



JOINT SUPERVISORY BODY OF EUROPOL

Brussels, 22 October 2003

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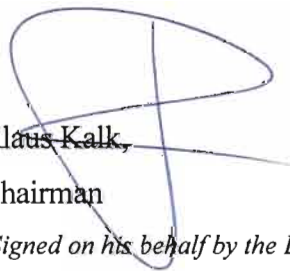
Dear Sir/Madam,

Enclosed you will find the first activity report of the Europol Joint Supervisory Body, issued on 23 October.

The report covers the first four years of the Body's activities.

I hope that this report will demonstrate the need of independent supervision on the processing of personal data and the importance of applying data protection principles to the work of Europol.

Yours sincerely



Klaus Kalk,
Chairman
(Signed on his behalf by the Data Protection Secretary)



JOINT SUPERVISORY BODY OF EUROPOL

PRESS RELEASE

On 23 October 2003, the Europol Joint Supervisory Body will present its first activity report.

The Joint Supervisory Body is an independent body made up of representatives of the national data protection authorities of the fifteen EU Member States which have ratified and applied the 1993 Europol Convention. It is charged with monitoring the activities of the European Police office -Europol- in order to ensure that the storage, processing and utilization of personal data do not violate the rights of individuals held by Europol.

The report covers the first four years of the Joint Supervisory Body, and provides an overview of the wide-ranging data protection issues related to Europol's work.

The JSB has issued advice on a range of developments at Europol, as well as with regard to opening work files for analysis purposes and all draft agreements with third countries and organisations in view of transferring personal data. In order to fulfil its tasks in the most effective way, the Joint Supervisory Body has also invested in developing different methods of supervising. In particular it has carried out regular audits of Europol headquarters and its data processing systems.

The JSB believes that it is important to raise public awareness of the data processing operations carried out by Europol, the access rights granted by the relevant Convention, and the activities performed in this sector.

Consequently, the JSB has been working to set up a web site, in which its activity reports – which are expected to be submitted every two years – as well as additional information on its activities and all the necessary reference documentation will be provided.

Joint Supervisory Body of Europol

Activity report

October 1998 to October 2002



Further information can be obtained from:

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Preface

As Chairman of the Europol Joint Supervisory Body, I am very pleased to be able to present our first activity report. I am aware that the measures described therein owe much to the initiatives set in motion by my predecessors Fergus Glavey and Alex Türk, the first Chairman of the Appeals Committee Peter Hustinx and to the capable and enthusiastic collaboration of all the members of our body.

The interest of the press and the general public in the role played by the body is clearly growing. This is probably due to the fact that we are now well and truly up and running, thanks among other things to the establishment of a joint Secretariat with the Schengen and Customs Supervisory Authorities. In some Member States, the role of Europol, its functioning and the way it is controlled are discussed in parliament.

Unfortunately, it is very probably also true that the tragic events of 11 September 2001 in the United States of America hastened the awareness of our fellow European citizens of the importance of the problems dealt with by Europol, and thus of the tasks performed by the body, which is constantly called upon to balance the obligations of personal data protection against the legitimate needs of Europol in its co-operation with its American counterparts in the fight against terrorism.

To conclude, I would like to express the wish that when the second activity report is published in 2004, we will be able to state that the values of humanism have triumphed over the forces of obscurantism.

Klaus Kalk

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I. Data protection and Europol

It has long been recognised that the fight against serious crime will only be effective when police forces cooperate on a national and international level. The Europol Convention is the embodiment of the strong desire within the European Union (EU) to encourage such cooperation. Although international cooperation is not a new phenomenon in the police field, the Europol Convention marks the start of a European institution that provides a platform for various forms of cooperation between police forces.

It is generally acknowledged that developments in the field of police cooperation must be incorporated into a legal framework in which the rights of individuals are guaranteed.

This need is expressed in the preamble to the Europol Convention where it is stated that:

‘in the field of police cooperation, particular attention must be paid to the protection of rights of individuals, and in particular to the protection of personal data’.

The data protection provisions contained in the Europol Convention consist of two elements. Firstly, they stipulate that Member States are required to have national data protection legislation in relation to the processing of personal data in data files in the framework of the Europol Convention (Article 14 of the Europol Convention). Furthermore, this national data protection must correspond to the standard resulting from the implementation of the principles of the Council of Europe Convention of 28 January 1981 and take into account Recommendation No R(87)15 of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector.

Secondly, the provisions set out a number of data protection rules in the Europol Convention itself. These data protection rules provide a balance between the responsibilities of Europol as a data controller, on the one hand, and the rights of the individual, on the other hand, taking into account the position of Europol in the various forms of cooperation.

Some of these data protection rules in the Europol Convention can be characterised as an incentive for harmonisation of the data protection rules that are applicable to police files in the EU Member States. The Europol Convention includes basic data protection rights — such as the right of access — that must generally be exercised in accordance with the national data protection law of the Member State concerned. In practice, this is likely to lead to the further harmonisation of data protection rules concerning the police sector.

Data protection cannot exist merely as an abstract concept: Europol must apply the rules laid down in the Europol Convention and the organisation should be conversant with the key principles of data protection. The experience of the past four years would seem to indicate that Europol takes its responsibilities as a data controller seriously.

II. Four years of the Joint Supervisory Body, its role and developments

Since it came into being, the Europol Joint Supervisory Body (JSB) has met 21 times in plenary session. The first and founding meeting took place in The Hague on 9 October 1998. The JSB meets at least four times a year, but, since the start, the necessity for an increasing number of extra meetings has become apparent.

The JSB is composed of two members or representatives of each of the national supervisory bodies of the Member States ⁽¹⁾.

The task of the JSB is specified in Article 24 of the Europol Convention. In general, the JSB is charged with reviewing the activities of Europol in order to ensure that the storage, processing and utilisation of the data held by Europol do not violate the rights of the individual. In addition, the JSB monitors the permissibility of data originating from Europol, examines questions relating to the implementation and interpretation of the Convention, and also tackles questions relating to checks by national supervisory bodies. Furthermore, the JSB may draw up harmonised proposals for common solutions.

An individual has the right to request the JSB to ensure that the manner in which his or her personal data have been collected, stored, processed and utilised by Europol is lawful and accurate.

More specific tasks are specified in Articles 12, 18, 19 and 20 of the Europol Convention. These tasks concern the opening orders for analysis files, the communication to third States and third bodies, and an appeal procedure regarding the right of access and the right of correction and deletion.

In order to fulfil its task, the JSB adopted rules of procedure at its second meeting on 23 November 1998. The Council of the European Union subsequently approved these rules of procedure by its decision of 22 April 1999 (see Annex C).

The JSB is at present the only joint supervisory body that has its own budget. Other supervisory authorities, such as the Schengen Joint Supervisory Authority and the Customs Joint Supervisory Authority, are financed through the normal structures of the Council of the European Union. Given that it has its own budget, the JSB is able to act with a certain degree of flexibility, thus enabling it to fulfil its tasks in the way it sees fit.

To start with, the JSB had a secretariat made up of staff from the General Secretariat of the Council of the European Union. However, there was an initiative to establish an independent secretariat and, following a Council decision of 17 October 2000, a permanent and independent secretariat was created on 1 September 2001 (see Annex D).

It is clear that, if the JSB is to fulfil all its tasks in the ever demanding field of police cooperation, the workload must be managed effectively. From the beginning, the JSB has had to develop working methods that would enable it to function as an independent supervisory body. Working groups were created to look at information technology matters, questions concerning relations with third States or bodies, public relations and for assessing opening orders. The work done by such groups made it possible to prepare the meetings of the JSB. At the same time, the JSB invested in enlarging its knowledge on police cooperation and the work of Europol.

The JSB also established an Appeals Committee (see Section V).

⁽¹⁾ Belgium, Denmark, Germany, Greece, Spain, France, Ireland, Italy, Luxembourg, the Netherlands, Austria, Portugal, Finland, Sweden and the United Kingdom.

The success of the work of the JSB depends on the capacity of the national supervisory authorities to participate. The increasing need for opinions of the JSB forces the delegations and as such indirectly the national supervisory authorities to make capacity available that may sometimes conflict with national priorities. The creation of a permanent secretariat can only compensate this partly, assuming that the secretariat will be staffed sufficiently.

The JSB aims to be a transparent and accessible organisation, and, to this end, it hopes to introduce a web site at some point in 2003.

III. Activities

A. Opinions

1. Opening orders

Opening orders specify the nature of one of the types of data files that are processed by Europol: the analysis file (Article 10 of the Europol Convention). The opening of an analysis file is only possible after the Management Board has approved the opening order of that file (Article 12.1 of the Europol Convention). Before the Management Board can decide on the opening of an analysis file, the director of Europol should inform the JSB of his plan to ask for the approval of the opening of an analysis file. The JSB may decide to advise the Management Board regarding the opening of the analysis file. It is the policy of the JSB to give a reaction on every opening of an analysis file.

The Council of the European Union has adopted implementing rules for the analysis files by the Council act of 3 November 1998 (OJ C 26, 30.1.1999).

If the urgency of the matter for which an analysis file is needed is such as to preclude obtaining the approval of the Management Board before starting the analysis file, the director may, by reasoned decision, order the opening of the file. The normal procedure of adopting the decision including the advisory role of the JSB starts directly after the decision to use the urgency procedure.

In all the urgency procedures that were instigated by the director of Europol, the JSB questioned the necessity to use this procedure. The use of the urgency procedure must be related to a particular case and the need for Europol to act fast in view of the nature of that case. In practice, it appeared that the urgency procedure was mainly used to avoid the standard procedure to open an analysis file that sometimes could take months. The JSB acknowledged the need for a less time-consuming procedure, and established the Working Group for Opening Orders to reduce the possible delay within the JSB to a minimum. It has been suggested that the Management Board of Europol do the same (Opinion No 00-07 of 8 May 2000).

For the opening orders, Europol uses a model opening order that was adopted after consulting the JSB. The use of this model gives a clear overview of the aim and the data that will be processed.

The JSB checks to ensure that the stated aim of the analysis file is in an area for which Europol has competence. In addition, the JSB examines whether or not the data processed are necessary to achieve the objective of the file, and an assessment is made of whether these data fall within the scope of Article 6 of the Council act. If the JSB deems it necessary to have more information before adopting an opinion on the opening order, it will ask the director of Europol to provide this information.

The JSB has advised the Management Board on 24 opening orders for analysis files. Two of these cases concerned the change of an existing opening order. To date, 16 of these analysis files are still in existence.

