

THE THIRD ACTIVITY REPORT OF THE  
JOINT SUPERVISORY BODY OF EUROPOL

NOVEMBER 2004 - OCTOBER 2006

## **Europol and the Joint Supervisory Body**

Europol is the Police Office of the European Union that handles criminal information. Its mission is to assist the law enforcement authorities of Member States in their fight against serious forms of organized crime whilst fully respecting human rights. Europol's main tasks are to facilitate the exchange of information between Member States and to provide analytical expertise.

The Europol Convention provides for the creation of a Joint Supervisory Body – an independent body with the task of ensuring Europol's compliance with data protection principles. The JSB reviews all activities of Europol in order to ensure that the rights of the individual are not violated by the storage, processing and utilization of their data held by Europol. It also monitors the permissibility of the transmission of data originating from Europol. Each individual has the right to request the Joint Supervisory Body to ensure that the manner in which his personal data have been collected, stored, processed and utilized by Europol is lawful and accurate. The Europol Convention establishes the Appeals Committee of the Joint Supervisory Body which is charged with examining appeals of Europol's decisions by all appropriate means. The Appeals Committee is independent and impartial and not bound by directives of the JSB.

The Joint Supervisory Body is composed of two representatives of each of the national Supervisory Bodies and appointed for five years by each Member State. The Appeals Committee of the Joint Supervisory Body is composed of one representative of each of the national Supervisory Bodies and appointed for five years by each Member State. Both meet at the Council of the European Union in Brussels several times a year. A permanent secretariat is appointed to support the activities of both, the Joint Supervisory Body and of the Appeals Committee of the Joint Supervisory Body.

In terms of transparency, the Europol Convention requires the Joint Supervisory Body to publish an activity report at regular intervals. The Joint Supervisory Body has been active since 1999 and it publishes an activity report every two years. The current report is the third activity report of the Joint Supervisory Body for the period ranging from November 2004 to October 2006.

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## **Foreword**

This is now the third activity report of the Europol Joint Supervisory Body (the JSB). The report covers the period from November 2004 to October 2006 reflecting the accomplishments of the JSB under the chairmanship of Emilio Aced Fález.

The report gives a comprehensive overview of the main topics that the JSB dealt with in this period. One important development was the JSB's initiative to enhance the transparency of its work which was formalised in an amendment to its Rules of Procedure.

This activity report is an important element of that transparency

The activities of the JSB in the period November 2004 to October 2006 were not focussed solely on Europol and its work as an organisation assisting law enforcement authorities in the Member States. Europol's activities are not static; they evolve as law enforcement techniques develop and the need for cooperation between Member States increases. Wider developments in the European Union in the area of law enforcement and data protection affect Europol and therefore received the necessary attention of the JSB. The JSB's extensive experience in law enforcement and data protection is clearly valued and it has contributed to the work of many different bodies involved in these developments.

A wide range of subjects related to Europol's activities and future development were discussed in a conference organised by the JSB in October 2006. This conference reaffirmed that data protection is an intrinsic aspect of the way in which Europol acts and that respect for individual rights is key to the current and future success of Europol as an international law enforcement agency.

Personally and on behalf of all my colleagues in the JSB, I would like to thank Mr. Aced Fález for his important contribution to the work of the JSB. I would also like to thank Peter Michael and the JSB secretariat without whom the JSB could never have accomplished so much, the Chairmen of the Appeals Committee for this period, Giuseppe Busia and Ronald Bachmeier and all the JSB's members for their combined efforts.

David Smith

Chairman

## **Chapter I**

### **I.1 Introduction**

This third activity report of the Joint Supervisory Body of Europol is published in a period in which many developments are taking place in the area of data protection under the third pillar and in the context of law enforcement co-operation in the European Union (EU). The main developments in the area of data protection in the EU appear in the first chapter together with an assessment of Europol's future and of the new evolving role of the Joint Supervisory Body.

The second chapter lists the results of the Joint Supervisory Body's activities during the 2004-2006 period. The Appeals Committee's decisions are set out in the third chapter. The fourth chapter provides the reader with the Joint Supervisory Body's strategic goals for the future. The last chapter contains an overview of the members of the Joint Supervisory Body.

### **I.2. New Developments in Law Enforcement and Data Protection throughout the EU**

Since the Treaty of Amsterdam committed Member States to creating 'an area of freedom, security and justice', one of the EU's key objectives was to improve co-operation between law enforcement authorities. The goal of constructing an 'Area of Freedom, Security and Justice' across the Union was agreed on at the 1999 EU Summit in Tampere. The 'Tampere programme' was a five-year agenda that came to an end in 2004.

In June 2004, the European Union followed up the Tampere programme by setting future guidelines for a new justice and home affairs agenda for the coming years. A new programme for justice and home affairs, known as the 'Hague Programme' was adopted.

The Hague programme is a five-year programme for closer co-operation in justice and home affairs at EU level between 2005 and 2010. It aims to make Europe an area of freedom, security and justice. The programme promotes the development of adequate safeguards and of effective legal remedies for the transfer of personal data for the purpose of police and judicial cooperation in criminal matters. In the justice and security area, some

of the key measures aim to make police information available for all law EU enforcement authorities and to improve the use of Europol.

