

Third opinion of the Joint Supervisory Body of Eurojust about the data protection regime in the proposed Eurojust Regulation

In view of the updated revised proposal on the draft Eurojust Regulation,¹ the Joint Supervisory Body of Eurojust (hereinafter the "JSB") hereby provides its third opinion on Chapter IV concerning data protection.² The JSB takes note that the COPEN Working Party reached a common understanding to follow the supervisory model agreed by Council for the draft Europol Regulation and to use it as a model for the draft Eurojust Regulation and that this was approved by the Council on 13 March 2015.

Without prejudice to possible additional opinions about other aspects of the proposal on the draft Eurojust Regulation, the JSB is concerned about two main issues which could impact on the activities of Eurojust and its data protection regime, *i.e.* the need to strengthen the involvement of experts with judicial experience in the Cooperation Board and the need to involve Eurojust in discussions about processing of personal data by the supervision mechanism. The JSB accordingly elaborates on these two points in this opinion.

1. Strengthening the involvement of experts with judicial experience in the Cooperation Board

Article 35(4) of the draft Regulation provides that "[t]he Cooperation Board shall be composed of a representative of a national supervisory authority of each Member State and of the European Data Protection Supervisor" (hereinafter the "EDPS").

¹ Eurojust Regulation, Chapter IV, 6643/15 of 27 February 2015.

² In this regard, see previous opinions of the JSB regarding data protection in the proposed new Eurojust legal framework of 14 November 2013:

http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/opinions/Opinion%20on%20the%20new%20Eurojust%20Regulation%2c%202013/OpinionJSB_new_Eurojust_Regulation_2013-11-14_EN.pdf

and 1 December 2014:

http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/opinions/Second%20opinion%20about%20the%20data%20protection%20regime%20in%20the%20proposed%20Eurojust%20Regulation/SecondOpinionJSB_Draft-EJ-Regulation_2014-12-01_EN.pdf

The JSB is very much in favour of the involvement of national authorities in the Eurojust supervisory scheme given the fact that the data processed by Eurojust come from the national judicial authorities and go back to them afterwards. Eurojust increasingly plays a crucial role in the enforcement activities of Member States and hence a critical role in the processing of personal data of European citizens. Consistency in the data protection supervision of Eurojust is indeed best served by the creation of an independent and effective joint supervision structure – *Cooperation Board* – with the equal, structural participation of national authorities and the EDPS. Extensive national experience with how to deal with law enforcement information as well as thorough and authoritative knowledge of data protection is essential.

The JSB regrets however that Article 35(4) of the draft Regulation does not set out that the representative of a national supervisory authority of each Member State is required to have any judicial expertise and experience. The Cooperation Board may consequently be exclusively composed of 28 representatives of national supervisory authorities of the Member States without any judicial expertise and experience. In practice, Member States may go beyond the minimum requirements provided for in Article 35(4) of the draft Regulation and appoint representatives of national supervisory authorities with judicial expertise and experience. They however bear no obligation to do so and there is therefore no guarantee that they will.

The JSB regards judicial expertise and experience as an essential requirement to sit in the Cooperation Board. The supervisory model should thus take into account the judicial nature of the work performed by Eurojust.

National Members of Eurojust are judges and prosecutors. Acting in this capacity in the field of judicial co-operation and co-ordination, they process personal data provided by the national judicial authorities and later on used – again – in the context of judicial proceedings in one or more Member States. In addition, personal data processed by National Members are part of national proceedings. In some cases, the principle of secrecy of judicial proceedings in the Member States protects it. As judicial authorities, National Members of Eurojust have the power to take judicial decisions under certain circumstances such as authorising judicial measures, participating in Joint Investigation Teams, receiving and executing requests for Mutual Legal Assistance as well as authorising controlled deliveries. In this context the value of a supervisory board,

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composed of persons experienced (also) in law enforcement, is evident and has proven itself.

Last, Article 35(5a) of the draft Regulation provides for the legal obligation of the Cooperation Board to “*examine cases submitted to it*” by the EDPS and may request the EDPS “*to reassess his position if appropriate. The Cooperation Board shall adopt such decisions on the basis of a two-thirds majority of its members.*” The JSB considers that the examination of cases and the adoption of decisions by the Cooperation Board on operational personal data require that the representative of a national supervisory authority of each Member State hold judicial expertise and experience to guarantee the meaningfulness of his contribution.

Regarding budget and finances, the JSB importantly emphasises that the Cooperation Board is not costlier than a more or less non-committal co-ordination mechanism composed of the EDPS and national authorities as provided for in the updated revised proposal on the draft Eurojust Regulation.³

2. Involving Eurojust in discussions about processing of personal data in the supervision mechanism

The JSB noted that Article 35(3) of the draft Regulation provides for the legal obligation of the EDPS to bear the “*costs and servicing*” of meetings between the Cooperation Board and the EDPS “*at least twice a year*”. To guarantee proper interactions between the Cooperation Board, the EDPS and Eurojust, the JSB recommends that at least one of these two yearly meetings should take place on the premises of Eurojust. The draft Regulation may be amended to that effect. Alternatively, the Rules of Procedure of the Cooperation Board to “*be adopted at the first meeting by simple majority*” mentioned in the same provision may provide for the location of at least one of these two yearly meetings on the premises of Eurojust.

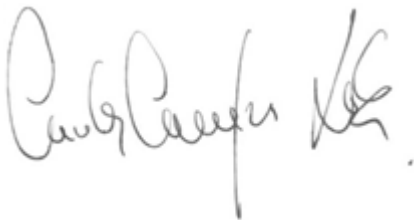
In addition, the JSB considers that the presence and input of Eurojust, through the presence of its Data Protection Officer at least, should be ensured when discussions

³ Eurojust Regulation, Articles 35 and 36, 6643/15 of 27 February 2015.

about the protection of personal data at Eurojust take place to also guarantee proper interactions between Eurojust and the EDPS.

The JSB Eurojust is eager to constructively contribute to the discussions about the proposed data protection regime in the draft Eurojust Regulation and offers its full assistance and expertise in future discussions regarding this matter.

Done at The Hague,
6 May 2015



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