The use of a model opening order proved to be efficient. The JSB was able to assess the opening order in a reasonable time using the Working Group for Opening Orders to prepare the opinions of the JSB. A majority of opening orders gave, sometimes after having more information requested, no reason for comments. There are, however, some areas where the JSB noticed a tension between the wish to use Europol's analysis files and the rules regarding these files.

Prevention

Article 10 of the Europol Convention, in connection with the mandate of Europol, specifies that the objective of an analysis file should cover criminal offences that have been committed or on the basis of serious grounds are likely to be committed. These serious grounds must always be clarified before an analysis file for prevention purposes may be opened.

Drugs abuse

Medical data are treated as sensitive data. The processing of these data is according to Article 10, paragraph 1 of the Europol Convention restricted and must be classified accordingly in the opening order. Data concerning drugs abuse are, under certain circumstances, to be considered as medical data. These circumstances are closely connected with the context in which these data are processed. If they relate strictly to the habits of an individual, without a clear relation to the criminal offences that are committed, these data are to be classified as medical data.

Biometrics

In Europe, the legal framework for DNA evidence and other forms of biometric identification is not harmonised. For this reason, these data can only be used by Europol in the case where they have been gathered and provided to Europol in accordance with the relevant national legislation.

Victims and witnesses

Data regarding these categories can be particularly sensitive in view of the position of these people. When these data are processed in analysis files, the JSB is of the opinion that these data should be anonymised wherever possible.

Member States' responsibilities

It is not always possible for a Member State that participates in an analysis project to assess data before transmitting them to Europol. However, Article 15 of the Europol Convention clearly stipulates that the responsibility for the transmission of data to Europol and the input of data lies with the Member State. Member States must therefore take measures to ensure that the data that will be transmitted to Europol concern criminal offences covered by the mandate of Europol.

If no such measures are in place, this will no doubt lead to a practice where Member States transmit data to Europol without any certainty that this information falls within the present competence of Europol. This will result in a situation where Europol is processing data beyond its mandate, and so acting in breach of the Europol Convention (Articles 2 and 10).

Denmark proposed on 2 July 2002 an initiative for a protocol to amend the Europol Convention. One of the proposals concerned the procedure to open an analysis file. The director of Europol was appointed as the responsible authority for opening such a file. In this proposal, the Management Board had no longer any role in approving the opening of these files but was given the right to instruct the director to close the file or amend the opening order. The control function for the Management Board therefore changes from a proactive to a reactive control. The present procedure provides the possibility for the JSB to give comments preceding the approval of the opening of an analytical file. The proposal places the opening of the file before the possibility for the JSB to make comments.

In its opinion (Opinion No 02-55 of 3 October 2002) on this Danish initiative, the JSB underlined that its proactive control function is to be regarded as an essential aspect of safeguarding the rights of the individual in relation to the opening of analysis files. (This specific proactive role of the JSB is of great importance for the safeguarding of the rights of the individual.) The present procedure of notification of a plan to open an analysis file gives the JSB the opportunity to react before personal data are processed, whereas the amendment of the Europol Convention only provides for a possibility to do so after the pro-

cessing of data has started. If the JSB were to suggest that the data file should be closed or the opening order amended, and the Management Board should come to the same conclusion, a certain period of time for data processing, including the dissemination of personal data, may already have passed.

2. Cooperation with third parties

Since organised crime is not restricted exclusively to the Member States of the European Union, Europol will need to cooperate with third parties. According to the Council of the European Union, the effectiveness of combating organised forms of criminality through Europol must be enhanced by appropriate relations between Europol and third parties. Data will be received from and transmitted to third parties. The Europol Convention opens the possibility for this kind of cooperation and the Council of the European Union has determined general rules for receiving and transmitting data to third parties.

As far as personal data are concerned, the Council act of 3 November 1998 (OJ C 26, 30.1.1999) concerning the receipt of information by Europol from third parties and the Council act of 12 March 1999 (OJ C 88, 30.3.1999) concerning the transmission of personal data by Europol to third States and third bodies are relevant.

Apart from these general rules, the Council of the European Union in its decision of 27 March 2000 (OJ C 106, 13.4.2000) set conditions for the director of Europol to start negotiations with a number of third States and third bodies.

Receiving data

Through Europol's contacts or contacts of the Member States, third parties sometimes transmit data to Europol. This transmission can take place directly to Europol or via a Member State. The JSB at the time of forming an opinion on an opening order for an analysis work file doubted whether the receipt by Europol of data originating from third parties without an agreement being in place between Europol and the third party is in conformity with the Europol Convention.

According to Europol, the rules concerning the receipt of data from third States and bodies leave open the possibility to receive information without an agreement. Europol informed the JSB on 24 January 2001 of its internal policy that 'as long as no cooperation agreement is in place, in principle no data from third parties should be received by Europol officials'.

Receiving and transmitting data

The basic rule for this cooperation with third States and third bodies is the existence of an agreement if the cooperation also involves the transmission of personal data. In exceptional cases, the director of Europol can decide on a transmission of data.

Negotiations and agreements

According to the Europol Convention (Article 18) and the Council acts and decision, the JSB is consulted at different stages in developing the cooperation with third parties.

The first stage concerns the authorisation of Europol by the Council of the European Union to start the negotiations with third States and non-European bodies. This authorisation may be granted after an assessment of the law and administrative practice of the third State or non-European body in the field of data protection, including as to the authority responsible for data protection matters. Europol has to submit a report to the Management Board of Europol describing the situation in the third State or non-European body and concluding that there are no obstacles to starting the negotiations. This report also deals with the data protection aspects. The Management Board consults the JSB on these reports (Article 1(5) of the decision of the Council of the European Union of 27 March 2000). The JSB has been consulted regarding the start of negotiations with 10 third States and one third body (see opinions in Annex A).

In the first stage of this process, the role of the JSB is to assess whether, on the basis of the report presented by the Management Board, obstacles exist from a data protection perspective to starting the negotiations. The opinion of the JSB cannot be seen as a statement of adequacy of the data protection level.

Furthermore, the JSB expresses in its opinion the following specific data protection aspects that must be taken into account in the negotiations:

'Transmission of personal data can only take place if the purpose and the reason of the transmission are sufficiently clear and fall within (a) the scope of the Europol Convention and (b) the scope of the agreement between Europol and the third State or body.

Data transmitted by Europol can only be used for the purposes specified in the agreement (the purposes specified in the Europol Convention).

The third State or body is under an obligation to delete any data received from Europol as soon as it is no longer relevant for the purpose for which it has been transmitted

The time limits for the storage of personal data as specified in the Europol Convention and the relevant implementing rules should be made applicable to the data transmitted by Europol to the third State or body so as to ensure that these data are not stored for a longer period than would be allowed for Europol.

Onward transmission to third States of personal data received from Europol has to be excluded.

Direct connection between the computer systems of Europol and the third State or body would be in breach of the Europol Convention.

The transmission of personal data from Europol should follow a procedure that guarantees an adequate level of data security in the third State or body.

The storage and use of data should be adequately secured.

Transmission of sensitive data from Europol can only take place if the third State or body demonstrates case by case a clear and motivated need for the transmission of the relevant data.

Europol must immediately notify the third State or body of any modification of the data transmitted by Europol.

The third State or body, upon receipt of such a notification, is under a legal obligation to modify or delete the data received from Europol in accordance with the notification.

The application of the agreement should be supervised adequately and provision should be made for the third State or body to be liable towards individuals for breaches of the agreement as well as for unauthorised or incorrect data processing.

The data security level to be offered by the third State or body in respect of personal data transmitted by Europol needs to be assessed taking into account the framework established in Article 25 of the Europol Convention.'

On three occasions, the JSB, on the basis of the report from Europol, expressed that shortcomings in the national legislation of a third State and the Interpol rules in respect of the treatment of sensitive data must be adequately addressed before the transmission of these data could take place.

Following the events of 11 September 2001, there was a strong urge to establish cooperation between Europol and the United States. The JSB was asked for an opinion in the procedure for authorisation to start the negotiations with the United States. In contravention of the normal procedure, Europol was, in view of the pressure of time and the lack of information that should have been provided by the United States within that time limit, unable to provide the JSB with a report on the data protection law and practice in the United States.

The JSB reported to the Management Board that, because of the lack of the report from Europol, it was not able to express an opinion on the US data protection level. The JSB furthermore stated that only a formal agreement with the United States offers the legal basis that is needed for the cooperation between Europol and the United States.

The JSB explicitly noted that the data protection law and administrative practice in the United States differ on a number of points from the legal framework of Europol. Although these differences are no obstacle to starting negotiations, they do need to be properly addressed during the negotiations. Furthermore, the JSB insisted that it be kept fully informed and involved in the process of addressing the data protection problems during the negotiations.

When Europol wants to enter into negotiations with an EU-related body, the director of Europol needs the authorisation of the Management Board. In this procedure, the JSB is not consulted (Article 3(4) of the Council act of 12 March 1999). When an agreement is concluded, the Management Board may only approve the agreement after obtaining the opinion of the JSB.

The second stage is when the Management Board, preparing for the Council's approval of the concluding of the agreement, consults the JSB (Article 3(3) of the Council act of 12 March 1999). The JSB assesses the draft agreement on all the data protection aspects of the Europol Convention including the specific aspects that were expressed in the opinion concerning the (non-) existence of obstacles to starting the negotiations. The JSB did not object to the concluding of the agreements with the third States on which it was consulted, but suggested alterations to some agreements. In relation to the agreement with Interpol, the positive opinion of the JSB was conditional on the changing of the agreement on specific points.

As already established in the first stage of the process, the assessment of the draft agreement between Europol and the United States confirmed once more the different approaches in data protection both in law and in practice.

In its opinion (Opinion No 02-65 of 3 October 2002), the JSB recognised that significant progress has been made during the course of the negotiations between Europol and the United States. The draft agreement represented a joint effort to balance the need to fight serious crime with the rights of the individual, taking into account the different legal and administrative structures of both parties.

Although some subjects needed to be further addressed in an exchange of notes, the JSB adopted the opinion that the Council was now in the position to allow the director of Europol to conclude the agreement.

The exceptional cases

In conformity with Article 4 of the Council act of 12 March 1999, the director of Europol has informed the JSB on three occasions that he had decided to transmit data to a third State or body in an exceptional case.