The programme also stresses the need to establish adequate data protection rules. This is in line with the European Parliament's call for harmonized data protection rules under the third pillar whilst guaranteeing the same data protection level as under the first pillar.

At the 2005 "Spring Conference of European Data Protection Authorities" the need was discussed for closer co-operation between the EU's law enforcement authorities and those of third States and the need for adequate data protection. The European Data Protection Authorities concluded that the 1981 Council of Europe Convention on Data Protection (Convention 108) applicable in the Union and in Member States was too general to effectively safeguard data protection in the area of law enforcement. It was held that some initiatives to improve law enforcement in the EU, such as the availability principle, should only be introduced on the basis of an adequate data protection system that ensured a high and equivalent standard of data protection.

In 2005 the European Commission submitted a proposal for a Council Framework Decision on the Protection of Personal Data processed in the framework of police and judicial cooperation in criminal matters. However, this proposal excluded Europol from its application.

Another development was initiated by the Austrian Presidency. After evaluating the role of Europol, various initiatives were launched for further discussions on its role and tasks. The Joint Supervisory Body was actively involved in these discussions.

### **I.3. Europol's future**

Europol is an evolving organization which since its inception has become an important active player in the fight against serious international and organized crime in the European Union. Discussions were started on its future during the Austrian Presidency. The aim was to further enhance Europol's role in the fight against serious crime and to strengthen Europol's contribution towards the European Union's security policy. It was also proposed

that the current legal basis for Europol in the context of a Council Decision be changed so as to make it more flexible.

Another important change is the finalization of the ratification of the three Protocols amending the Europol Convention and their implementation.

This ratification demonstrated that amending the Europol Convention may be a lengthy process, in some cases lasting up to seven years. One of the conclusions drawn from this process is the need to create a more flexible legal basis for Europol by replacing the Europol Convention by means of a Council Decision.

It is expected that the Commission will publish a proposal for a Council Decision before the end of 2006.

The Europol Joint Supervisory Body acknowledges that the discussions on Europol's role will no doubt have a data protection impact. Europol's information position, its new tasks and the enhancing of its operational role, should be accompanied by adequate data protection safeguards. Against this background, the Europol Joint Supervisory Body is currently studying all new developments relating to the future of Europol<sup>1</sup>.

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<sup>1</sup> The Commission has published a proposal for a Council Decision in December 2006

## **Chapter II**

### **II.1 Supervisory Work**

Under the Europol Convention, the Joint Supervisory Body 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 utilization of data held by Europol. The Joint Supervisory Body performed this task in various ways in the period 2004-2006.

#### **II.1.1. Inspecting Europol**

One of the ways in which the Joint Supervisory Body fulfils its general task is by carrying out on-site inspections of Europol's activities. The Joint Supervisory Body plans at least one inspection every year.

Europol is an organization in which cooperation between the Member States and Europol constitutes a key factor for success. The last two years have shown that inspections and the way in which inspection reports were received have led to growing interest, not only by Europol but also by the Management Board and by the Heads of the National Units. The reaction of all parties concerned definitely demonstrates a promising commitment towards addressing the issues submitted to them by the Joint Supervisory Body.

#### Inspection – March 2005

In December 2004, the Joint Supervisory Body mandated its inspection team to examine Europol's analysis files, the functioning of the Information System and also to check the follow-up to the recommendations contained in the previous two inspection reports.

In March 2005, the inspection team spent three days inspecting Europol. This was the sixth inspection visit by the Joint Supervisory Body. As regards Europol's analysis files, there still remained a few problems relating to their functioning as pointed out in earlier inspection reports. These can be explained by the lack of information provided by the Member States. The development of the new Information System (IS) was assessed. All findings, evaluations and recommendations referred to the development and training platforms. No inspection was made of the actual implementation of the technical infrastructure. Consequently, the inspection team made no statements about the actual

operational environment of the IS and of the IS's underlying infrastructure. The general impression of the new IS was positive. Several technical recommendations were made.

The report furthermore stressed the need to prioritize the follow-up to the recommendations made during the 2004 inspection concerning the archiving of messages containing operational information. A number of recommendations were made with a view to further improving Europol's compliance. The inspection team once again repeated that some of the recommendations referred to action to be taken by the Member States (and their National Europol Units).

#### Inspection – March 2006

The preparation of a new inspection to be carried out in March 2006 was proposed by the Joint Supervisory Body in December 2005. The main inspection areas were the Europol Information System, the follow-up to the recommendations made by the Joint Supervisory Body during earlier inspections and the content of data in the Analytical Working Files (AWF).

The inspection lasted three days, starting on 21 March 2006. A thorough investigation was held, involving checks in many areas of Europol's operational procedures. In the analysis area, four (4) Analysis Working Files were selected for inspection. Many technical recommendations were made concerning the Europol Information System. The Joint Supervisory Body also stressed Europol's own responsibility for the content of the Europol Information System, combined with Member States' responsibility.

