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REV 1
LIMITE

EUROPOL 69

NOTE

from: the Presidency

to: the Europol Working Party

No. prev. doc. : 11330/97 EUROPOL 57; 12651/97 EUROPOL 69

Subject : **Draft rules of procedure of joint supervisory body**
- **Proposals of the Member States**

The delegations find enclosed draft rules of procedure of joint supervisory body - proposals of the Member States. The document contains a summary of the written remarks (in normal font) and remarks made during the meetings of this Group (in italics).

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);

Italy: art. 1 prefers a simple reference to the EUROPOL convention.

Belgium, Denmark: art. 1 for pedagogical considerations, a description of tasks should be maintained.

Several delegations: (B, UK, F, D...) add a reference to the EUROPOL convention.

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).

Germany: 2(2)

In particular, the joint supervisory body shall be authorized to obtain information from Europol, to be given access to all documents, paper files and (...) any data stored by Europol, and to be granted free access to all Europol premises at any time 5 Article 24 par. 2 of the Convention). Details shall be stipulated in arrangements between the joint supervisory body and the management board of Europol.

Finland: Respect of the wording of the Convention.

France: 2(2) deletion of "hardware and software" and respect of the wording of the Convention.

Austria: 2(2) Access to hardware and software is not explicitly foreseen in the Convention. Details of exercising the powers should be determined by an agreement between the EUROPOL and the JSB.

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).

Germany: 3(1) cannot be interpreted to mean that the joint supervisory body decides which member of the joint supervisory body shall represent the respective member state on the appeals committee.

Austria, Netherlands: do not agree with the German interpretation.

(Interpretation problem related to the different linguistic versions of the Convention)

Belgium: wishes a passive form.

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.

Austria: 4(1) The question of different opinions within one delegation and its effect on voting has to be solved. It should be stated that abstentions from voting shall not adversely affect the quorum required for a decision.

France: against such precisions, this problem should be tackled within each delegation.

Greece: prefers 4 years instead of 5.

Germany: 4(2) Sentences 1 and 2 unchanged; thereafter;

"It there is a justified concern about partiality, the member concerned shall communicate this and shall be excluded from further treatment of the matter. Any member of the joint supervisory body can apply to have another member excluded because of concern about partiality. The joint supervisory body shall decide on this by a majority of the delegations' votes...."

France (and Belgium and UK): 4(2) deletion of "not bound....law" and "where conflict of interests arises,.....delegations votes."

Germany: 4(3) deletion of the 2. sentence.

France: 4(3) deletion.

Finland: 4(3) Qualification of members of the JSB should be precise.

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.

France: 5(1) The chairman and the deputy chairman may not belong to the same delegation; they are appointed for a non-renewable term of two years.
Deletion of the last sentence.

Germany: 5(1) after deputy-chairman, add: "who shall not be a member of the chairman's delegation",
add after the 1. sentence: "If none of the candidates achieves the required majority in the first round of voting, a second round shall take place, in which the candidates receiving the most votes shall be elected".
Sentences 2 and 3 unchanged.

Germany: 5(2) deletion of the 1. sentence.
add a new sentence: "In the absence of the deputy-chairman the most senior member of the joint supervisory body shall act as deputy-chairman".

Germany: 5(3) If the chairman or the deputy-chairman leaves the joint supervisory body before the expiration of his term of office, a fresh appointment to the office shall be made for the remaining period in accordance with paragraph 1.
Deletion of the 2. sentence.

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.

France: 6(3) deletion in the 2. sentence of "unless provided otherwise".

Germany: 6(4) deletion in the 2. sentence of "unless the JSB decides otherwise".

France: 6(4) deletion in the 2. sentence of "unless the JSB 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.

Austria: 6(4) In the Confidentiality Regulations it should be mentioned that the JSB is obliged to respect these regulations. The rules of procedure of the JSB should reflect this obligation.

France: 6(5) deletion of the 2. sentence.

Austria: 6(5) Amendments of 2. sentence: firstly the plenary should be tasked to decide which languages may be dropped, secondly more specific conditions and criteria have to be defined.

France: art 6. Proposal to insert provision concerning the elaboration of a protocol by sub-commission of the JSB, to be approved by the Council.

Finland (*and Sweden*): art 6. General idea: meetings and documents should be open and public unless there are good reasons to declare them non-public. *Germany, France, Italy, Belgium cannot support the proposal of Finland.*

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.