Two of these decisions were related to the events of 11 September 2001. Apart from a specific decision regarding certain data, the director of Europol gave a general authorisation to transmit data to the United States for the purpose of investigating the terrorist acts. This authorisation can be characterised as an interim measure to establish cooperation with the United States pending the conclusion of a formal agreement.

The JSB informed the director of Europol that this permanent status for an exception, even in the situation arising from the events of 11 September 2001, might not replace on a permanent basis the standard rule for the transmission of personal data. The JSB suggested amending the decision of the director of Europol and implementing a time limit for the authorisation. According to the opinion of the JSB, this authorisation must not proceed after 1 July 2002.

3. Council act of 12 March 1999

The rules on the transmission of personal data exclude any onward transmission of personal data transmitted by Europol to a third State or non-EU-related body. The JSB was asked for its opinion on a proposal to allow a third State/body such onward transmission in the case where the Member State responsible for the data as well as Europol agree to that onward transmission.

The prohibition of onward transmission is an integral part of the system set up by the Europol Convention. Personal data can only be transmitted to third States/bodies in cases where an adequate level of data protection exists and an agreement has been concluded with the relevant third State/body guaranteeing the rights of the data subjects. Both preconditions need to be met before transmission can be legal. The JSB stressed that allowing unlimited onward transmission would be in breach of this system (Opinions Nos 00-24 of 21 December 2000, 01-12 of 18 April 2001 and 01-34 of 26 November 2001).

The JSB acknowledged that the total exclusion of onward transmission of personal data can create problems for Europol and, in particular, for Europol's relations with third States and bodies and proposed conditions that must be met before onward transmission can take place. These conditions must be implemented in the Council act and taken into account in the agreements with third States or bodies.

The JSB stated in its opinion that the proposed (and revised) amendment 'allowing onward transmission of personal data by third bodies in case an agreement is in place with this relevant third State or body covering data resulting from onward transmission as well as in certain exceptional cases mentioned in Article 2 of the rules on the transmission of personal data is acceptable under the conditions set out in this opinion'.

These conditions are:

- an agreement has to be concluded between Europol and the relevant third body before this third body can transmit personal data onwards; and
- the onward transmission of personal data has to be based on truly exceptional circumstances within the meaning of Article 2(1)(b) of the rules which has to be duly motivated for each individual case; and
- a clear and motivated need has to exist for personal data to be transmitted to third States or bodies via an intermediate body instead of by direct transmission; and
- the director of Europol and the Member State that have supplied the data need in each individual case to give their prior consent to the onward transmission; and
- the director of Europol needs to ensure and motivate that data protection in the receiving third State or body is of an adequate level taking into account Article 2(2) of the rules; and
- the director of Europol needs to keep a record of each case of onward transmission and — in accordance with Article 4 of the rules — inform the JSB of each case'.

The Council act of 12 March 1999 was changed on 28 February 2002 (OJ C 76, 27.3.2002) according to the opinion of the JSB.

4. Member States' operational projects with Europol support

The inspection group of the JSB that performed an inspection at Europol in November 2000 reported to the JSB the existence of analysis files that were in operation for Member States' projects with Europol support. In these projects, better known as the MSOPES, Europol renders analysing services to Member States' projects. In some projects, Europol creates analysis files under the responsibility of a Member State and does not apply Article 10 of the Europol Convention.

The JSB contacted Europol to receive more information on the practice of the MSOPES. The director of Europol informed the JSB of his opinion 'that the present legal framework laid down in the Europol Convention allows Europol to assist with analysing services'.

The JSB supported the view of the director of Europol that efficient action against serious criminality requires common strategies, initiatives and close cooperation. In this field, the role of Europol is clearly acknowledged and well defined in the Europol Convention. The JSB acknowledged the different ways in rendering this service and focused on the existence of analysis files as the support by Europol to the MSOPES.

The JSB came to the conclusion that the tasks of Europol as described in the Europol Convention are defined in general terms. On some points, however, the Convention specifies the task of Europol. Article 7 (the information system) and Article 10 (the work files for the purposes of analysis) relate the existence of the information system and the analyses files to the performing of the task of Europol (Article 7) or the achievement of the objective laid down in Article 2(1) of the Convention.

In view of the general tasks for Europol as mentioned in Article 3, paragraph 1, and the specific analysing task for Europol as exclusively specified in Article 10 of the Convention, the creating of analyses files can only take place within the framework of Article 10. This means that, in the opinion of the JSB, Europol's analytical support, by opening analysis files outside the scope of Article 10 of the Europol Convention, is in contradiction to this Convention.

The Danish initiative of 2 July 2002 for a protocol to amend the Europol Convention contained a provision allowing analytical support to be provided to investigations in Member States in accordance with the national law of the Member State requesting such support and under the sole responsibility of that Member State.

In its opinion (Opinion No 02-55 of 3 October 2002), the JSB strongly objected to this proposal which was aimed at regulating the situation in which some Member States request analytical support, even for those investigations that clearly fall within the objective of Europol, but where those Member States apparently do not want to participate in an analysis file under the legal framework and responsibility of Europol. The JSB stated that, from a data protection point of view, the need to maintain one legal system as developed in Article 10 of the Europol Convention for analysis files is crucial. The JSB stressed that a situation where a great variety of legal systems may apply to — in content, objective and structure — identical analysis files will lead to a situation where transparency fades away and the legal framework of that file will in practice be difficult, if not impossible, to understand for all the participants in the analytical process as well as for the individual whose data are processed.

5. Danish initiative to amend the Europol Convention

Denmark proposed on 2 July 2002 an initiative for a protocol to amend the Europol Convention. This initiative contained some fundamental changes to the Europol Convention. Some of these proposals and the reaction of the JSB (Opinion No 02-55 of 3 October 2002) are already described in Section IIIA(1) and (4).

The initiative aimed to strengthen the effectiveness and cooperation between Member States by stating that Europol has a **key role** with respect to cooperation between Member States' authorities in the field of cross-border crime investigation.

The JSB stated in its reaction that 'from a data protection point of view, this key role and effective combat against serious international crime must be accompanied by a joint effort of Europol and all the Member States for decent processing of data, confidentiality, reliability and data quality'.

Amendments were proposed on various aspects of the Europol Convention and the work of Europol. The JSB has commented on all the proposals that involved the processing of personal data. These proposals were related to different aspects of the Europol Convention such as the objective of Europol, its tasks, its contacts with the Member States, the analysis work files, the retention of data, the control on the retrieval of data and the transmission of data to third States and third bodies.

The initiative also introduced the creation of a system for background information for the execution of the tasks of Europol. The JSB's reaction was that the proposal was not specific enough and that more clarification was needed.

In order to enable competent authorities in the Member States to consult the Europol information system, the possibility to query the system was introduced. Although a further stimulation of the cooperation between Member States may make this necessary, the JSB, in view of the objective of Europol and the category of data processed, stressed that the communication should be limited to those competent authorities that have a legal task in preventing and combating serious international crime.

The general conclusion of the JSB was that the initiative to change the Europol Convention will lead to a fragmentation of the cooperation between Member States and Europol and not to a key role for Europol. This will have a great negative impact on the quality of the data protection of those individuals whose data are, or will be, processed by Europol. The JSB urged reconsideration of the draft protocol.

B. Inspections

Pursuant to Article 24(1) of the Europol Convention, the JSB has the task of reviewing the activities of Europol in order to ensure that the rights of the individual are not violated by the storage, processing and utilisation of data held by Europol.

On 29 June 2000, the JSB set up an inspection group responsible for carrying out an inspection on the security and the analysis work files at Europol. In view of the inspection that was scheduled in November 2000 and for future inspections, Europol and the JSB adopted a protocol on the special arrangements with Europol concerning visits and inspections by the JSB.

During the preparation and performance of the checks, the inspection group used the relevant principles and recommendations of the Information Systems Audit and Control Association (ISACA) as a basis, adapted to the specific characteristics of the installation as well as to restrictions related to the environment, the objectives, the information available and the duration of the inspection. European criteria were also taken into consideration for this inspection, as listed in the *Information technology security evaluation criteria* (ITSEC) and *IT security evaluation manual* (ITSEM) documents, which are regarded by Member States of the European Union as the main official reference in the field, in accordance with Council Recommendation 95/144/EC of 7 April 1995.

The draft report was submitted to Europol in December 2000. After the receipt of Europol's reaction in April 2001, the inspection report was amended and adopted at the meeting of the JSB on 12 October 2001.

In view of the findings of the inspection team, the JSB concluded that Europol fulfils the requirements mentioned in the relevant regulations and it would appear that the work of Europol is also carried out in compliance with principles of good practice. This conclusion only relates to the matters subject to the inspection.

The JSB formulated several recommendations and stressed the need to apply necessary measures as mentioned in these recommendations in order to improve compliance with these regulations.

In March 2002, a second inspection took place.

At its meeting of 13 December 2001, the JSB set up an inspection group responsible for carrying out an inspection on the follow-up by Europol of the recommendations of the JSB in its inspection report of 12 October 2001.

The JSB is satisfied that Europol has taken seriously the recommendations contained in the first inspection report. Europol has already taken a number of actions to implement the recommendations. A number of projects have been initiated to assist the implementation of the recommendations that have yet to be addressed. Most of these projects have yet to reach their conclusion. It is regrettable that there appears to have been some delay in the completion of these projects. This delay is not due to a lack of resolve on Europol's part, but to the complexity involved in implementing the projects with the agreement of all parties involved, and as a result of changes in the Technology Services Department. It is essential that these projects be seen through to their conclusion without further delay. It is particularly important that those projects that have a bearing on other work, namely the risk analysis project, proceed towards an urgent conclusion. The JSB informed Europol of its wish to be kept informed of the progress of these projects and of the successful implementation of the recommendations that are dependent on the completion of these projects.

C. Other activities

1. Contacts

The Management Board of Europol, the director of Europol and the JSB have recognised the need to meet on a regular basis. In practice, these meetings take place at the changing of the Presidency of the European Union every half-year. These meetings contribute to a better understanding of the different responsibilities of the three participants.

In June 2002, the JSB organised a meeting with representatives of the data protection authorities in the third States and third bodies with which Europol has concluded an agreement to cooperate and to exchange personal data. All participants shared the view that data protection is best served by sharing information and experience between those data protection authorities that supervise the transmission and further processing of data. The first meeting resulted in a common feeling that the meetings should be continued on an annual basis.

