

Joint Supervisory Body of Eurojust**Decision****18 September 2018****Appeal no. EJ-JSB-18/02***Decision on the appeal of Ms B against Eurojust's decision of 19 April 2018*

The Joint Supervisory Body composed of: Mr Wilbert Tomesen (Chair and permanent member - Netherlands), Mr Hans Frennered (permanent member - Sweden) and Mr Rajko Pirnat (permanent member - Slovenia).

Appellant: Ms B

Summary of facts

On 22 May 2018, the Joint Supervisory Body of Eurojust (JSB) received an appeal, dated 11 May 2018, from Ms B (hereinafter the appellant) of Greek nationality, against the decision of Eurojust of 19 April 2018 regarding her request of 27 January 2018 for information about access, correction, blocking, deletion and compensation according to Articles 9, 19, 20 and 21 of the Rules on the Processing and Protection of Personal Data at Eurojust¹.

In addition to her appeal of 11 May 2018, the applicant submitted to the JSB the following supporting documentation: 1) Supplement I to the appeal received on 30 May 2018 (dated 24 May 2018); 2) Supplement II to the appeal received on 21 June 2018 (dated 18 June 2018); 3) Supplement III received on 28 June 2018 (dated 22 June 2018); 4) Letter received on 27 July 2018 (dated 23 July 2018); 5) Letter received on 6 August 2018 (dated 30 July 2018); 6) Fax received on 20 September 2018 (hard copy received on 21 September 2018); 7) Fax received on 24 September 2018 (hard copy received on 1 October 2018).

Procedure

On 7 June 2018, in accordance with Article 23(7) of the Eurojust Decision², the JSB met to discuss the appeal and declared it admissible to the extent of its mandate which is limited to the examination of a decision taken

¹ Rules of Procedure on the Processing and Protection of Personal Data at Eurojust, OJ C 1, p. 68, 19.3.2005, available at: <http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/dataprotection/Eurojust%20Data%20Protection%20Rules/Eurojust-Data-Protection-Rules-2005-02-24-EN.pdf>

² 2002/187/JHA setting up Eurojust with a view to reinforcing the fight against serious crime, OJ L 63 p. 1, 6.3.2003 amended by Council Decision 2009/526/JHA of 16 December 2008 on the strengthening of Eurojust, OJ L 138 p. 14, 4.6.2009, available at:

by Eurojust with regard to the processing of data carried out by Eurojust and its compatibility with the Eurojust Decision in that regard.

On 13 June 2018, in accordance with Article 15(3) of the Act of the JSB³, the JSB Secretariat acknowledged receipt of the appeal to the appellant, informing her that the appeal was considered admissible by the JSB and providing information about the appeal procedure.

On 11 June 2018, in accordance with Article 16(2) of the Act of the JSB, the JSB forwarded a copy of the complaint to the College of Eurojust for its observations and requested Eurojust to provide its observations on the appeal received within four weeks.

On 6 July 2018, the College of Eurojust submitted its observations on the appeal to the JSB, stating that all the elements of the procedure had been followed thoroughly according to the Eurojust Decision and Eurojust Data Protection Rules.

On 18 September 2018, the JSB, composed of the three aforementioned permanent members, held a meeting to deliberate upon the appeal, considering also the views of the National Members concerned.

Considerations

In accordance with the Article 23(7) of the Eurojust Decision, the JSB examined the part of the Eurojust decision of 19 April 2018 related to the right of access of the appellant to the new European Arrest Warrant (hereinafter EAW) against her issued on 1 December 2017 by the Greek judicial authorities as being the one element which was not dealt with by Eurojust in its decision of 19 April 2018. The JSB did not examine the other questions, raised by the appellant in the initial appeal and the following supplements (especially in relation to the legitimacy of the EAW issued by the Greek authorities) as not being within the JSB's mandate.

The JSB examined the appeal on the basis of Article 19(4) of the Eurojust Decision which provides for three cases in which access to personal data shall be denied, i.e.: a) such access may jeopardise one of Eurojust's activities; b) such access may jeopardise any national investigation; c) such access may jeopardise the rights

<http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/ejdecision/Consolidated%20version%20of%20the%20Eurojust%20Council%20Decision/Eurojust-Council-Decision-2009Consolidated-EN.pdf>

³ Act of the Joint Supervisory Body of Eurojust of 23 June 2009 laying down its rules of procedure, OJ C 182/03, 7.7.2010, available at: [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/jsb/Act%20of%20the%20Joint%20Supervisory%20Body%20of%20Eurojust%20\(2009\)/JSB-Act-2009-06-23-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/jsb/Act%20of%20the%20Joint%20Supervisory%20Body%20of%20Eurojust%20(2009)/JSB-Act-2009-06-23-EN.pdf)

and freedoms of third parties. These three cases are the only exceptions which allow refusal to give access to personal data.⁴

The JSB considered that the arguments, expressed by Eurojust and the representatives of the National Desks for Germany and Greece in support of the reasons why the personal data (specifically a copy of the new EAW issued on 1 December 2017) should not be disclosed to the appellant, did not fall under any of the three aforementioned cases for denial of access. The JSB noted that these exemptions can only be applied if, and to the extent to which, the interests of Eurojust or third parties outweigh the interest in exercising the right of access. The principle of proportionality implies that a decision on the right of access requires an assessment on a case by case basis. Refusing access is only possible when necessary for the purposes referred to in the exemptions. The word “necessity” implies that Eurojust is obliged to explain why an exemption is used. Simply referring to a more general fear is not sufficient for demonstrating the necessity of using an exemption. Eurojust should determine, and be able to explain, that the communication could specifically and effectively undermine the protected interest. The risk of the protected interest being undermined with the communication should be reasonably foreseeable and not purely hypothetical.⁵

In light of these considerations, after careful evaluation of the operational reasons to refuse access as presented by Eurojust and of the available information, the JSB decided that Eurojust’s reasons for denying access in this case, whether considered separately or combined, did not present sufficient grounds to justify its refusal.

Decision

The JSB finds that the decision taken by Eurojust on 19 April 2018, in relation to the request by Ms B to have access to personal data (in this case the new EAW issued on 1 December 2017) concerning her processed by Eurojust, does not comply with Article 19(4) of the Eurojust Decision.

The JSB decides therefore that, as no exception applies that could justify the limitation of the appellant’s right of access, Eurojust must provide her with a confirmation that the new EAW is in the possession of Eurojust, as well as a copy of it.

The Hague, 18 September 2018



Wilbert Tomesen
Chair
Joint Supervisory Body of Eurojust

⁴ Decision of the Joint Supervisory Body of Eurojust regarding the appeal filed on behalf of Mr A, 18 March 2013, para. 6, Available via <http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/appealdecisions/Appeal%20Decision%202013-03-18/JSB-Appeal-Decision-CaseMrA-2013-03-18-EN.pdf>

⁵ Joint Supervisory Body of Europol, Appeals Committee, Appeal of Mr. A, Decision nr. 10/02 of 14 March 2012, p. 7 and 8. Available via <http://collections.internetmemory.org/haeu/20170706142918/http://europoljsb.europa.eu/media/205849/10-02%20%20final%20decision%20mr.%20a.pdf>