Germany: 7(1) 1. sentence add: "or their alternates" after members.
Deletion of the 2. and 3. sentence.
4. sentence, after urgent change into "he may make such appointments by virtue of his office."
Last sentence unchanged.

France: 7(1) No assistant by outside experts.

Austria: 7(1) To permit the involvement of outside experts in such general manner seems to have no legal basis in the Convention. The role of the outside experts before the appeal's committee could be considered. If desirable, a list of experts could be agreed upon by EUROPOL and the JSB.

Finland: 7(1) It should be clarified that outside experts means data protection experts in national service.

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).

France: Art 8: Deletion or replacement by provisions of article 24 par. 5 of the Convention.

Germany: Art 8: Deletion of "or if there are controversies with Europol to that effect".

Austria: Art 8: It should be examined whether Art 24 para 5 third sentence of the Convention foresees a task or a power of the JSB. Consequently it should be inserted in Art 1 or 2 of the draft.

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.

Germany: Art 9: The German delegation interprets Article 9 sentence 2 to mean that the adoption of the minutes in accordance with Article 6 paragraph 3 shall occur on the basis of a simple majority of delegations. Article 9 sentence 3 then means that each individual delegation - as a minority right - may request the inclusion of additional remarks regarding their own comments made in 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 19 paragraph 6, sentence 2,
 - (b) Article 19 paragraph 7, sentences 2 to 5,
 - (c) Article 19 paragraph 7, sentence 6, 1st alternative in conjunction with sentence 7,
 - (d) Article 19 paragraph 7, sentence 6, 2nd alternative in conjunction with sentence 7,
 - (e) Article 19 paragraph 7, sentences 8 and 9,
 - (f) Article 19 paragraph 7, sentence 10, 1st and 2nd alternative,
 - (g) Article 19 paragraph 8,
 - (h) Article 20 paragraph 4, sentence 3, 1st and 2nd alternative, and
 - (i) Article 22 paragraph 3 of the Convention

France: 11(1) Deletion of all references to articles 19 - 22 and replace by: "the committee shall examine appeals relating to the provisions of the Convention".

Austria: 11(1) The different types of tasks should be paraphrased and the structure could be improved and made more rational and transparent.

The Convention distinguishes between:

- a) the different types of an individual
- b) the origin of the data concerned
- c) the place where the complaint had originally been lodged

Therefore, following different types of appeals can be distinguished:

- * right of access
- ** concerning data entered by a Member State to the Information System
- ** concerning data entered by EUROPOL to the Information System
- ** concerning data stored in the analysis work files
- ** concerning non-automated data held by EUROPOL in the form of data files
- * right to the checking of information (either if the requirer is not satisfied with the received response or if there had not been any response at all)
- ** concerning data entered by a Member State to the Information system
- ** concerning data entered by EUROPOL to the Information System
- ** concerning data stored in the analysis work files
- ** concerning non-automated data held by EUROPOL in the form of data files
- * right of correction
- * right of deletion

(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.

Germany: 11(3) Addition of "When using the powers referred to in Article 2 paragraph 2, the applicant and where a lawyer or other adviser has been appointed, the latter shall have the right to attend. The appeals committee may by a majority exclude this right of attendance when compelling reasons necessitate this: in this case, the applicant or his adviser shall be informed about the results of the examination".

Germany: 11(4) replaced by "The proceedings of the committee shall be held in public. The committee can by virtue of its office or an application from one of the parties decide to exclude the public wholly or partially in the interest of protecting the privacy of an individual or of public security or of other compelling reasons."

France: 11(4) Deletion of "unless the committee decides otherwise".

Austria: 11(4) The wording of this paragraph conflicts with Art 6 of ECHR.

Finland: Art 11; All proceedings should be public unless decided 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⁾

(2) A member of the committee who is unable to attend a meeting may be represented by an alternate, who shall be equally qualified.

Germany: 12(1) Insert after the 1. sentence "The Member States shall decide on the basis of the criteria listed in these rules of procedure which member of the joint supervisory body shall be seconded to the appeals committee."
2. sentence: Add "certified" before legal expertise. Addition of a new sentence: "The chairman and the deputy-chairman of the committee must have completed their legal training in accordance with respective national law".

France: 12(1) 1. sentence: specify that each member and representative is appointed by the national body.
Deletion of the 2. sentence.

Austria: 12(1) see 4(3). The introduction of a chamber-system should be examined. In this case basic decisions as well as certain procedural decisions (e.g. charges of impartiality) could rest with plenary.