The Joint Supervisory Body is satisfied that Europol has implemented most of the recommendations set out in previous reports concerning overall security aspects of the technology infrastructure. However, new recommendations have been added. Some of them are also dependent on actions that need to be taken by the Member States. Although Europol is an organization with its own responsibilities regarding compliance with the provisions of the Europol Convention, it should not be forgotten that Europol is dependent on the way Member States fulfil their obligations vis-à-vis Europol. The Joint Supervisory Body recognized that this sometimes forces those involved to set priorities but stressed that such priorities should never replace activities that are needed to fulfil all the provisions of

the Europol Convention. In its future inspections, the Joint Supervisory Body will be assessing in which way this commitment may result in enhancing compliance with data protection provisions.

### Inspections – Strategic Objective

Since 2003, the Joint Supervisory Body has laid down a number of objectives intended to guide future inspections. These included the building up of expertise for the inspection team and working out a framework methodology or audit programme, thus creating an efficient instrument for supervising Europol. Based on this experience, the JSB is studying ways and means of developing an audit framework methodology to be used by the Joint Supervisory Body and as an instrument for self-auditing by Europol.

One of the important strategic objectives set out by the JSB is the inspection of the quality of the data held by Europol's information systems and in the analytical work files. The inspection of the content of the Europol Information System in particular requires close cooperation between the Joint Supervisory Body and national data protection supervisors. The 2006 inspection witnessed the involvement of four national data protection authorities.

### **II.1.2. Opinions of the Joint Supervisory Body <sup>2</sup>**

During the last two years, the Joint Supervisory Body has received several requests from Europol regarding its operational activities and submitted its opinion to Europol. As part of its supervisory role, the Joint Supervisory Body also had several meetings with Europol officials. The development of the department of information security, Europol's role in Joint Investigation Teams, the new Europol Information System, the follow-up to the decisions of the Appeals Committee, the implementation of protocols amending the Europol Convention constituted the most important subjects.

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<sup>2</sup> All JSB opinions can be found on the following website : <http://europoljsb.consilium.europa.eu>

## **Index System**

Europol considered the revision of its Index System<sup>3</sup> and requested the opinion of the Joint Supervisory Body concerning its design. As provided for in Article 11(2) of the Europol Convention, there are two basic requirements as regards the Index System. A consulting Liaison Officer from a Member State should be able to clearly establish whether data are held that are of concern to him, while it should not be possible to establish connections or further conclusions regarding the content of the file. Europol's proposal was that in case of a search of information with a specific handling code that makes transmission conditional upon the permission of the Member State which has sent the information to Europol, no information would be revealed to the Liaison Officer. In that case, the analyst would be notified of the Liaison Officer's request for sensitive information and would be responsible for communicating further information to the Liaison Officer. The JSB discussed the subject and decided that from a data protection point of view, the proposal posed no problems. This opinion was communicated to Europol's Management Board.

## **Europol's New Analysis Project**

Europol is introducing a new analysis project (OASIS Framework Project) and has requested the Joint Supervisory Body to assess whether this project is in line with Article 17 of the Council Act of 3 November 1998 adopting rules applicable to Europol analysis files.

Taking into account the different stages of an analyzing process and the subsequent work streams, the Joint Supervisory Body concluded that Europol's data protection responsibilities with regard to an AWF should also include those analyzing processes required to prepare the final step of the analyzing process i.e. the criminal analysis. The Joint Supervisory Body considered that it was in line with the Europol Convention and with the Council Act which stipulates that Europol is responsible for the entire preliminary analyzing phase within Europol.

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<sup>3</sup> The Index System (Art. 11 of the Europol Convention) is a system that provides information on whether or not an item of information is stored in Europol's Analysis Files.

### **Europol's access to SIS**

On 3 August 2005 the Chairman of the Article 36 Committee requested that the Europol Joint Supervisory Body deliver its opinion on the technical proposal for Europol's access to the Schengen Information System (SIS). The proposal specified the technical conditions for access to certain<sup>4</sup> SIS data by Europol. The Joint Supervisory Body, after studying the proposal, prepared an opinion focused on the logging and control of Europol's access.

### **Europol's access to Visa Information System (VIS)**

In October 2005, the European Commission issued a proposal for a Council Decision concerning access for consultation of the Visa Information System (VIS) by the authorities of the Member States. Among the authorities listed, Europol's access was also regulated.

The objective of the proposal was to provide the legal basis to allow for and to lay down the conditions under which Member States' authorities responsible for internal security and the European Police Office (Europol) may access the Visa Information System (VIS) for consultation to prevent, detect and investigate terrorist offences and the types of crime and offences in respect of which Europol is competent to act pursuant to Article 2 of the Europol Convention (“serious criminal offences”)

The Joint Supervisory Body, although it has no supervisory role relating to VIS, assessed this proposal and concluded that, although the conditions for Europol's access to VIS were defined in that proposal, more limitations to the access rules for Europol should be introduced. The introduction of Europol's access to VIS data by simply referring to Europol's general task and without any specific explanation and limitation was in itself insufficient to justify the exception from the purpose of processing VIS data. Access to the VIS should be within the limits of a specific Europol task and only when necessary for the performance of this task and for the purpose of a specific analysis file.