2. Studies

The JSB has initiated a questionnaire on right of access. This questionnaire focuses on the legal provisions in the Member States dealing with right of access to police files. An important aspect of this study is to obtain an overview of how this right of access is dealt with in practice. A report on this study is expected in 2003.

The JSB intends to investigate the quality of data processed by Europol. Data that are being processed by Europol may be used in every Member State for the prevention and combating of criminal offences falling within the competence of Europol, and to combat other serious forms of crime. In view of the kind of data that are processed, these data will have a great influence on the way an individual is treated in the Member States. After all, these individuals are suspected of being connected with international crime in an organised structure. High-quality data are therefore of the utmost importance.

Since the value of Europol in combating international crime by maintaining an information system is the sharing of data (coming from Member States, third States and bodies, and from the analysis files) regarding a certain individual, it is important that this shared information provides a description of that person which is relevant and accurate.

IV. Future

Europol is an organisation with a specific task to provide for an extra dimension to police cooperation in Europe. An important aspect of Europol's task is the facilitating of exchange of data, the analysing of data and the sharing of data by maintaining computerised systems. Although responsibilities regarding the processing of data are divided between Europol and the Member States, the success of Europol and its specific tasks is, in fact, a common responsibility for the Member States and Europol. The mandate of Europol is related to international crime and that needs an international and joint answer.

An organisation such as Europol is to a large extent dependent on the cooperation of others. It is also dependent on the input of data from different sources and the will of the Member States to share information. If there is no input, or the quality of data is inadequate, the added value of Europol is at stake. At this point, data protection concerns run parallel to the law enforcement and security interest at a European level. The principle of data quality is essential to data protection as well as to law enforcement and the added value of Europol.

Many European initiatives concern the (further development) of law enforcement and security in Europe. Some of these developments, such as Eurojust (European unit of prosecutors, judges and police officers), the establishment of the customs information system and the development of the new Schengen information system, contain elements of processing personal data on a European level. Furthermore, initiatives are being developed to exchange data between Europol, Eurojust and the Schengen information system. Discussions on the task of Europol may also have implications for the processing of data.

The enlargement of the European Union will create its own dimension for Europol and the acceding States. The sharing of knowledge on police work and procedures and the exchange of data will be important for these new Member States as well as for Europol. It should be noted that most of the new States have already signed an agreement for cooperation with Europol.

In a situation where personal data is shared by different organisations or information systems, the need to invest in the quality of data is evident. The sharing and use of these data by different authorities, and the analytical process in order to find specific links between data or create new data, will have a great influence on the way the data subjects are treated in their private lives. Member States and Europol should therefore invest in a system of checks and controls to provide and maintain a high level of data quality.

The JSB is constantly monitoring these developments in cooperation with the other joint supervisory authorities and will take action where necessary. The JSB will check that these developments take into account the protection of the rights of individuals and, in particular, the protection of personal data. Where these developments have implications on a national level, the JSB will seek cooperation with the national supervisory authorities.

The JSB will inspect Europol on a regular basis and seek to maintain dialogue with Europol and other responsible institutions in order to uphold an adequate standard of data protection. The JSB will invest in the (further) development of inspection methods and procedures. These inspections may concern the general implementation of the principles of Article 25 of the Europol Convention or more specific targets. That is not to say that the JSB regards itself as the only supervisor. National supervisors are active in controlling the national units at Europol and Europol's data protection officer has a specific and controlling role in the organisation. In view of the specific position of Europol, the JSB will stimulate and support the work of these different controllers. Cooperation between the JSB, the national supervisors of the Member States and the national supervisors of the third States with which Europol has an agreement on transmitting personal data will be (further) developed. Data protection at the Europol level is best served by monitoring the data protection aspects of cooperation in the field of law enforcement on the national level and on the JSB level. The JSB will furthermore stimulate the development of internal audit instruments for Europol.

V. Appeals Committee

The Europol Convention compels the JSB to set up a committee for examining the appeals provided for in the Convention. The Appeals Committee of the JSB was established on 23 November 1998 and has convened 14 times since then. The proceedings of an appeal and the work of the Appeals Committee were incorporated into Title III of the rules of procedure of the JSB.

Any individual wishing to exercise his or her right of access to data relating to him or her or to have such data checked may make a request to that effect to the national competent authority in any Member State he or she wishes. In general, the national data protection authorities are appointed as the competent authority to receive these requests. These competent authorities are obliged to refer the request without delay to Europol. Europol must deal with that request within three months. Europol will inform the enquirer that he or she may appeal to the JSB if he or she is not satisfied with the decision of Europol.

Although Europol receives requests for access to or for checking data on a regular basis, only in two cases was an appeal lodged. On 16 May 2002, the Committee announced its decision in the first case in a public meeting.

VI. Opinion of the Management Board of Europol

According to Article 24(6) of the Europol Convention, the Management Board of Europol was given the opportunity to deliver an opinion on the activity report.

The JSB received no comments from the Management Board.

Annexes

A. Opinions period October 1998 to October 2002

No 99-01	Opinion on the rules governing the transmission of personal data (15.1.1999)
No 99-08	Opinion on the rules of procedure (23.4.1999)
No 99-10	Opinion on drawing up reports for retrievals of personal data in the information system (23.4.1999)
No 99-15	Opinion on the model opening order and four opening orders (9.7.1999)
No 99-20	Opinion on three opening orders (1.11.1999)
No 00-02	Opinion on two opening orders (15.3.2000)
No 00-07	Opinion on one opening order (8.5.2000)
No 00-08	Opinion on the establishing of a permanent secretariat (19.4.2000)
No 00-09	Opinion of the JSB in respect of the data protection level at Interpol (7.6.2000)
No 00-10	Opinion of the JSB in respect of the data protection level in Norway (7.6.2000)
No 00-12	Opinion on one opening order (19.7.2000)
No 00-18	Opinion of the JSB in respect of the data protection level in Hungary (20.10.2000)
No 00-19	Opinion of the JSB in respect of the data protection level in Iceland (20.10.2000)
No 00-20	Opinion of the JSB in respect of the data protection level in Poland (20.10.2000)
No 00-22	Opinion of the JSB in respect of the data protection level in Estonia (21.12.2000)
No 00-23	Opinion of the JSB in respect of the data protection level in Slovenia (21.12.2000)
No 00-24	Opinion on the amendment of the rules on the transmission of personal data in respect of onward transmission of personal data (21.12.2000)
No 01-04	Opinion on one opening order (8.2.2001)
No 01-05	Opinion on one opening order (8.2.2001)
No 01-08	Opinion on drawing up reports for retrievals of personal data in the information system (8.2.2001)
No 01-09	Advice of the JSB in respect of the proposed interim information system of Europol (8.2.2001)
No 01-12	Opinion on the amendment of the rules on the transmission of personal data in respect of onward transmission of personal data (18.4.2001)
No 01-13	Opinion of the JSB in respect of the data protection level in the Czech Republic (18.4.2001)
No 01-14	Opinion on a revised opening order (18.4.2001)
No 01-15	Opinion in respect of the draft agreement to be signed between Europol and Norway (2.5.2001)
No 01-16	Opinion in respect of the draft agreement to be signed between Europol and Iceland (2.5.2001)
No 01-17	Opinion in respect of the draft agreement to be signed between Europol and Interpol (2.5.2001)
No 01-21	Opinion in respect of the draft agreement to be signed between Europol and Poland (26.6.2001)
No 01-22	Opinion in respect of the draft agreement to be signed between Europol and Hungary (26.6.2001)
No 01-23	Opinion in respect of the draft agreement to be signed between Europol and Estonia (26.6.2001)
No 01-24	Opinion in respect of the draft agreement to be signed between Europol and Slovenia (26.6.2001)
No 01-25	Opinion on a revised opening order (26.6.2001)
No 01-	Opinion on two opening orders (16.10.2001)
No 01-31	Opinion on the use of Europol's analysis facilities in Member States' operational projects with Europol support (8.11.2001)
No 01-34	Opinion on the amendment of the rules on the transmission of personal data in respect of onward transmission of personal data (26.11.2001)
No 01-38	Opinion of the JSB in respect of the data protection level in the United States (26.11.2001)
No 01-39	Opinion in respect of the draft agreement to be signed between Europol and the Swiss Confederation (26.11.2001)
No 01-40	Opinion in respect of the draft agreement to be signed between Europol and the Czech Republic (26.6.2001)

No 02-01	Opinion on one opening order (6.3.2002)
No 02-08	Opinion in respect of the decision of the director of Europol on transmission of personal data to law enforcement authorities in the United States of America (6.3.2002)
No 02-10	Opinion on the index system (6.3.2002)
No 02-13	Opinion on one opening order (6.3.2002)
No 02-14	Opinion on one opening order (6.3.2002)
No 02-27	Opinion in respect of the audit requirements for the new analysis system (15.5.2002)
No 02-46	Opinion on one opening order (26.6.2002)
No 02-47	Opinion on one opening order (26.6.2002)
No 02-48	Opinion of the JSB in respect of the data protection level in Canada (26.6.2002)
No 02-49	Opinion of the JSB in respect of the data protection level in Bulgaria (26.6.2002)
No 02-51	Opinion of the JSB in respect of the data protection level in the Slovak Republic (26.6.2002)
No 02-54	Opinion of the JSB in respect of the data protection level in Lithuania (1.8.2002)
No 02-55	Opinion in respect of the draft Council act drawing up a protocol amending the Europol Convention (3.10.2002)
No 02-60	Opinion of the JSB in respect of the data protection level in the Republic of Latvia (3.10.2002)
No 02-61	Opinion of the JSB in respect of the data protection level in Cyprus (3.10.2002)
No 02-62	Opinion on one opening order (3.10.2002)
No 02-65	Opinion in respect of the draft agreement to be signed between Europol and the United States of America (3.10.2002)
No 02-66	Opinion on one opening order (3.10.2002)

B. Reports period October 1998 to October 2002

- Inspection report No 01/00, adopted 12 October 2001
- Inspection report No 02-16, adopted 26 June 2002

C. Rules of procedure

Act No 1/99 of the Joint Supervisory Body of Europol of 22 April 1999

laying down its rules of procedure

THE JOINT SUPERVISORY BODY

Having regard to the Convention based on Article K.3 of the Treaty on European Union, on the establishment of a European Police Office (Europol Convention) ⁽¹⁾, and in particular Article 24(7) thereof,

Whereas it is for the Joint Supervisory Body acting unanimously to lay down its rules of procedure,

HAS ADOPTED THESE RULES OF PROCEDURE:

⁽¹⁾ OJ C 316, 27.11.1995, p. 1.