Germany: 12(2) Replace "who shall be equally qualified" by "previously appointed by the respective Member State, for whom the requirements referred to in paragraph 1 shall apply mutatis mutandis".

France: 12(2) Deletion of "who shall be equally qualified" and specify that the length of the mandate of the alternate should be the same than for the member itself.

⁽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.

(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.

Germany: 12(3) 1. sentence unchanged up to renewable, then add "The term shall and when the term of membership of the joint supervisory body expires. When members of the committee cease to serve as member or representative of the national supervisory body, they shall remain in the committee until the end their term of office. The member concerned may leave joint supervisory body voluntarily."

Germany: 12(4) A new paragraph: "A member of the appeal committee may be relieved of office if, in the unanimous judgement of the other members of the committee, he does not or has ceased to fulfil the necessary conditions. The respective member shall be heard before the decision is taken but shall not have a say in that decision".

Article 13 - Independence and impartiality

(1) Article 4 paragraph 2 applies likewise. The members shall not be bound by directives of the plenary.

Germany: 13(1) Same remark as for art. 4(2). For independency considerations, appeals committed members should not have other (incompatible) tasks; for the same reason travel expenses should exclusively be provided by JSB budget.

(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.

Germany: 13(2) Link with art 4(2) unclear; in such a case, a complete withdrawal should always occur.

better: justified concern about partiality

(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.

Germany: 13(3) to be completed by "according to paragraph 2"; the other party should also be heard before a decision.

(4) If the challenge is accepted, the member shall be replaced by his alternate.

Germany: 13(4) The replacement should be foreseen for any case of paragraphs 1, 2 or 3.

Finland: art 13. The provision of independence and impartiality is somewhat unclearly stated. The reasons for withdrawal and internal challenge of a member could be stated more precisely and clearly.

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.

Germany, Italy and Greece: 14(1) as for art 5(1), a second round should be foreseen with a simple majority. Specify that the chairman of the committee and the chairman of the JSB may not be the same person and not have the same nationality. For the first meeting, the committee should be invited by its oldest member.

France, Italy and Greece: 14(1) Specify that the chairman of the committee and the chairman of the JSB may not have the same nationality.
Deletion of the last sentence.

Italy: 14(1) majority of 2/3 of members of the delegations.
Deletion of " by the members attending the meeting".

Germany: 14(3) as for art 5(3), a fresh appointment shall be made; specify that senior means senior in age.

Germany: 14(4) specify that this provision includes also the maintaining of order (*Hausrecht und Sitzungsgewalt*).

(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 rapporteur. 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.

Germany: 14(5)

- "may appoint" is unclear;
- which are the rights and obligations of the rapporteur;
- is the choice of the rapporteur completely free or should there be guidelines.

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.

Germany: art 15. (new wording will be provided)

- The refusal based on incompetence should only be limited to "other advisers" and it should be provided that a refusal is also possible in case of unhonorable behaviour.

- In case of refusal, the concerned party should have a deadline to choose another advisor (suspension of procedure).

- Who can request the authorisation ? (only committee, its chairman or its rapporteur)

- A provision should deal with the question of costs (art. 25 insufficient).

France + Belgium + UK: art 15. Replace by "the applicant may be represented by a person of his choice who shall produce an authorization in case of absence of the applicant."

Finland: do not approve French proposal.

Italy: art 15: Amend: "The applicant may be represented and defended by a qualified and competent practitioner, expert in the matter under consideration. He shall be given a specific mandate, according to the specific provisions regulating representation and defence in the national legislations. Moreover, the applicant may be assisted by an adviser."

Austria: art 15: The "advisers" should be dealt with separately in the procedure rules, especially because role and competence of an "adviser" (as foreseen by the Convention) is different from that of a representative. The refusal of an adviser in case of incompetence criteria for this decision have to be defined clearly.

Finland: art 15. Specify the qualifications of the adviser. A proper authorization has to be produced in each case.

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.

Germany: art. 16(1) + (3):

- need clarification; the procedure language could be decided by the applicant.

- how to guarantee confidentiality and conformity of translations / interpretations ? (possible use of art. 33(2) of EUROPOL convention ?)

Germany: 16(2) Deletion of the second sentence.

The Netherlands: 16(2) does not support Germany's proposal: the summary is helpful to know nature and urgency of the appeal.