The Joint Supervisory Body urged the Council to amend the proposed Council Decision in the light of the suggestions and remarks set out in the opinion

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<sup>4</sup> The Council Decision limits access to data as referred to in Articles 95, 99 and 100 of the Schengen Convention.

## **Protocols amending the Europol Convention**

### **Opinion on the proposal for a decision implementing Article 6A of the Europol Convention.**

The Council Act of 27 November 2003 amending the Europol Convention introduced a new Article 6A for the processing of data outside the computerized system of collected information. Specific conditions for the processing of data were defined in a draft decision prepared by the Europol's Management Board. The Joint Supervisory Body was requested to give its opinion on this draft decision. The opinion containing some suggestions of a more technical legal nature was adopted in October 2006.

### **Opinion on the initiative to amend the Council Act of 3 November 1998 adopting rules applicable to Europol analysis files.**

The Council Act of 27 November 2003 introduced several changes to the Europol Convention regarding the work files of Europol for analysis purposes. As a consequence, the existing Council Act of 3 November 1998 adopting rules applicable to Europol analysis files needed to be amended. The chairman of the Europol's Management Board requested the Joint Supervisory Body to give its opinion on a draft initiative on 17 July 2006. The opinion containing some suggestions of a more technical legal nature was adopted in October 2006.

### **Opinion on the draft Decision of the Management Board concerning the participation of Europol officials in Joint Investigation Teams.**

The Council Act of 28 November 2002 amending the Europol Convention introduced a new Article 3A in the Europol Convention dealing with Europol's participation in joint investigation teams (JIT). Although consultation of the Joint Supervisory Body is not mandatory on this subject, the Europol's Management Board consulted the Joint Supervisory Body. In its opinion adopted in October 2006, it was stressed that the decision should emphasize that Europol's analysis activities in a JIT may only take place within the context of Article 10 of the Europol Convention. The rules on JITs and their legal structure cannot replace the obligations for Europol officials to comply with the Europol Convention.

### **Draft Decision of the Management Board on the control mechanisms for retrievals JSB**

The Council Act of 27 November 2003 amending the Europol Convention amended Article 16 of the Europol Convention on the control mechanisms for retrievals. The Europol's Management Board prepared a draft decision on these control mechanisms and asked the JSB to give its opinion. The opinion was adopted in October 2006.

### **Draft Decision of the Management Board governing the arrangements on the association of third parties' experts with the activities of analysis groups.**

The Council Act of 27 November 2003 enables Europol to invite experts from third States or third bodies to be associated with the activities of an analysis group. The Europol's Management Board prepared a draft decision on the rules governing such arrangements and requested the Joint Supervisory Body to give its opinion. In its opinion adopted in October 2006, the JSB stressed the need to further define objective conditions to assess when it is in the interest of a Third State to be associated with an analysis group.

### **II.1.3. Opening Analysis Files**

Every time Europol wants to start a new analysis file under Article 10 of the Europol Convention, an order must be drawn up to define the specifics of the file. This order should set out, among other things, the purpose of the file, the participant Member States and the categories of personal data to be held. These orders must be approved by Europol's Management Board which is obliged to send the order to the Joint Supervisory Body for comment.

During the period covered by this report, the Joint Supervisory Body issued opinions on three orders to open analysis files. While the JSB made no comments in two cases, in the third which referred to the merger of two previous analysis working files, the Joint Supervisory Body commented on the categories of data that can be lawfully processed and on the time-limits for examination and duration of storage of data under Article 16(2) of the rules applicable to Europol Analysis Files.

At the moment, Europol is processing personal data in sixteen (16) separate analysis working files.

### **New approach to opening orders and analytical work files**

Europol's analytical working files (AWF) are used to support the investigation of a specific criminal activity. Any analytical activity performed by Europol is strictly limited to the conditions set out for AWF's in the Europol Convention and in the Council Act on analytical files. Europol is not allowed to provide for analytical support outside the scope of these two legal instruments.

Europol proposed in 2006 to create a general framework AWF relating to a specific criminal activity as a standard for future use. Such a framework should allow Europol to start an analytical project directly when requested and when necessary to analyze a specific target group related to this criminal activity. The development of the target group concept in the analysis files had already come to the Joint Supervisory Body's attention during its inspection in March 2004 and resulted in an exchange of views between Europol. Until then, these target groups were temporary working arrangements within an analysis file.

The present proposal introduces an AWF allowing a quick reaction from Europol on a request for analysis support and at the same time reduced the administrative capacity needed for opening an AWF. Europol justified this new approach by referring to problems concerning the formal procedure for opening an AWF and the specific problems relating to the specific area of crime. There was an obvious need to provide for analytical products in an expedient way and in a specific criminal area, where experience has demonstrated a continuous demand for analytical assistance.

In its opinion, the Joint Supervisory Body agreed with this new concept but defined several conditions, especially for the use of target groups. These conditions referred to fundamental data protection principles and to the purpose of the target group, the categories of personal data, the processing of sensitive data, access limitations and to the transparent procedures for informing the Joint Supervisory Body. In addition, the framework AWF was only approved for a limited period of three years. An evaluation of this new concept should be made during that period.

Europol has accepted these conditions.

