

**THE JOINT SUPERVISORY BODY OF EUROJUST****26 APRIL 2007****DECISION**

The Joint Supervisory Body of Eurojust, composed of Mr Antti Ruotsalainen (Finland), Mr Klaus Tolksdorf (Germany) and Mr Carlos Campos Lobo (Portugal), on 26 April 2007, has decided:

The decision taken by Eurojust on 5 October 2006 in relation to the request by Mr S to have access to personal data concerning him processed by Eurojust does not conform to the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime.

The matter shall be referred to Eurojust for reconsideration.

**Reasoning**

1. The applicant Mr S (hereinafter “the Applicant”), through his lawyer Mr van Liere, requested from Eurojust by letter of 6 September 2006 access to any personal data concerning the Applicant that Eurojust might be processing.

Eurojust, acting through its Data Protection Service, replied to the Applicant’s request by letter of 5 October 2006 informing him that checks had been carried out, without revealing to the Applicant the result of these checks.

The Applicant filed an appeal to the Joint Supervisory Body of Eurojust by letter of 30 October 2006 against the decision of Eurojust of 5 October 2006.

The Joint Supervisory Body of Eurojust has examined the appeal submitted to it by the Applicant in accordance with Article 19(8) of the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (hereinafter "Eurojust Decision").

The Joint Supervisory Body of Eurojust considers that the decision taken by Eurojust on 5 October 2006 does not conform to the Eurojust Decision.

2. The decision of Eurojust of 5 October 2006 is based on a literal interpretation of Article 19(7) of the Eurojust Decision. Such a literal interpretation of Article 19(7) of the Eurojust Decision, however, is not compatible with other provisions of the Eurojust Decision itself and with the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Pursuant to the main rule in Article 19(1) of the Eurojust Decision every individual shall be entitled to have access to personal data at Eurojust. A literal interpretation of Article 19(7) of the Eurojust Decision would be incompatible with that general principle and also with Article 19(4) of the Eurojust Decision. As an exception to the general entitlement to access to personal data, Article 19(4) of the Eurojust Decision enumerates the reasons why such access may be denied. The mere notification of an applicant for whom no personal data are processed by Eurojust that a "check" has been carried out, without revealing the result of the check, effectively amounts to a denial of access to personal data. This denial, however, is not provided for by Article 19(4) of the Eurojust Decision and is therefore contrary to this provision. None of the reasons mentioned in Article 19(4) of the Eurojust Decision for denying access to personal data applies to an applicant for whom no personal data are processed by Eurojust.

As mentioned before, the application of Article 19(7) of the Eurojust Decision to individuals for whom no personal data are processed due to a literal interpretation of this provision would contradict the principle contained in Article 19(1) of the Eurojust Decision that everybody shall be entitled to have access to personal data concerning him. Article 19 of the Eurojust Decision is drafted according to the concept of principle and exception: apart from certain specific exceptions enumerated by Article 19(4) of the Eurojust Decision every individual shall be informed about personal data concerning him processed by Eurojust. Without a corrective interpretation of Article 19(7) of the Eurojust Decision, however, this

concept of principle and exception would be reversed. Almost all individuals who may enquire at Eurojust for information about their personal data processed by Eurojust would effectively be denied access to this information if Article 19(7) of the Eurojust Decision were interpreted literally. Contrary to Article 19(1) of the Eurojust Decision none of these individuals would receive a complete and satisfying answer from Eurojust to their request for information about personal data.

3. Furthermore, a literal interpretation of Article 19(7) of the Eurojust Decision would be incompatible with the provisions of the 1981 Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. In its preamble, the Eurojust Decision refers expressly to the level of data protection guaranteed by this Convention, demanding that the necessary steps should be taken to guarantee a level of data protection which corresponds at least to that which results from the application of the Convention's principles. In its Article 8, the Convention expressly guarantees every individual's right to information about the existence of an automated personal data file ("Any person shall be enabled: (a) to establish the existence of an automated personal data file, its main purposes, as well as the identity and habitual residence or principal place of business of the controller of the file; (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 data file as well as communication to him of such data in an intelligible form."). Exceptions and restrictions are contained in Article 9 of the Convention. In the case of an applicant for whom no personal data are processed by Eurojust, none of the exceptions and restrictions mentioned in Article 9 of the Convention applies. In particular, denying the applicant the information that no data concerning him are processed by Eurojust does not constitute a *necessary* measure in the interest of suppression of criminal offences, neither in relation to the applicant himself nor with regard to other applicants.

The Joint Supervisory Body of Eurojust therefore holds that Article 19(7) of the Eurojust Decision, instead of being applied literally, requires a corrective interpretation which takes into account the Eurojust Decision as a whole and that the College of Eurojust shall have discretion in the application of this provision.

The Joint Supervisory Body of Eurojust considers that in all cases where an individual seeks access to personal data concerning him processed by Eurojust, including those cases where there are no data processed, the College of Eurojust shall decide whether in the *specific* case the disclosure of the data or of the non-existence of data concerning the applicant processed by Eurojust may contravene any interests of Eurojust or of one of the Member States. If this is not the case, Eurojust shall reveal to the individual the requested data or inform him that in fact there are no data concerning him.

4. In accordance with Article 23(7) of the Eurojust Decision, the matter has to be referred to Eurojust for reconsideration.

Signed by:



Antti Ruotsalainen

Chairman of the Joint Supervisory Body