

Decision of the Joint Supervisory Body of Eurojust regarding the appeal filed on behalf of Mr X and Ms Y

Procedural considerations

-The Joint Supervisory Body of Eurojust (JSB) received on 25th June 2013 an appeal on behalf of Mr X and Ms Y (hereinafter – the applicants) (represented by their lawyer) against the decision of the College of Eurojust (dated 4th June 2013) following their request to access any personal data processed by Eurojust related to them (dated 10th April 2013). The decision was communicated to the applicants on 6th June 2013 by the Data Protection Officer of Eurojust.

- The decision of Eurojust, as communicated to the applicants by the DPO of Eurojust, was worded as follows: *"In accordance with Article 19.7 of the Eurojust Decision, I hereby notify you that the necessary checks have been carried out, but I am unable to give you any information which could reveal whether or not your clients are known to Eurojust."*

- In accordance with Article 15 of the Act of the JSB of Eurojust of 23 June 2009 laying down its rules of procedure (JSB rules of procedure¹), the JSB secretariat sent an acknowledgment of receipt to the applicant on 4th July confirming that the JSB considered the appeal admissible and would deal with in line with the procedure as set out in Articles 11 to 26 of the JSB rules of procedure within the prescribed time limits.

- On 8th July 2013 the Joint Supervisory Body of Eurojust received a request from the applicants for the procedure to be conducted henceforth in German, in accordance with Articles 14 and 18 of the Act of the Joint Supervisory Body of Eurojust. The JSB took note of this request and by the letter of 9th July 2013 confirmed that from then on all communications, relating to the appeal, should be in German.

¹ Official Journal of the European Union C 182/3 of 7.7.2010.

- In accordance with the procedure stated in Article 16.2 of JSB rules of procedure, the JSB informed the College of the appeal on 22nd August 2013 and kindly invited it to submit any observations regarding the case subject of appeal to the JSB.

- By letter of 12th September 2013, the President of Eurojust provided the following observations of the College to the JSB:

"The College of Eurojust has reconsidered its decision of 4 June 2013 to notify the data subjects that the necessary checks have been carried out, and that information could not be revealed on whether or not the data subjects were known to Eurojust. The College, after consulting the relevant national authorities involved in this case, decided on 10 September 2013 to disclose the existing information on the data subjects. I have therefore asked the Data Protection Officer of Eurojust to respond to the lawyer of the data subjects in order to provide them with the requested data."

- By letter of 10th October 2013 sent by the DPO of Eurojust, the applicants were informed that : *"Following your appeal, the JSB, in accordance with its rules of procedure, asked the College of Eurojust to consider again the subject of your appeal. Following this request of the JSB, the College of Eurojust discussed the matter on 10 September 2013 and decided to reconsider its decision of 4 June 2013 and to disclose the existing information in its files on your clients. I am therefore providing you with the requested data concerning your clients Mr X and Ms Y"*. The requested information was sent to the lawyer, representing the applicants. For the purpose of protecting other persons' (mentioned in the documents) rights to privacy, Eurojust redacted their personal data.

- By letter of 15th October 2013 sent to the JSB Eurojust, the applicants informed the JSB that they could not determine from the attached files if the content was complete or if other file contents had not been sent and asked the JSB for verification. They noted that substantial file components were blackened, that is to say made indecipherable. The applicants requested the transmission of the file components in "unblackened" condition. At the same time, the applicants requested the JSB to bear the costs of the present appeal's procedure in accordance with Article 25.1 of the JSB rules of procedure.

- At its meeting of 14th November 2013 the JSB discussed the case at stake, taking note of all documents related to it. After deliberations, the JSB reached a unanimous decision.