#### **II.1.4. Agreements with third States/Bodies**

If Europol intends to transmit personal data to a State outside the EU, a formal agreement must be concluded between Europol and that third State. Before concluding such an agreement, Europol is obliged to obtain the opinion of the Joint Supervisory Body. In the past two years, two opinions have been adopted: one relating to the draft agreement to be signed between Europol and Croatia, the other between Europol and Canada.

In both cases the JSB made a number of general remarks but concluded that, from a data protection perspective, there were no obstacles to prevent Europol from finalizing the agreement.

The opinions on all agreements can be found on the following website <http://europoljsb.consilium.europa.eu>

Europol also initiated an evaluation of its third States policy including the development of a new standard agreement. Europol's policy document aims to present the possibilities for cooperation with third States and bodies and the necessary legal instruments for such cooperation. This policy document is expected in November 2006.

The Joint Supervisory Body participated in the discussions.

#### **II.1.5. Data Subject's Rights**

Under Article 23 of the Europol Convention, an individual may ask the National Data Protection Authority to ensure that the entry or communication of data to Europol and the consultation of the data by the Member State concerned are lawful.

Under Article 19 of the Europol Convention, an individual wishing to exercise his/her right of access to data relating to him/her which are stored within Europol, or to have such data checked, may make a request free of charge to the national competent authority in any Member State he/she wishes, who shall then transmit the request to Europol and notify the individual concerned that Europol shall reply directly. Europol must deal with the request within three months of its receipt by the National Data Protection Authority.

Figures provided by Europol reveal that 25 requests for access were received by Europol in the period November 2004- October 2006.

Individuals can also ask the Joint Supervisory Body to ensure that the manner in which their personal data have been collected, stored, processed, and utilized by Europol is lawful and accurate. So far, seven requests have been received – and, after checks were made, Europol was found to have acted in compliance with the Europol Convention in six cases. One case is still under investigation.

## **II.2. Managing the Joint Supervisory Body**

The Joint Supervisory Body met nine times between November 2004 and October 2006. The JSB is composed of representatives of the national data protection authority of each Member State.

### **II.2.1. Transparency**

The Joint Supervisory Body is always concerned with enhancing the transparency of its work. In 2004 a new provision on public access to documents to be included in the Rules of Procedure was proposed. This was to provide greater openness as regards the JSB's activities.

This proposal was triggered against a backdrop of improved transparency throughout the EU institutions. The EU institutions apply Regulation 1049/2001, recital 11 of which states that 'In principle, all documents of the institutions should be accessible to the public'. Article 6(4) of our Rules of Procedure stipulates that the documents of the Joint Supervisory Body are confidential unless the latter decides otherwise. In accordance with the commitment made in the most recent activity report, it is suggested that the principle set out in Article 6(4) be reversed: all documents are accessible to the public unless there is an overriding interest against disclosure.

The amendments to the Rules of Procedure were discussed before adopting the final text in late 2005. The final text was sent to the Council for approval in accordance with Article 32 of the Rules of Procedure<sup>5</sup>.

Although the fact that the Europol Convention does not require the activity reports to be sent to the European Parliament, the Joint Supervisory Body furthermore decided to include such an obligation in the Rules of Procedure.

Another step towards enhancing transparency was taken in March 2006. It was decided that a public note concerning the topics discussed at the meetings and the final conclusions would immediately be published after every meeting.

The Joint Supervisory Body also publishes all opinions and decisions of the Appeals Committee on its website at <http://europoljsb.consilium.europa.eu>

## **II.2.2 Working Groups**

The Joint Supervisory Body has in the past set up different working groups in accordance with Article 3(2) of the Rules of Procedure, each with their own scope and mandate. The working groups add significant value to the work of the JSB since highly qualified members provide in-depth analyses of the issues discussed by the Joint Supervisory Body.

In view of the Joint Supervisory Body's changed composition, in the past two years new members have been appointed to the various working groups. The current existing working groups are:

- i) The Inspection group: mandate: planning and executing the inspections within Europol
- ii) The New Projects Group: mandate: examination of technical issues.
- iii) The Third States relations: mandate: studying the legal issues concerning Europol's co-operation agreements with third States.

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<sup>5</sup> OJ.C.311, 19.12.2006, p.13

- iv) The Opening order group: mandate: studying data protection issues concerning the opening orders of analysis files of Europol.
- v) The Public relations group: mandate: making proposals for publicity regarding the Joint Supervisory Body's work.

If necessary for the execution of their tasks, the working groups may hold additional meetings with the support of the Joint Supervisory Body's Secretary.

### **II.2.3. 2006 Conference**

The Joint Supervisory Body has now been operational for seven years and has always been aware of its important role vis-à-vis the public and Europol's stakeholders. As one of its main tasks is to guarantee citizens' rights by being a body to which people can address requests and submit appeals, the JSB decided to organize a Conference. At the instigation of the Europol Joint Supervisory Body, the EU Parliament, the Commission, the Secretariat General of the Council and various other institutions met in Brussels on 17 October to discuss data protection challenges and Europol.

The crucial role of Europol and the need to accompany the fight against crime with sufficient safeguards to ensure the fundamental rights of the individual were reconfirmed: data protection is an intrinsic aspect of the way in which individuals, private and public offices and governments should act.