Austria: art 16: It should be stated explicitly that it is up to the applicant to choose the language (among the official languages of the Union). A distinction could be foreseen between internal procedures of the JSB and procedural steps involving the applicant.

Art 2 para 4 of the confidentiality rules (EUROPOL 7 REV 5) should be taken into consideration.

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.

Germany: 17(1)

- no delays concerning procedure ?
- It should be the secretariat of the JSB as the committee has no own secretariat (art. 35)
- confirmation of reception of complaints should be foreseen.

Italy: 17(1). 2. and 3. sentence reworded:
"The appeal shall contain:

- a) first name, family name, company name or title of the applicant
- b) domicile, residence or headquarters of the applicant
- c) details on what required
- d) motivations for application
- e) date, place of the application and signature of the applicant
- f) details of the mandate envisaged in art 15 if given.

All documents useful for the purpose of consideration should be annexed to the appeal.

Germany: 17(2)

- replace "above" by "in paragraph 1, sentences 1 - 3 above".
- specify the beginning of the delay

Germany: 17(3) "Appeals which do not meet the requirements are refused by the committee on proposal of the chairman".

Austria: 17(3) The rapporteur should have the right to refuse such applications.

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.

Germany: art 18: to be completely revised in order to specify the course of procedure:

- complaint to EUROPOL for explanation
- comments by the applicant (deadline) (precisions see 12165/97 EUROPOL 64 page 19 - 20)
- role of ENU's unclear; complaints are always addressed against EUROPOL
- participation of national supervisory bodies not foreseen by the convention (art. 19 (7) of the convention: consultation)

Italy: art 18: It is necessary to specify:

1. sentence: time from which three months will start
2. sentence: time from which four weeks start
3. sentence: time within which the national units may submit their observations

Austria: Art 18: The timelimit of four weeks seems short. Preferably the term "as soon as possible".

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.

Germany: 19(1)
- suggests that also the applicant may ask for further information; it should be stated that the committee has to give consideration to such requests
- it should be possible to ask for further information, even if a position from EUROPOL/ENU/national supervisory bodies is not or is not yet available.

Italy: 19(1) Add at the end "and the time shall be fixed within which the a.m. further comments shall be provided."

(2) The committee may ask the national supervisory bodies to investigate in conformity with its national law and submit a report on the matter.

Germany: 19(2) unclear; should be deleted
if maintained, art. 19(2) cannot mean that the obligation of the investigation is transferred to national bodies.

France: 19(2) suggests to replace "to investigate" by "to gather information".

Austria: 19(2) should be in line with art 19 para 7 of the Convention; to be clarified.

(3) The committee may also decide to investigate on location at Europol. Article 7 applies likewise.

Germany: 19(3) The participation of the applicant/advisor should be foreseen under the conditions proposed for art. 11(3).

Italy: 19(3) deletion of the last sentence.

France: general remark concerning all articles: replace "complaint" by "appeal".

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

Germany: art. 20
- parties = applicant, EUROPOL and in individual cases ENU's.
- beyond the possibility of consultation of the investigation files at the official location of the appeals committee, on request copies of the relevant documents should be send
- the solution provided for confidential information, may raise some questions

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DG II
committee may require a summary of documents to be made available to the

with regard to art. 10 of ECHR; Germany proposes a solution where confidential

EN

Article 21 - Oral procedure

(1) The committee may invite any party to present oral evidence or hear third parties relevant to the case.

Germany: art. 21(1) + (2)
- it should be a real oral procedure and not only a hearing; precisians should be foreseen in art. 21 (request of a party, appointment, invitation); if no oral procedure is decided, art. 22(2) is applicable
- third parties being understood as witnesses/experts, the hearing procedure has to be precise for example concerning the question of declaration under oath, refusal, costs.

Italy: 21(1) add "The Committee may also fix the date on which the a.m. individuals may be heard".

(2) All involved parties shall be notified in due course of the hearing and have a right to be present.

Italy : 21(2) It is necessary to specify the time within which all involved parties shall be notified.

(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.

Germany: 21(3) this should be strictly limited to cases where really necessary (conditions to be specified).

Italy: 21(3) Deletion of para 3.

France and Belgium: art 21: The Committee is not a judicial body, therefore no specific rules needed.

Austria: art 21: The Committee must be a courtlike organ.

The link with art 11(4) should be clarified.

Italy: art 21: the rights of the parties should be clarified

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.