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Title I
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 utilisation of the data held by Europol. In addition, it shall monitor the permissibility of the transmission of data originating from Europol (Article 24(1), first and second sentences of the Convention).
2. For this purpose, the Joint Supervisory Body has the following tasks, in particular:
 - (a) examination of orders opening a data file (Article 12(1), second sentence and (2), third sentence of the Convention);
 - (b) examination of provisions concerning the drawing-up of reports on the retrieval of personal data (Article 16, first sentence of the Convention);
 - (c) examination of general rules for the communication of personal data by Europol to third States and third bodies (Article 18(2), second sentence 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 utilisation of personal data (Article 24(3), first alternative of the Convention),
 - checks carried out independently by the national supervisory bodies of the Member States (Article 24(3), second alternative of the Convention),
 - the exercise of the right to information (Article 24(3), third alternative of the Convention),
 - the drawing-up of harmonised proposals for common solutions to existing problems (Article 24(3), fourth alternative of the Convention);
 - (e) examination of the lawfulness and accuracy of a possible collection, storage, processing and utilisation of personal data by Europol at the request of an individual (Article 24(4) of the Convention);
 - (f) the drawing-up of activity reports at regular intervals (Article 24(6) of the Convention).

Article 2
Powers

1. The Joint Supervisory Body shall, for the discharge of its tasks, have the powers provided for in the Convention.
2. In particular, the Joint Supervisory Body shall be authorised to obtain information from Europol, to be given access to all documents and paper files as well as access to the data stored by Europol, and to be granted free access to all Europol premises at any time (Article 24(2) of the Convention). This includes information on and access to hardware and software, whenever this is necessary for the performance of the tasks of the Joint Supervisory Body. Details may be stipulated in arrangements between the Joint Supervisory Body and the Management Board of Europol.

Article 3
Committees

1. The Joint Supervisory Body shall set up the committee provided for under Article 24(7) of the Convention.
2. It may set up one or more other internal committees and determine their composition and terms of reference (Article 24(8) of the Convention).

Title II

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 which shall form a delegation. Each member may have an alternate. The members of the Joint Supervisory Body and their alternates shall be appointed for five years by each Member State (Article 24(1), third sentence of the Convention) which term shall be renewable.

2. The members of the Joint Supervisory Body and their alternates shall be independent, not bound by instructions 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 person concerned shall declare that interest and withdraw from taking part in the discussion and the decision on the matter. He may, where necessary, be excluded by a majority of the votes cast in a secret ballot by the delegations attending the meeting. The person concerned shall be heard before any exclusion, but shall not take part in the decision. If a person withdraws or is excluded, he may be replaced by his alternate.

3. Only persons having the necessary abilities may be appointed to serve as members of the Joint Supervisory Body or their alternates (Article 24(1), third sentence of the Convention). Particular regard shall be had to the requirements for the Appeals Committee.

4. A member of the Joint Supervisory Body who is unable to attend a meeting may be represented by his alternate.

5. Membership of the Joint Supervisory Body shall cease when the person concerned resigns. It shall also cease when that person ceases to serve as member or representative of the national supervisory body, unless his term of office is reconfirmed by the Member State concerned. Appointment as a member shall not be revoked other than in accordance with national law. This shall apply likewise to the alternates.

Article 5 Chair

1. The Joint Supervisory Body shall elect 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. The deputy chairman shall not be a member of the chairman's delegation. If none of the candidates achieves the required majority in the first round of voting, a second round shall take place between the two candidates having received the most votes. The chairman and his deputy shall be elected for a term of office of two years. Election for a second term of one year shall be possible.

2. The chairman shall represent the Joint Supervisory Body and chair its meetings. 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 prepare the provisional agenda and ensure the execution of the decisions of the Joint Supervisory Body.

3. The deputy chairman shall act for the chairman if he is unable to attend. In the absence of the deputy chairman, the oldest member in terms of age shall act as deputy chairman. The first meeting of the Joint Supervisory Body shall be convened and chaired by the oldest member in terms of age until the election of the chairman.

4. 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 a proposal from 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.

5. The chairman or a majority of the delegations may request the attendance at meetings of the director and invite staff members of Europol, national experts, liaison officers and other persons to attend.

Article 6

Working methods

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 at least three delegations submit a written proposal stating reasons, or present an oral proposal in a previous meeting. The chairman of the Management Board and the director of Europol shall be entitled to propose items 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 notice convening the meeting shall be transmitted in time to arrive at least two weeks before the meeting. The notice shall include the provisional agenda and the documents needed for the meeting, unless the nature of these documents does not allow so. 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 of the delegations attending, unless provided otherwise in these rules. Each delegation shall be entitled to one vote. In case of a tied vote, the chairman shall have a casting vote.
4. The meetings of the Joint Supervisory Body shall not be public. Its documents shall be confidential, unless the Joint Supervisory Body decides otherwise. However, documents submitted by Europol shall be subject to the confidentiality rules referred to in Article 31(1) of the Convention.
5. The Joint Supervisory Body shall meet on the basis of documents and draft papers drawn up in all official languages of the institutions of the European Union. Exceptions to this rule shall be admissible only in cases of urgency. However, each delegation shall have the right to require a translation in its own language.
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. In the framework of its powers in accordance with Article 24 of the Convention, the Joint Supervisory Body may carry out data protection checks at Europol.
2. The Joint Supervisory Body may appoint one or more members for carrying out these checks. Such members may be assisted by experts as deemed appropriate by the Joint Supervisory Body, drawn only from a list of experts established by the Joint Supervisory Body in advance and communicated to Europol. Experts on this list shall come from within national supervisory bodies and government agencies, unless such experts are not available. All experts must meet the security requirements applying under their national law.
3. 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.
4. The members of the Joint Supervisory Body entrusted with carrying out 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 utilisation of personal data, 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 (Article 24(5), third sentence of the Convention). Failure to comply with a final decision of the Appeals Committee shall be regarded as a violation of the Convention.

Article 9

Minutes

Minutes shall be made of all meetings of the Joint Supervisory Body. The draft minutes shall be prepared by the Secretariat under the direction of the chairman and submitted to the Joint Supervisory Body for adoption at its next meeting. Each member shall have the right to have the draft minutes amended to reflect comments made by that member 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 deliver an opinion, which shall be attached to the report (Article 24(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.

Title III

Rules of procedure of the Appeals Committee

Article 11

Tasks of the Appeals Committee

1. The Appeals Committee (hereinafter called 'the Committee') shall examine the appeals provided for in Article 19(6), (7) and (8), Article 20(4) and Article 22(3) of the Convention.
2. The Committee shall take final decisions in respect of the matters referred to in paragraph 1.
3. In addition to the powers referred to in Article 2(2), the Committee shall have the powers provided for in this chapter.

Article 12

Membership

1. The Committee shall be composed of one member of each delegation in the Joint Supervisory Body. Each member may have an alternate. The members of the Committee and their alternates shall be appointed for five years by the Joint Supervisory Body, on the nomination of the delegation concerned, which term shall be renewable.
2. The members of the Committee and their alternates shall have the necessary qualifications for examining and deciding the appeals referred to in Article 11(1), involving *inter alia* legal expertise, experience in conflict resolution and experience in data protection matters.
3. A member of the Committee who is unable to attend a meeting may be represented by his alternate.
4. Membership of the Committee shall cease when the person concerned resigns or ceases to be a member of the Joint Supervisory Body. This shall apply also to the alternates.

Article 13

Independence and impartiality

1. The members of the Committee shall be independent and impartial, not bound by directions of the Joint Supervisory Body or anyone else in the exercise of their duties and subject only to the law. They may not engage in any activity during their term of office which is incompatible with their independence and impartiality as mem-

bers of the Committee or with the required availability for service on the Committee. Activities which are being carried out or have been carried out on behalf of the national supervisory body shall not be regarded as incompatible with work on the Committee. The provisions of this paragraph shall apply also to the alternates.

2. Where a member of the Committee or an alternate has been involved in the case in such a manner as to give rise to serious doubts as to his impartiality, or any other circumstance arises which might prejudice the proper determination of an appeal, he shall declare this and withdraw from the case.

3. If a member or alternate is challenged by a party on grounds relating to paragraphs 1 and 2, the Committee shall hear the person concerned and the other parties and subsequently decide on the challenge in the absence of the person concerned by means of a secret ballot.

4. If a person withdraws or is excluded from the case pursuant to paragraph 3, he shall be replaced by his alternate.

Article 14

Chair

1. The Committee shall elect 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. If none of the candidates achieves the required majority in the first round of voting, a second round shall take place between the two candidates having received most votes. The chairman or deputy chairman of the Joint Supervisory Body may not be elected chairman or deputy chairman of the Committee nor be a member of the same delegation. The chairman and his deputy shall be elected for a term of two years. Election for a second term of one year shall be possible.

2. The chairman shall preside over the meetings of the Committee. He shall monitor the smooth and proper functioning of its work. He shall convene the meetings of the Committee and determine the venue, date and time of such meetings. He shall prepare the provisional agenda.

3. The deputy chairman shall act for the chairman if he is unable to attend. In the absence of the deputy chairman, the oldest member in terms of age shall act as deputy chairman. The first meeting of the Committee shall be convened and chaired by the oldest member in terms of age until the election of the chairman.

4. In order to prepare its deliberations, the Committee may appoint from among its members, on a proposal from the chairman, one or several rapporteurs. In such cases in principle, the member appointed as rapporteur shall be from the Member State from which the applicant comes or, if the applicant comes from a non-Member State, from the Member State to which the case is most closely connected. 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. The rapporteur shall examine the appeal and submit a report to the Committee on its admissibility and a proposal for further proceedings, in particular with regard to what preparatory measures are needed.

Article 15

Representation

The applicant may be assisted or represented by a lawyer or another adviser. A lawyer or an adviser may be excluded from the proceedings by the Committee in cases of serious misconduct. If a lawyer or an adviser is excluded, the chairman shall stipulate a deadline for the party concerned to enable him to appoint another lawyer or adviser; the proceedings shall be suspended until the expiration of this deadline. A lawyer or an adviser shall produce proper authorisation from the applicant, if so requested by the Committee.

Article 16

Languages

1. The procedure shall be conducted in one of the official languages of the institutions of the European Union. The applicant shall choose the official language in which the procedure shall be conducted. The language of the procedure shall be used in the oral statements and in the written documentation of the parties and in the minutes and decisions of the Committee.