Initiatives to further improve the fight against crime such as the Prüm Treaty, the processing for law enforcement purposes of PNR data, the introduction of the availability principle, providing access to data bases such as SIS II and VIS and perhaps in the future Eurodac need(s) to be properly assessed and discussed as to its data protection implications. Ways and means need to be found of implementing fundamental principles such as the right to liberty and security and protection of personal data.

It was stressed at the Conference that the implementation and use of current instruments of law enforcement cooperation should be improved. Experience gained by the JSB clearly

shows that there is still a lot of work governments and law enforcement authorities can do to successfully fight serious crime.

The need was also confirmed for a legal instrument that created an adequate system of data protection arrangements in the area of law enforcement, guaranteeing a high and equivalent level standard of data protection.

The presentations focused on the role of data protection and supervision against the objective of the EU under the third pillar area. The influence of supervisory authorities, their views and opinions and their future also formed the subject of some of the presentations.

## **Chapter III**

### **III.1 The Appeals Committee**

Individuals have a right of access to information that Europol holds on them and they also have the right to ask for such information to be checked, corrected or deleted. When an individual has concerns about the manner in which Europol has responded to an access request or to a request that information be corrected or deleted, the individual may lodge a complaint with the appeals body of the Joint Supervisory Body. This right of appeal shall be notified to the data subject in response to these requests. The appeals body shall then investigate and determine whether Europol has acted in accordance with the relevant provisions of the Convention. The decision of the Appeals Committee shall be final.

Although its membership is drawn from the Joint Supervisory Body, the Appeals Committee is independent and impartial and not bound by any directions. Decisions taken by the Appeals Committee are final for all parties involved.

To date, the Appeals Committee has had to take a decision in five cases. In the last two years two decisions were taken. Both decisions were taken in December 2005 and resulted in the finding that Europol had acted in compliance with Article 19(3) of the Europol Convention.

#### **III.1.1 Summary of the Appeal lodged by Mr U.**

Mr U contacted the French Data Protection Commission (CNIL), in which he requested that it should be ascertained if data pertaining to him were being stored by Europol. The request was forwarded to Europol.

Europol's reply concluded that:

*"In accordance with the procedure as stipulated in the Europol Convention and the French 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 French legislation, it is not possible for me to give you any further information."*

Mr U complained that he was the victim of harassment by the administrative authorities. In his letter to the Appeals Committee, Mr U stated that since there is no judicial file relating to him in France, he requested to be informed on the data relating to him and processed by Europol.

The right of access is set out under Article 19(1) of the Europol Convention and although the extent of this right is not specifically defined, it should in view of Article 14(1) of the Europol Convention be regarded as the same right defined in Article 8 of the Convention of the Council of Europe of 28 January 1981. This right enables an individual to establish whether personal data relating to him are stored and if so, gives entitlement to having these data communicated to him.

The application of the general principles of the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data of 1981 emphasizes the principle of proportionality. Exceptions to the right of access can only be allowed if and to the extent to which, the interests of police or third parties outweigh the interest of exercising the right of access. The principle of proportionality implies that a decision on the right of access requires assessment on a case-by-case basis.

The appeal involves both aspects of the right of access. Under Article 19(3), this right shall be exercised in accordance with the law of the Member State where the right is claimed, in this case France. Article 19(3) of the Europol Convention also uses the expression "communication concerning data" which covers both the communication whether data are processed and communication of the data that are processed.

The French law containing rules for the protection of privacy with regard to police data files recognizes a right to be informed whether and if so, which personal data concerning that person are stored in the police data file. However, it also introduces an indirect system of the right of access. In case the processing of personal data concerns activities affecting national security, defence, or public safety, the right is exercised by the national data protection commission acting on behalf of the applicant. In this indirect system an appropriate investigation is conducted by the CNIL where there is no possibility of

informing the data subject whether data are being processed and if so, to communicate those data to him. The data subject is only informed that checks have been made.

The existence of this indirect right of access leads to the applicability of the first sentence of Article 19(3) of the Europol Convention: the right of access should be exercised in accordance with the law of the Member State where the right is claimed.

Europol's decision refers to checks that have been made following Mr U's request.

In view of legal practice in France regarding the right of access to data processed by Europol and in view of Article 19(3) of the Europol Convention, Europol's decision on Mr U's request complies with Article 19(3) of the Europol Convention.

### **III.1.2. Summary of the Appeal lodged by Mrs Y**

Mr Y contacted the French Data Protection Commission (CNIL), submitting a request that it be ascertained whether data pertaining to her had been stored by Europol. The request was forwarded to Europol.

Europol's reply concluded that:

*"In accordance with the procedure stipulated in the Europol Convention and the applicable national legislation of France, 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 the applicable legislation of France, I would like to inform you that no data concerning you are processed at Europol to which you are entitled to have access to in accordance with Article 19 of the Europol Convention."*

This case was the same as the previous one, so the decisions were almost identical. The rapporteur concluded that Europol's reply was in accordance with French law.

In the appeal, the appellant also asked to be informed since when data had been processed. Since this specific request was not part of the original request for access to Europol, Europol's decision on the request could not be seen as having included an answer to that

specific request. Consequently, the Committee did not consider this aspect of the appellant's application.

