioners. Taking into account art. 6 ECHR, the revised draft will try to "walk the middle ground" between detailed court like rules of procedure and a more general approach suitable for an administrative organ.
- c) The specific nature of the Appeals Committee will be stressed in the revised draft rules of procedure, considering also the special relation between the Appeals Committee and the Joint Supervisory Body.
- d) The words "court" or "tribunal" will not be used in the draft rules. The Joint Supervisory Body is a sui generis organ and the revised draft shall be based on that presumption.
2. It can be expected that the revised draft will take into account a number of comments made by the Member States in the framework of the Europol Group Working Group.

D. Conclusion

Discussion as well in the Europol Working Group as among the Data Protection Commissioners has shown that on the main outstanding issue concerning the nature of the Appeals Committee, guidance from higher bodies may be necessary.

The possibility for a compromise could be explored along the lines set out by the Data Protection Commissioners as mentioned in point C).

Article 6 of the European Convention for the Protection of Human Rights and Fundamental Freedoms

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.
3. Everyone charged with a criminal offence has the following minimum rights:
 - a. to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
 - b. to have adequate time and facilities for the preparation of his defence;
 - c. to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
 - d. to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
 - e. to have the free assistance of an interpreter if he cannot understand or speak the language used in the court.