2. Documents in a language other than the procedural language shall be accompanied by a translation into the procedural language. Where documents are lengthy, the translation submitted may be restricted to excerpts or summaries. The Committee may by virtue of its office or upon application from a party require a full translation at any time.
3. Where necessary, interpretation services and translations shall be provided for each member of the Committee and for the parties free of charge. The decisions of the Committee shall be translated into all official languages of the institutions of the European Union.
4. In cases where none of the official languages of the institutions of the European Union is accessible to the applicant, the complaint may be lodged in another language. The applicant is obliged to submit a summary in one of the official languages. The chairman or rapporteur shall have the complaint translated into the chosen language.

Article 17

Institution of the procedure

1. The appeal shall be lodged by submission of a written complaint at the Secretariat of the Joint Supervisory Body within three months of the decision of Europol being received by the applicant. When there is no decision, the appeal shall be lodged within three months after the expiration of the relevant time limits referred to in Article 19(6), Article 20(4) and Article 22(3) of the Convention. Any doubt about compliance with time limits shall be determined in favour of the applicant.
2. 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. The applicant may withdraw his appeal at any time.
3. The Secretariat shall acknowledge the receipt of the complaint within four weeks and give general information on the course of the procedure.
4. If the complaint does not meet the requirements set out in paragraph 2, first and second sentences and in Article 16(4), second sentence, the Secretariat shall invite the applicant to rectify any omissions within four weeks.
5. Appeals which do not meet the requirements shall be refused by the Committee on the proposal of the chairman or of the rapporteur. An appeal which does not comply with the time limits mentioned in paragraph 1 may be accepted, if special circumstances can justify the delay.

Article 18

Preliminary consideration

1. If the complaint meets the requirements, it shall be considered by the Committee on the basis of the following provisions taking into account the Convention especially Articles 19, 20 and 22.
2. A copy of the complaint shall be forwarded to Europol for its observations, which shall be submitted within four weeks, extension for two further weeks being possible.
3. The Committee may decide on a case-by-case basis additionally to involve in the appeals procedure one or more national units. The applicant and Europol shall be informed of this decision. The relevant national units shall be sent a copy of the observations from Europol and the applicant in order to enable them to submit their own observations, to be submitted within four weeks, extension for two further weeks being possible.
4. After the observations have been received or the deadlines have expired, the complaint shall be dealt with by the Committee within the ensuing three months.

Article 19

Additional information

1. The Committee may ask the applicant, Europol, the national units, the national supervisory bodies or any other body to provide information, evidence or comments to the Committee. The parties are entitled to make sugges-

tions to the Committee regarding the taking of evidence or to call for the admission of evidence. The Committee shall follow up these suggestions and calls for admission to the extent necessary for the examination of the case.

2. The Committee may also decide to investigate on location at Europol. Article 7 applies likewise. In this case, the applicant or his adviser shall be informed of the result of the investigation.

Article 20 Access to file of procedure

1. All parties shall, if they wish, have access to the file of the procedure, and require the Secretariat of the Joint Supervisory Body to provide them with excerpts or photocopies at their own expense. Access shall be refused where such refusal is necessary in order to:

- enable Europol to fulfil its duties properly,
- protect security and public order in the Member States or to prevent crime,
- protect the rights and freedoms of third parties,

considerations which cannot be overridden by the interests of the person concerned.

2. Europol, national units and national supervisory bodies may indicate to what extent the information they provide should not be made available to the applicant, stating the reasons for such a restriction. The Committee may ask for further reasons. To the extent that the Committee finds such reasons acceptable, the information concerned shall be withheld. The Committee may decide otherwise only in the absence of acceptable reasons and only unanimously. In this case, the Committee may require a summary to be made available to the applicant or require that certain information shall be provided to the applicant.

Article 21 Hearing

1. The parties shall be heard by the Committee should they so request. The Committee shall duly inform the parties of their right to be heard. This right shall be exercised in writing.

The Committee shall decide to hold an oral hearing on request from one of the parties involved in the proceedings to the extent deemed necessary for the examination of the case. The Committee shall duly inform the parties of their right to request an oral hearing. All parties shall be notified in due time of the oral hearing and have the right to be present.

2. An oral hearing shall be held in public unless the Committee decides by virtue of its office or on application from one of the parties to exclude the public wholly or partly where the interests of public security, especially on the grounds referred to in Article 19(3) of the Convention, or the protection of the privacy of an individual so require, or to the extent strictly necessary in the opinion of the Committee in special circumstances where publicity would prejudice the proper determination of the appeal. If a Member State that is a party to the proceedings, or Europol, requests that the public be excluded from the proceedings, the Committee may decide otherwise only on the grounds that no reasons as referred to in the first sentence obtain, and only unanimously.

3. The Committee may decide, at the request of a party or at its own initiative, to hear a party without other parties being present, where this is required in order to ensure the proper functioning of Europol, to safeguard the security of a Member State or to protect the interests of the applicant or a third party. The absent parties shall be informed of proceedings taking place in their absence.

Article 22 Hearing of witnesses and experts

1. The Committee may decide, at the request of a party or at its own initiative, to hear witnesses. All parties and the witnesses concerned shall be notified in due course of the hearing. Article 21(2) and (3) shall also apply.

2. Witnesses notified by the Committee shall be entitled to reimbursement of their travel and accommodation expenses and to compensation for loss of earnings, to the extent the Committee finds equitable. They may receive the necessary advance payments. All payments shall be made from the budget of the Joint Supervisory Body.

3. The witnesses shall be heard by the Committee. The members of the Committee may address questions to the witnesses. With the permission of the chairman, the parties may address questions to the witnesses. Before the hearing begins, the chairman shall remind the witnesses that they should speak the truth.

4. The Committee may appoint an expert and define his mandate. The expert is entitled to remuneration for his work. The Committee may decide to hear the expert. The rules regarding the hearing of witnesses shall also apply.

Article 23 Closing statements

Before reaching a final decision, the Committee shall invite all parties to submit final comments.

Article 24 Minutes

1. The Committee shall keep minutes of its proceedings which shall reflect the course of each hearing and the statements made in it. The parties may request that certain documents or statements be included wholly or partly in the minutes. The minutes shall be signed by the chairman, forwarded to the parties and added to the file of the case. In cases referred to in Article 21(2) or Article 22(1), the Committee shall impose restrictions.

2. Article 9 shall also apply to all meetings of the Committee which are not attended by the parties.

Article 25 Decisions and confidentiality

1. Any meeting of the Committee shall only be effective if four fifths of the members or their alternates attend.

2. Decisions shall be taken by a simple majority of the members or alternates attending the meeting, unless provided otherwise either in these rules or in the Convention. In case of a tied vote, the chairman shall have a casting vote. All persons taking part in the final decision must have attended an oral hearing.

3. The deliberations of the Committee shall remain confidential.

4. The final decision of the Committee shall contain the names of the parties and their representatives, the names of the members of the Committee taking part in the decision, the date on which the decision is announced, the operative part of the decision, a brief presentation of the facts of the case and the reasons for the decision. It shall be announced at a public meeting and conveyed to the parties. A copy of the decision shall be forwarded to the Joint Supervisory Body.

Article 26 Notifications

Notifications and other communications to parties, witnesses and experts shall be made by means that reasonably ensure that they are duly informed and can be verified when necessary.

Article 27 Costs

1. The Committee shall decide on the costs of the procedure in its final decision. The procedure before the Committee shall be free of charge. If the appeal is upheld, wholly or partially, the necessary costs incurred by the applicant for lodging and processing the complaint shall be borne by Europol to the extent that the Committee considers this equitable.

2. If an applicant is unable to bear all or part of the costs of the procedure, he may at any time on request be granted assistance for the costs. When he submits the application, he shall enclose documentation demonstrating that he is in need. The Committee may withdraw the assistance at any time if the preconditions under which it was

granted change in the course of the proceedings. If assistance is approved, the costs will be disbursed from the budget of the Joint Supervisory Body. Where this is fair, the final decision may require a party to reimburse to the budget of the Joint Supervisory Body the advance payments granted. In submitting his application, the applicant shall declare his agreement to reimburse the costs if required by the final decision.

Article 28
Due process

In cases not provided for in these rules, the Committee shall conduct its procedures in accordance with the general principles of Community law referred to in Article F(2) of the Treaty on European Union.

Title IV
Final provisions

Article 29
Secretariat

1. The Joint Supervisory Body shall have a secretariat based at its headquarters to assist it in the performance of its tasks. The Secretariat shall be a permanent body and its members recruited only on the basis of competence. The members of the Secretariat shall act solely in the best interests of the Joint Supervisory Body, shall be fully independent from Europol and shall not accept instructions from any other authority. Recruitment or secondment to the Secretariat shall take place on a proposal from the Joint Supervisory Body. Staff members of the Secretariat shall not undertake other work without permission of the chairman of the Joint Supervisory Body.
2. The Secretariat shall operate under the direction of the chairman of the Joint Supervisory Body in accordance with the rules established by the Joint Supervisory Body. The Secretariat shall also provide services to the Appeals Committee. In the performance of these functions, it shall operate under the direction of the chairman of that Committee. The Secretariat shall keep a register of appeals and all other documents.
3. The Secretariat shall ensure that the obligations under Article 32 of the Convention shall also be respected in the work of the Joint Supervisory Body.

Article 30
Confidentiality

1. Members of the Joint Supervisory Body, alternates, experts and members of the Secretariat shall be obliged to treat in a confidential manner the circumstances which come to their knowledge in the context of their activity, unless the proper discharge of their task requires otherwise. This obligation shall continue to apply also when they cease to be active in that capacity.
2. Upon appointment, members of the Joint Supervisory Body, alternates, experts and members of the Secretariat shall declare their acceptance of these obligations.
3. In the case of a breach of confidentiality, a member of the Joint Supervisory Body or his alternate may be suspended by a majority of two thirds of the votes cast in a secret ballot by the delegations attending a meeting of the Joint Supervisory Body. The person concerned shall be heard before, but shall not take part in, the decision. This provision shall apply equally to the Appeals Committee, where the breach of confidentiality relates to the work of that Committee. In the latter case, the Joint Supervisory Body shall be informed without delay.

In the case of a suspension, the place of the suspended member shall be taken by his alternate. A suspension shall be communicated to the national supervisory body responsible for the appointment of the suspended member.

Article 31
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 prior to the consultation, required in Article 24(9) of the Convention.