All decisions of the Appeals Committee, together with additional information on the rights available under the Europol Convention, can be found on the following JSB's website **<http://europoljsb.consilium.europa.eu>**

## **Chapter IV**

### **IV.1. Self-Assessment**

Since its inception in October 1998, the Joint Supervisory Body has presented itself as a controller of Europol with an open attitude and with a keen eye for a pro-active approach to its tasks. Throughout that period the JSB endeavoured to become an effective control body. Many initiatives were taken to improve the work resulting in the establishment of a permanent secretariat, working procedures and a transparency policy.

Although the Joint Supervisory Body is satisfied with its achievements, it also felt that it was time to self-evaluate existing working procedures and results. In its first years of existence, the Joint Supervisory Body focused on giving reactive advice to Europol in several well-identified areas as well as on clarifying the interpretation of the Europol Convention. Over the years this aim has expanded and the Joint Supervisory Body has also focused on exploring new ways of promoting compliance and of raising citizens' awareness of Europol operations.

The Joint Supervisory Body is to embark on self-assessment in the near future.

### **IV.2 The Future**

In its most recent activity report the JSB committed itself to:

- carrying out annual inspections of Europol (paying particular attention to the Europol Information System);
- monitoring compliance with the provisions of the Europol-US agreement;
- raising the JSB's profile within EU institutions and in particular proposing regular contacts with the LIBE Committee;
- helping new colleagues from the accession countries to inform national police authorities of their data protection obligations;
- working with its sister authorities and the wider data protection community to present a coherent and constructive response to new initiatives involving the use of personal data;
- raising awareness of the rights of individuals under the Europol Convention.

Although these objectives have largely been met, they remain important. The Joint Supervisory Body formulated the following objectives for the coming two years.

Priorities for the Joint Supervisory Body will always be to protect the rights of the individual. To be effective, the organization of its work, the governance and management of the Joint Supervisory Body should be constantly evaluated.

In its work plan during the period 2006-2008, the JSB will focus on the following subjects:

- i) carrying out annual inspections of Europol, whilst paying particular attention to the quality of the data processed by Europol;
- ii) improving methods of inspections;
- iii) closely monitoring new developments in the area of data protection in the law enforcement area and developments relating to EU information systems;
- iii) co-ordinated common supervisory actions at national level;
- iv) raising public awareness of the rights of individuals afforded under the Europol Convention and the role of JSB Europol alone and in conjunction with the National Data Protection Authorities

These strategic objectives will form the basis for providing high-quality services for the protection of personal data processed by Europol in the next few years, taking into account any changes in the European law enforcement area.

## Chapter V

### IV.1 Members of the JSB Europol and of the Appeals Committee

#### IV.1.1. JOINT SUPERVISORY BODY OF EUROPOL

Chairman: Mr Emilio ACED FELEZ  
Vice-Chairman: Mrs Miroslava MATOUSOVA

<b>AUSTRIA</b> MEMBERS Mrs Waltraut KOTSCHY Mrs Eva SOUHRADA-KIRCHMAYER ALTERNATES Mr Alexander FLENDROVSKY Mr Gregor KÖNIG	<b>BELGIUM</b> MEMBERS Mr Willem DEBEUCKELAERE Mr Bart DE SCHUTTER ALTERNATES Mrs Priscilla de LOCHT
<b>CYPRUS</b> MEMBERS Mrs Goulla FRANGO ALTERNATES Mrs Louiza MARKIDOU	<b>CZECH REPUBLIC</b> MEMBERS Mrs Miroslava MATOUSOVA ALTERNATES Mr Jiří MAŠTALKA
<b>DENMARK</b> MEMBERS Mrs Lena ANDERSEN Mr Ib Alfred LARSEN ALTERNATES Mrs Anne BROBERG RASMUSSEN	<b>ESTONIA</b> MEMBERS Mrs Merit VAIM Mr Bert BLÖS ALTERNATES Mrs Maris SARV
<b>FINLAND</b> MEMBERS Mr Reijo AARNIO Mr Heikki HUHTINIEMI ALTERNATES Mrs Maija KLEEMOLA Mr Lauri VUORIVITRA	<b>FRANCE</b> MEMBERS Mr Georges de la LOYÈRE Mrs Pascale RAULIN-SERRIER ALTERNATES
<b>GERMANY</b> MEMBER Mr Roland BACHMEIER Mr Michael RONELLENFITSCH ALTERNATE Mr Wolfgang Von POMMER ESCHE Mrs Angelika SCHRIEVER-STEINBERG	<b>GREECE</b> MEMBER Mr Sotyrios Lytras Mr Christos POLITIS ALTERNATE Mrs Kyriaki LOSTARAKOU Mr Kostantinos Moulinos
<b>HUNGARY</b> MEMBERS Mr PETERFALVI, Attila ALTERNATES Mrs PAJÓ, Agnes	<b>ITALY</b> MEMBERS Mrs Vanna PALUMBO