Germany: 22(1),

- to be put in line with provisions foreseen in art. 18, 19 and 21; delays should be specified.

- why limit the oral presentation to the written submissions ?

- meaning and appreciation of "frivolous or vexatious"?

France: 22(1) considers the restriction (frivolous or vexatious) as not founded and even dangerous for the Committee; each person should have the right to make "free" contributions.

Italy: 22(1) replace with "Any party shall be allowed to request to be heard".

The paragraph should be included in article 21.

(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.

Italy: 22(2) add "The final comments of the parties shall be notified to the other parties for the purpose of counter-observations which - in any case - shall be submitted within 30 days before the date fixed for the consideration of the appeal by the Appeals Committee".

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.

Germany: art. 23 reference to art. 9 is unappropriated (adoption at the next meeting and amendments by delegates).

Article 24 - Decisions and confidentiality

(1) Any meeting of the committee shall only be effective if four fifths of the members or alternates attend.

Germany: 24(1) the consequence should be that the whole meeting is postponed.

(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.

Germany: 24(2) decisions shall only be taken by members having taken part in the oral debates.

(3) The deliberations of the committee shall be confidential.

Germany: 24(3) add: "and remain confidential"

(4) The final decision shall be given in public, conveyed to the parties concerned and include reasons.

Germany: 24(4)
- what is part of the decision and what would be given in public ?
- consequences of *res judicata*?

France and UK: 24(4) Not in line with the Convention, unpractical.

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.

Germany: art. 25

- add "The procedure before the committee is free of costs"
- "may award" is insufficient
- consequences of the execution of the final decision have to be taken into consideration.

France: art 25. Not in favour of such a provision, the procedure not being of a jurisdictional nature.

Italy: art 25. It is necessary to specify the criteria for cost-bearing.

Finland: art 25. Clarification needed regarding "costfree" proceedings.

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⁾

Belgium: Reference to art 6 of ECHR not adequate, deletion of art 26.

Denmark: Deletion of art 26. No strict procedure needed.

Germany: In cases not provided by these rules, Germany prefers a reference to existing procedures (e.g. European Court of Justice), instead of a reference to the ECHR. As art 6 of ECHR does not provide procedural rules, it is necessary that the reference is made to an existing procedure in line with art 6 of ECHR.

Greece: No definitive position, but considers reference to ECHR as sufficient.

Spain: No definitive position, feels that administrative procedure sufficient.

France: Deletion of art 26.

Ireland: No definitive position.

Portugal: In line with delegate of Portugal at the Commissioners Working Party.

Finland: Art 26. Clarification of "process and natural justice", administrative procedure is sufficient.

Sweden: administrative procedure sufficient, no strict procedure necessary.

UK: No detailed procedures needed.

Remark: on request of several delegations the legal service of the Council will be consulted on this issue.

II. Specific rules of procedure

Article 26 a - Procedure in case of appeals relating to the right of response in due time (Art. 19 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.

Germany: Chapter II: The added value of these provisions (art 26 a - 34) regarding the Convention is not clear.

Austria: 26 a - 34: considers these provisions as necessary.

Austria: 26 a: The provision should include the possible ruling of the committee.

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. 19 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

France: Art 27 - 34. Proposal to reduce to a synthesis as these provisions are contained in the convention.

Italy and Finland: Art 27 - 34 should be deleted.

Austria: Art 27: In the text there is confusion between the Member State where the request has been made

information system, the committee shall consult the national supervisory

(relevant for the decision whether the applicant is entitled to request access or

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(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).

France: Art 27 - 34. Proposal to reduce to a synthesis as these provisions are contained in the convention.

Italy and Finland: Art 27 - 34 should be deleted.

Austria: Art 28: The open questions mentioned in art 27 have to be answered mutatis mutandis. While in this procedure there is no Member State having entered data, EUROPOL has to take part.

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.

France: Art 27 - 34. Proposal to reduce to a synthesis as these provisions are contained in the convention.

Italy and Finland: Art 27 - 34 should be deleted.

Austria: Art 29: The open questions mentioned in art 27 have to be answered *mutatis mutandis*. In this procedure, EUROPOL as well as Member States participating in the analysis as well as other Member States directly concerned have to play a role.

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.

France: Art 27 - 34. Proposal to reduce to a synthesis as these provisions are contained in the convention.

Italy and Finland: Art 27 - 34 should be deleted.