Legal and content considerations

1. Article 19.1 of Eurojust Council Decision states that *'every individual shall be entitled to have access to personal data concerning him processed by Eurojust under the conditions laid down in this article'*.
2. The case at stake relates to the application of Article 19.7 of the of Council Decision 2002/187/JHA on the setting up Eurojust, as amended by Council Decision 2003/659/JHA, and Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust² (Eurojust decision), which refers to the cases in which either access is denied on the basis of one of the exceptions enumerated in Article 19.4 of the Decision or when no personal data concerning the applicant are processed by Eurojust. In such case the Decision mentions that Eurojust *shall notify the applicant that it has carried out checks, without giving any information which could reveal whether or not the applicant is known*. The reply given to the applicants by Eurojust on 6th June 2013 complied with the letter of this Article.
3. The applicants by the letter of 25th June 2013 appealed against this decision of Eurojust and presented the additional documents confirming that some information concerning at least one of the applicants might be processed by Eurojust.
4. The College of Eurojust, following the request from the JSB to submit the observations on the appeal case, discussed the matter in its plenary meeting on 10th September 2013 and decided to grant access to the applicants to the existing information concerning them. The information was sent to the lawyer of the applicant on 10th October 2013.
5. Therefore, the JSB is of the opinion that the access to the personal data concerning one of the applicants was granted according to Article 19.1 of the Eurojust Decision.

² OJ L 138/14 of 4.06.2009.

The information provided concerned only Mr X simply because of the fact that Eurojust does not process any information concerning Ms Y.

6. However, the applicants by the second appeal letter claimed that not full information was provided as some parts of the content were redacted.
7. The JSB notes that Eurojust carefully followed all the necessary procedures, including the additional checks carried out by the DPO of all the files to be transmitted to the applicants. According to Article 23.1 of the Eurojust Decision, the JSB as well checked this element. No violations were found in this respect.
8. The JSB is of opinion, that Eurojust correctly redacted certain parts of the content by removing the names of the other persons mentioned in the documents for the purpose of protecting their right to privacy. The JSB notes that according to Article 19.1 of the Eurojust Decision *an individual is entitled to have access to data concerning him processed by Eurojust [...]* (emphasis added). Therefore, the applicants were entitled to receive any data concerning them individually.
9. In this specific case, the JSB welcomes the fact, that the College of Eurojust reconsidered the request of the applicants at its plenary meeting of 10th September 2013 and that a thorough discussion took place regarding all aspects of the case at stake, as stated in the written observations provided by 12th September 2013, the President of Eurojust. The JSB took note of the fact, that Eurojust, in considering this matter, consulted the involved national authorities and correctly applied the procedures established by the Eurojust Decision and Rules of Procedure on the Processing and Protection of Personal Data at Eurojust³.
10. It is however regrettable that the first decision of Eurojust (dated 4th June 2013) did not contain any consideration as to how the disclosure of the data concerning the applicants processed by Eurojust may contravene any interests of Eurojust or of one of the Member States.

³ Text adopted unanimously by the College of Eurojust during the meeting of 21 October 2004 and approved by the Council on 24 February 2005) (2005/C 68/01), OJ 68, p. 1, 19.3.2005

11. The JSB considered the question of the request for the JSB to bear the costs of the present appeal's procedure in accordance with Article 25.1 of the JSB rules of procedure. The JSB notes that Article 25.1 states that "[...] *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 Eurojust to the extent that the Joint Supervisory Body considers this equitable*" (emphasis added). In this particular case, the access to information was granted to the applicants before the JSB took a decision on the appeal. The applicant was provided with all the information concerning him, even including the internal correspondence with the national authorities re this particular request. Even though, Eurojust reconsidered its initial decision only after the request of the JSB, however, the access to information was granted. Therefore, the situation is not the one described in Article 25.1 as, due to the decision of Eurojust to provide the information to the data subject before the JSB considered the matter, the JSB has not even reached the stage of having to decide whether to uphold, wholly or partially, the appeal.
12. The provision of the expenses in Article 25.1 of the JSB rules of procedure is there to protect the individuals against a possible deliberate misbehaviour of Eurojust. In this particular case, Eurojust has followed the procedures correctly and has showed its willingness to take on board the issues raised by the applicants by granting access even before the JSB's decision on the appeal; therefore the request to bear the costs cannot be upheld.

Decision

In the light of the specific circumstances and the fact that the applicant was provided with full access to information concerning him, processed by Eurojust, that by redacting the names of other persons Eurojust protected their right to privacy, the JSB decides, in accordance with Article 23.7 of the Eurojust Decision, that in the present appeal case Eurojust correctly applied the provisions of the Eurojust Decision.

Due to the mentioned above, the applicants' request to bear the costs is not upheld.

The Hague, 14 November 2013



Hans Frennered
Chair of the Joint Supervisory Body