2. The Joint Supervisory Body shall decide on the disbursement of the budget allocated to it which shall be administered by the Secretariat.

3. The costs of the Joint Supervisory Body and the Appeals Committee, including the expenses for the members of the Appeals Committee and their alternates, which are necessary for the proper exercise of their duties, shall be borne by the budget of the Joint Supervisory Body in accordance with rules established by it.

Article 32

Amendment of the rules of procedure

Amendments to these rules of procedure shall be unanimously adopted by the Joint Supervisory Body and shall be submitted to the Council for unanimous approval (Article 24(7), first sentence of the Convention).

Article 33

Evaluation

These rules of procedure shall be evaluated by the Joint Supervisory Body between one and three years after their entry into force.

Article 34

Entry into force of the rules of procedure

These rules of procedure shall enter into force on the day following that of their approval by the Council in accordance with Article 24(7) of the Convention.

Done at Brussels, 22 April 1999

For the Joint Supervisory Body
The Chairman

Fergus GLAVEY

COUNCIL DECLARATION

on Article 4(5) and Article 12(4)
adopted when approving the rules of procedure of the
Joint Supervisory Body of Europol

The Member States are agreed that membership of the Joint Supervisory Body (of a member or an alternate) in particular may not cease before the end of the term of office on grounds connected with the exercise of a function in the Appeals Committee.

D. Council decision of 17 October establishing a secretariat

COUNCIL DECISION of 17 October 2000

establishing a secretariat for the Joint Supervisory Data Protection Bodies set up by the Convention on the establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to Articles 30 and 34(2)(c) of the Treaty on European Union,

Having regard to Article 2 of the protocol integrating the Schengen *acquis* into the framework of the European Union,

Having regard to the initiative of the Portuguese Republic,

Having considered the opinion of the European Parliament,

Whereas:

(1) The Convention on the establishment of a European Police Office (Europol Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention) have created Joint Supervisory Bodies in order to monitor the correct application of data protection provisions in those instruments.

(2) In order for those Joint Supervisory Bodies to function effectively and to reduce costs, they should be supported by one single, independent Data Protection Secretariat which, in the exercise of its tasks, is bound only by instructions of those bodies.

(3) For practical reasons the administration of the Data Protection Secretariat should be closely linked to the General Secretariat of the Council, while safeguarding its independence in the exercise of its tasks.

(4) In order to ensure this independence, decisions on the appointment and removal from office of the head of the Data Protection Secretariat should be taken by the Deputy Secretary-General of the Council, acting on a proposal of the Joint Supervisory Bodies, and the other officials assigned to the Data Protection Secretariat should be placed exclusively under the instructions of the head of the Data Protection Secretariat.

(5) The administrative expenses of the Data Protection Secretariat should be charged to the general budget of the European Union. Europol should contribute to the financing of certain expenses in respect of meetings relating to matters of implementation of the Europol Convention.

(6) Since Council Decision 1999/438/EC of 20 May 1999 concerning the Joint Supervisory Authority set up under Article 115 of the Convention applying the Schengen Agreement of 14 June 1985, on the gradual abolition of checks at common borders, signed on 19 June 1990, is superseded by this Decision, it should be repealed as from the date on which this Decision becomes applicable.

(7) The existing Joint Supervisory Bodies have expressed their approval for the principles set out in this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

Establishment and tasks of the Data Protection Secretariat

1. A Secretariat (hereinafter referred to as the 'Data Protection Secretariat') is hereby established for the Joint Supervisory Bodies set up by the Convention on the establishment of a European Police Office (Europol

Convention), the Convention on the Use of Information Technology for Customs Purposes and the Convention implementing the Schengen Agreement on the gradual abolition of checks at the common borders (Schengen Convention).

2. The Data Protection Secretariat shall fulfil the tasks provided for the secretariats of the Joint Supervisory Bodies as laid down in the respective rules of procedure of those bodies.

Article 2

Data Protection Secretary

1. The Data Protection Secretariat shall be headed by a Data Protection Secretary whose independence in the performance of his tasks shall be safeguarded, subject only to instructions from the Joint Supervisory Bodies and their chairmen. The Deputy Secretary-General of the Council, acting on a proposal by the Joint Supervisory Bodies, shall appoint the Data Protection Secretary for a period of three years. The Data Protection Secretary may be reappointed.

2. The Data Protection Secretary shall be chosen from among the persons who are European Union citizens, have full civil and political rights, can bring to bear appropriate experience and expertise in the performance of the duties concerned, and offer every guarantee of independence. He shall refrain from any action incompatible with his duties and, during his term of office, not engage in any other occupation, whether gainful or not. He shall after his term of office behave with integrity and discretion as regards the acceptance of appointments and benefits.

3. The Data Protection Secretary shall be removed from office by the Deputy Secretary-General of the Council, acting on a proposal from the Joint Supervisory Bodies, if he no longer fulfils the conditions required for the performance of his duties or if he has been guilty of serious misconduct.

4. Apart from normal replacement on expiry of his term of office or in the event of his death and removal from office in accordance with paragraph 3, the office of the Data Protection Secretary shall end when his resignation takes effect. In the case of the expiration of his term of office and in the case of his resignation, he shall at the request of the Joint Supervisory Bodies remain in office until he has been replaced.

5. The Data Protection Secretary shall, both during and after termination of his term of office, be subject to a duty of professional secrecy with regard to the confidential information which has come to his knowledge in the course of the performance of his duties.

6. During his term of office, the Data Protection Secretary shall, except where otherwise stated in this Decision, be subject to the rules applicable to persons having the status of a temporary agent within the meaning of Article 2(a) of the Conditions of employment of other servants of the European Communities, including Articles 12 to 15 and 18 of the Protocol on Privileges and Immunities of the European Communities. The Data Protection Secretary shall be in grade A, the level and step at which he is employed shall be determined by the criteria applicable to the officials and other agents of the Communities. If the person appointed is already an official of the Communities, he shall be seconded for the term of his office in the interest of the service by virtue of Article 37(a), first indent of the Staff Regulations of officials of the European Communities (Staff Regulations). The first sentence of the last paragraph of Article 37 of the Staff Regulations shall apply without prejudice to paragraph 1 of this Article.

Article 3

Staff

1. The Data Protection Secretariat shall be provided with the staff necessary for the performance of its tasks. The staff members assigned to the Data Protection Secretariat shall fill posts included in the list of posts appended to the section of the general budget of the European Union relating to the Council.

2. In the exercise of their duties the staff members referred to in paragraph 1 shall be subject exclusively to the instructions of the Data Protection Secretary and the Joint Supervisory Bodies and their Chairmen. In that context, they may neither seek nor accept instructions from any government, authority, organisation or person apart from the Data Protection Secretary and the Joint Supervisory Bodies and their Chairmen.

3. Notwithstanding paragraph (2), the staff assigned to the Data Protection Secretariat shall be subject to the regulations and rules applicable to officials and other servants of the European Communities. As regards the exercise of the powers conferred by the Staff Regulations on the appointing authority and the powers under the Conditions of employment of other servants of the European Communities, the staff shall be subject to the same rules as the officials and other agents of the European Communities.

Article 4
Administrative support

1. The General Secretariat of the Council shall provide the office space and equipment necessary for the performance of the duties of the Data Protection Secretariat. It shall provide facilities for meetings of the Joint Supervisory Bodies within the premises of the Council, including interpretation facilities.
2. As far as meetings to be convened in the premises of the Council are concerned, the Chairmanships of the Joint Supervisory Bodies shall set these dates subject to prior agreement of the Presidency of the Council.

Article 5
Financing

1. The administrative overhead expenses of the Data Protection Secretariat (in particular equipment, remuneration, allowances and other personnel expenses) shall be charged to the section of the general budget of the European Union relating to the Council.
2. Costs related directly to meetings shall be borne
 - by the Council: for meetings in the premises of the Council relating to matters of implementation of the provisions of the Schengen Convention as well as travelling expenses for carrying out controls at the C.SIS and for meetings relating to matters of implementation of the Convention on the Use of Information Technology for Customs Purposes;
 - by Europol: for meetings relating to matters of implementation of the Europol Convention.

Article 6
Final provisions

1. This Decision shall enter into force the day following that of its adoption by the Council.
It shall apply from 1 September 2001.
2. As from the date of entry into force of this Decision, the decisions and acts necessary to implement this Decision can be adopted. They shall not take effect before the date on which this Decision becomes applicable.
3. At the date on which this Decision becomes applicable, Decision 1999/438/EC shall be repealed. It shall, however, continue to apply to expenses caused by events preceding that date.

Done at Luxembourg, 17 October 2000

For the Council
The President

E. Decision of the Appeals Committee

Decision on the appeal from Mr X against Europol's decision of 22 January 2001 regarding right of access (Article 19 of the Europol Convention)

The Appeals Committee:

Composed of Ms L. Jørgensen, Mr R. Bachmeier, Mr F. Aldhouse, Mr G. Busia, Mr M. M. Varges Gomes, Mr P. J. Hustinx, Ms M. Kleemola, Ms K. Kambouraki, Mr L. Aguilera Ruiz, Mr P. Thomas, Mr A. Türk, Mr U. Widebäck and Mr G. Wivenes

Rapporteur: Mr F. Aldhouse
Secretary: Mr P. Michael

Parties:

1. Mr X (appellant)
2. Europol, represented by Mr D. Heimans and Mr H. Felgenhauer
3. National Criminal Intelligence Service, Ministry of Home Affairs of the United Kingdom, represented by Mr R. Gaspar.

Procedure

- On 8 January 2001, Mr X requested from Europol access to personal data relating to him.
- This request was sent to the Data Protection Commissioner in the United Kingdom.
- The Data Protection Commissioner forwarded the request to Europol on 10 January 2001.
- On 22 January 2001, Europol forwarded its decision on this request to the appellant.
- Mr X lodged an appeal against this decision with the Appeals Committee on 19 February 2001.
- The Appeals Committee declared the appeal admissible on 18 April 2001.
- The Appeals Committee considered at its meeting of 26 June 2001 an investigative report by Mr J. Bamford of 21 June 2001 and the report of the rapporteur of 26 June 2001 drawn up in part on the basis thereof.
- The Appeals Committee decided on 26 June 2001 to invite the National Criminal Intelligence Service (NCIS) to participate in the appeal proceedings.
- The Appeals Committee considered the documents in the case and the recommendations of the rapporteur at its meetings of 18 April, 26 June, 11 October and 13 December 2001.
- The Appeals Committee decided on 13 December 2001 to refuse a request from the appellant for an oral hearing and, in view of the special circumstances of the case, considered it appropriate for Europol to be given the opportunity to reconsider its decision and postponed further prosecution of the case.
- Europol explained in a letter to the chairman of the Appeals Committee dated 1 February 2002 that it had reconsidered the decision of 22 January 2001 and tried to arrange a meeting with the appellant or his legal representative to inform him of the content of its reconsideration. Europol furthermore stated that its effort was in vain because of the lack of cooperation of the appellant.
- The Appeals Committee invited all parties to submit final statements on 4 February 2002.
- The Appeals Committee considered at its meeting of 6 March 2002 a further report of the rapporteur of 7 February 2002.