Austria: Art 30: In the same manner as explained in art 27 there is a confusion in the text between the Member State where the request has been made (relevant for the decision whether the applicant is entitled to request or only checking as well as for the answer to the question which national law shall be applicable) and that Member State which entered the data (its NSB resp. court have to be cooperated closely).

Article 31 - Appeals relating to the checking of data entered by Europol in the information system (Art. 19 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.

France: Art 27 - 34. Proposal to reduce to a synthesis as these provisions are contained in the convention.

Italy and Finland: Art 27 - 34 should be deleted.

Article 32 - Procedure in case of appeals relating to the checking of data in the work files for the purposes of analysis (Art. 19 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.

France: Art 27 - 34. Proposal to reduce to a synthesis as these provisions are contained in the convention.

Italy and Finland: Art 27 - 34 should be deleted.

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.

France: Art 27 - 34. Proposal to reduce to a synthesis as these provisions are contained in the convention.

Italy and Finland : Art 27 - 34 should be deleted.

Austria: art 33: Detailed explanations on the application of Art 19 para (1) to (7) of the Convention to non-automated data files held by EUROPOL (f.e. the legal position of member states in the procedure) is necessary to be given.

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.

France: Art 27 - 34. Proposal to reduce to a synthesis as these provisions are contained in the convention.

Italy and Finland: Art 27 - 34 should be deleted.

Austria: art 34: In the same manner as explained in art 27 there is a confusion in the text between the Member State where the request has been made (relevant for the decision whether the applicant is entitled to request or only checking as well as for the answer to the question which national law shall be applicable) and that Member State which entered the data (its NSB resp. court have to be cooperated closely).

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.

Germany: art. 35

- the members of the secretariat falling under the staff regulations of EUROPOL, it must be sure that they are not under the authority of the EUROPOL director but under those of the chairman of the JSB or appeal committee (art. 2 (1) of the Management Board may be taken).

- it must be sufficient, that correspondence is addressed to the JSB (approved by the NL).

Italy: Art 35. It is necessary to outline the tasks of the Secretariat.

France: art 35. cannot imagine that Europol staff works for the JSB on the basis of secondment; no link should exist between Europol and the JSB.

Austria: art. 35: The staff regulations of EUROPOL will apply to members of the secretariat. In order to guarantee impartiality it should be foreseen that members of the secretariat shall not be allowed to hold an office within EUROPOL at the same time.

Sweden: 6. sentence add: "and of all to appeals related documents".

<p><u>Article 36 - Confidentiality</u></p> <p>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.</p>	<p>Germany: art. 36</p> <ul style="list-style-type: none"> - which experts ? - which sentences in case of infringement of confidentiality obligations <p>Finland: art. 36. Refer to personal data instead of circumstances.</p>
	<p>Italy: It is necessary to envisage provisions identifying the procedures for data collection and processing by the members of the JSB in order to ensure an adequate protection of confidential information. After art 36 two new articles should be introduced:</p> <ol style="list-style-type: none"> 1) article outlining the procedure in order to acquire and have access to data marked with the Europol levels 1, 2 and 3 as well as related cautionary measures. 2) article regulating custody of such data.
<p><u>Article 37 - Headquarters</u></p> <p>The joint supervisory body shall have its headquarters in⁽¹⁾, but may meet in other locations as appropriate.</p>	<p>Germany: art 37. proposes The Hague but not in the EUROPOL premises.</p> <p><i>France: art 37. Not in the Europol building to protect the independence of the JSB, and not in a national supervisory bodies buildings.</i></p> <p>Finland: art 37. Prefer the site of the JSB nearest possible to the Europol; i.e. The Hague.</p>

⁽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.

<p><u>Article 38 - Budget and Costs</u></p> <p>(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.</p> <p>(2) The joint supervisory body shall decide on the disbursement of the budget allocated to it which will be administered by the secretariat.</p>	<p>Italy: 38(1) deletion the provision of the article 24(9) of the Convention.</p>
<p><u>Article 39 - Amendment of the rules of procedure</u></p> <p>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.</p>	<p>Germany: art 39. Add "unanimous" before approval.</p> <p><i>Austria: art 39: These rules of procedures should be considered as provisional. After a period of 3 - 5 years they should expire. This gives the opportunity to JSB and Council to reconsider, adapt or modify the regulations based on experiences gathered meanwhile.</i></p> <p>Finland: art 39. Add "unanimous" before approval.</p> <p>Specify that the amendments should also be given to the Management Board for information and for its (possible) statement.</p>