Facts

1. On 8 January 2001, Mr X addressed a letter to the United Kingdom competent authority in which he requested that it should be ascertained if data pertaining to him are stored by Europol, and, if so, that such data be checked.
2. By fax of 10 January 2001, the national competent authority forwarded the letter to Europol.
3. After consulting the United Kingdom authorities, Europol answered Mr X by letter dated 22 January 2001 stating as far as relevant for this appeal: 'In accordance with the procedure as stipulated in the Europol Convention and the UK legislation, I would like to inform you that following your request checks of Europol files have been made. Following Article 19 of the Europol Convention in combination with UK legislation, I would like to inform you that no data concerning you were processed that the individual would be entitled to access in accordance with Article 19 of the Europol Convention.'
4. The investigative report by Mr J. Bamford of 21 June 2001 indicated that the checks of Europol provided a true reflection of the situation.
5. An effort by Europol to discuss with the appellant the decision of 22 January 2001 failed because the appellant did not agree with a meeting that was proposed by Europol.

Relevant law and practice

The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Convention of the Council of Europe of 28 January 1981) contains the following provisions:

Article 8

Any person shall be enabled:

(a) ...

(b) to obtain at reasonable intervals and without excessive delay or expense confirmation of whether personal data relating to him are stored in the automated files as well as communication to him of such data in an intelligible form.

Article 9(2)

Derogation from the provisions of Articles ... and 8 of this Convention shall be allowed when such derogation is provided for by law of the party and constitutes a necessary measure in a democratic society in the interests of:

a ... protecting State security, public safety ... or the suppression of criminal offences.

Recommendation No R(87)15 of the Committee of Ministers of the Council of Europe of 17 September 1987:

Principle 6.2

The data subject should be able to obtain access to a police file at reasonable intervals and without excessive delay in accordance with the arrangements provided by domestic law.

Principle 6.4

Exercise of the rights of access, rectification and erasure should only be restricted in so far as a restriction is indispensable for the performance of a legal task of the police ...

The Europol Convention (Convention of 26 July 1995, OJ C 316, 27.11.1995) contains the following provisions:

Article 14(1)

By the time of the entry into force of this Convention at the latest, each Member State shall, under its national legislation, take the necessary measures in relation to the processing of personal data in data files in the framework of this Convention to ensure a standard of data protection which at least corresponds to the standard resulting from the implementation of the principles of the Council of Europe Convention of 28 January 1981, and, in doing so, shall take account of Recommendation No R(87)15 of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector.

Article 14(3)

In the collection, processing and utilisation of personal data, Europol shall take account of the principles of the Council of Europe Convention of 28 January 1981 and of Recommendation No R(87)15 of the Committee of Ministers of the Council of Europe of 17 September 1987.

Article 19

Right of access

1. Any individual wishing to exercise his right of access to data relating to him which have been stored within Europol or to have such data checked may make a request to that effect free of charge to the national competent authority in any Member State he wishes, and that authority shall refer it to Europol without delay and inform the enquirer that Europol will reply to him directly.

2. ...

3. The right of any individual to have access to data relating to him or to have such data checked shall be exercised in accordance with the law of the Member State where the right is claimed, taking into account the following provisions:

Where the law of the Member State applied to provides for a communication concerning data, such communication shall be refused if such refusal is necessary to:

(1) enable Europol to fulfil its duties properly;

(2) protect security and public order in the Member States or to prevent crime;

(3) protect the rights and freedoms of third parties, considerations which it follows cannot be overridden by the interests of the person concerned by the communication of the information.

4. ...

5. The right to the checking of information shall be exercised in accordance with the following procedures: Where the national law applicable makes no provision for a communication concerning data or in the case of a simple request for a check, Europol, in close cooperation with the national authorities concerned, shall carry out the checks and notify the enquirer that it has done so without giving any information which might reveal to him whether or not he is known.

The United Kingdom Data Protection Act of 16 July 1998 contains the following provisions:

Part II: Rights of data subjects and others

Section 7. (1) ... an individual is entitled:

(a) to be informed by any data controller whether personal data of which that individual is the data subject are being processed by or on behalf of that data controller,

- (b) if that is the case, to be given by the data controller a description of:
 - (i) the personal data of which that individual is entitled, [...]
- (c) to have communicated to him in an intelligible form:
 - (i) the information constituting any personal data of which that individual is the data subject, ...

Part IV: Exemptions

Section 29. (1) Personal data processed for any of the following purposes:

- (a) the prevention or detection of crime,
- (b) the apprehension or prosecution of offenders, ...
- (c) ...

are exempt from ... and Section 7 in any case to the extent to which the application of those provisions to the data would be likely to prejudice any of the matters mentioned in this subsection.

Part V: Enforcement

Section 42. (1) A request may be made to the Commissioner by or on behalf of any person who is, or believes himself to be, directly affected by any processing of personal data for an assessment as to whether it is likely or unlikely that the processing has been or is being carried out in compliance with the provisions of this Act.

(4) Where the Commissioner has received a request under this section, he shall notify the person who made the request:

- (a) whether he has made an assessment as a result of the request, and
- (b) to the extent that he considers appropriate, having regard in particular to any exemption from Section 7 applying in relation to the personal data concerned, of any view formed or action taken as a result of the request.

Arguments before the Appeals Committee

Mr X

Appellant has repeatedly stated being the subject of harassment and discrimination by many individuals whilst visiting Belgium and the Netherlands. This could only have been orchestrated by the police, which if so, on information fabricated and accessed from Europol that had originated in the United Kingdom. The reply from Europol (the decision of 22 January 2001) to his request (of 8 January 2001) does not tell him whether or not he is known to Europol.

NCIS and Europol

Organised criminality desires to discover what the authorities know about their activities and variously invests resources to discover the answer to this question. Revealing that nothing is known about an individual involved in organised crime is at least as important as knowing that something is known by a law enforcement organisation. If somebody who has no connection with organised criminality requests access to data where no data are processed, a precedent is created when that individual is told that no data are held. The precedent means that this answer should be given in all similar circumstances where no data are held. That would result in an organised criminal being aware that no data were held in respect of him or her and would therefore give him or her an advantage.

Providing an advantage to organised criminals is contrary to the purpose of Europol and, consequently, the precedent must be avoided. The only way to avoid this is to give an answer to the request for access as was given.

Findings of the Appeals Committee

In its decision of 13 December 2001, the Appeals Committee considered it appropriate, in view of the special circumstances in this case, for Europol to be given the opportunity to reconsider its decision. The Appeals Committee took note of the developments that took place following that decision and will therefore restrict its findings to the decision of Europol of 22 January 2001.

The Appeals Committee distinguishes two questions in this case.

The first question is the answer from Europol on a request from Mr X for access to data relating to him.

The Europol Convention contains in Article 19(1) a right of access for any individual. The extent of this right is not specifically defined but must in view of Article 14(1) of the Europol Convention be regarded as the same right as defined in Article 8 of the Convention of Europe of 28 January 1981. This right enables the individual to establish whether personal data relating to him are stored and, if so, gives the right of having this data communicated to him. The appeal involves both aspects of the right of access. According to Article 19(3) of the Europol Convention, this right shall be exercised in accordance with the law of the Member State where the right is claimed, in this case the United Kingdom. This article uses the wording 'communication concerning data' which covers both the communication whether data are processed and communication of the data that are processed. The Data Protection Act 1998 also recognises in Section 7(1) a right to be informed whether data are processed and a right of communication of these data. The existence of these rights in the law of the Member State leads to the applicability of the second sentence of Article 19(3) that gives a strict rule when the communication shall be refused. If one of the three exemptions of Article 19(3) is applicable, the communication must be refused. This means that every request for access where the second sentence of Article 19(3) applies has to be assessed on a case-by-case basis if it is necessary for one of the exemptions to refuse the communication. Although the exercise of the right of access must be in accordance with the law of the Member State, Europol has the responsibility of checking if the exemptions of Article 19(3) apply.

Section 29(1) of the Data Protection Act 1998 exempts from Section 7 the personal data processed for the prevention or detection of crime and the apprehension or prosecution of offenders when the application of Section 7 is likely to prejudice any of these matters. The content of these exemptions is closely related to the exemption in Article 19(3) of the Europol Convention.

According to the further report of the rapporteur, the decision of Europol is consistent with the advice given by the United Kingdom Information Commissioner to data controllers on the form of a subject access response where no data are held or an exemption relied upon.

The arguments used by Europol and the NCIS concern the fulfilling of the task of Europol, the protection of security and public order and the prevention of crime and are strictly related to organised crime. In view of the law and practice in the United Kingdom regarding the right of access in relation to data concerning organised crime and in view of Article 19(3) of the Europol Convention, the decision of Europol on the request from Mr X is in compliance with Article 19(3) of the Europol Convention.

The second question relates to the request of Mr X to have the data relating to him checked. Article 19(5) of the Europol Convention applies if the national law applicable makes no provision for a communication or in case of a simple request for a check.

In view of the merits of this particular appeal, this part of the request from the appellant can be seen as a simple request for a check. This means that according to Article 19(5) of the Europol Convention Europol shall notify the enquirer that checks have been done without giving any information which might reveal to him whether or not he is known.

Costs

Since no application was done on the basis of Article 27(1) of the rules of procedure, no decision on the costs is needed.

Decision

The decision of Europol on a request from Mr X for access to his data and to have these data checked is in compliance with Article 19(3) and Article 19(5) of the Europol Convention.

This decision is announced at the public meeting of the Appeals Committee of 16 May 2002, and conveyed to the parties and forwarded to the Joint Supervisory Body.

Brussels, 16 May 2002

Mário Manuel Vargues Gomes
Chairman of the Appeals Committee
of the Joint Supervisory Body of Europol

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