<p>IRELAND</p> <p>MEMBERS</p> <p>Mr Billy HAWKES</p> <p>Mr Nelius LYNCH</p> <p>ALTERNATES</p> <p>Mr Tom MAGUIRE</p> <p>Mr Sean SWEENEY</p>	<p>LATVIA</p> <p>MEMBERS</p> <p>Mrs Signe PLUMINA</p> <p>Mrs Aiga BALODE</p>
<p>LITHUANIA</p> <p>MEMBERS</p> <p>Mrs Rita VAITKEVICIENE</p> <p>Mrs Vaida LINARTAITĖ</p>	<p>LUXEMBOURG</p> <p>MEMBERS</p> <p>Mr Georges WIVENES</p> <p>Mr Thierry LALLEMANG</p> <p>ALTERNATES</p> <p>Mr Pierre WEIMERSKIRCH</p>
<p>MALTA</p> <p>MEMBER</p> <p>Mr Paul Mifsud CREMONA</p>	<p>NETHERLANDS</p> <p>MEMBERS</p> <p>Mr Jacob KOHNSTAMM</p> <p>Mrs Jeanette BEUVING</p> <p>ALTERNATES</p> <p>Mrs Evelien van BEEK</p> <p>Mr Niels GROENHART</p>
<p>POLAND</p> <p>MEMBERS</p> <p>Mrs Ewa KULESZA</p> <p>Mrs Elzbieta OSTROWSKA</p> <p>ALTERNATES</p> <p>Mrs Dorota SKOLIMOWSKA</p> <p>Mr Piotr DROBEK</p>	<p>PORTUGAL</p> <p>MEMBERS</p> <p>Mr Amadeu Francisco RIBEIRO GUERRA</p> <p>Mrs Isabel CERQUEIRA DA CRUZ</p> <p>ALTERNATES</p> <p>Mrs Clara GUERRA</p> <p>Mr JoséAlexandre PINHEIRO</p>
<p>SLOVAK REPUBLIC</p> <p>MEMBERS</p> <p>Mr Peter LIESKOVSKÝ</p> <p>Mr Tomáš MIČO</p>	<p>SLOVENIA</p> <p>MEMBERS</p> <p>Mr Andreja MRAK</p> <p>Mrs Natasa PIRC MUSAR</p> <p>ALTERNATES</p> <p>Mrs Mojca PRELESNIK</p> <p>Mr Joze BOGATAJ</p>
<p>SPAIN</p> <p>MEMBERS</p> <p>Mr Emilio ACED FÉLEZ</p> <p>Mr José Luis PIÑAR MAÑAS</p> <p>ALTERNATES</p> <p>Mrs Esperanza ZAMBRANO GÓMEZ</p> <p>Mrs Mercedes ORTUÑO</p>	<p>SWEDEN</p> <p>MEMBERS</p> <p>Mrs Agneta RUNMARKER</p> <p>Mrs Katja ISBERG AMNÄS</p> <p>ALTERNATES</p> <p>Mrs Britt-Marie WESTER</p> <p>Mrs Birgitta ABJÖRNSSON</p>
<p>UNITED KINGDOM</p> <p>MEMBERS</p> <p>Mr Richard THOMAS</p> <p>Mr David Smith</p> <p>ALTERNATES</p> <p>Mr Jonathan Bamford</p> <p>Mr Chris TURNER</p>	

## IV.1.2 APPEALS COMMITTEE

Chairman: Mr Ronald Bachmeier

<p>AUSTRIA MEMBER Mr Gregor KÖNIG ALTERNATE Mr Alexander FLENDROVSKY</p>	<p>BELGIUM MEMBER Mr Willem DEBEUCKELAERE ALTERNATE Ms. Bart DE SCHUTTER</p>
<p>CYPRUS MEMBER Mrs Goulla FRANGOU ALTERNATE Mrs Louiza MARKIDOU</p>	<p>CZECH REPUBLIC MEMBER Mrs Miroslava MATOUSOVA ALTERNATE Mr Jindrich Formanek</p>
<p>DENMARK MEMBER Mrs Lena ANDERSEN ALTERNATE Mrs Jakob Pedersen</p>	<p>ESTONIA MEMBER Mr Bert BLÖS</p>
<p>FINLAND MEMBER Mr Reijo AARNIO ALTERNATE Mrs Maija KLEEMOLA</p>	<p>FRANCE MEMBER Mr Georges de la LOYÈRE ALTERNATE Mrs Pascale RAULIN-SERRIER</p>
<p>GERMANY MEMBER Mr Roland BACHMEIER ALTERNATE Mr Wolfgang Von POMMER ESCHE</p>	<p>GREECE MEMBER Mr Christos POLITIS ALTERNATE Mrs Kyriaki LOSTARAKOU</p>
<p>HUNGARY MEMBER Mr PETERFALVI, Attila ALTERNATE Mrs PAJÓ, Agnes</p>	<p>IRELAND MEMBER Mr Billy HAWKES ALTERNATE Mr Tom MAGUIRE</p>
<p>ITALY MEMBER Mrs Vanna PALUMBO</p>	<p>LATVIA MEMBER Mrs Signe PLUMINA ALTERNATE Mrs Aiga BALODE</p>

<p>LITHUANIA MEMBER Mrs Rita VAITKEVICIENE ALTERNATE Mrs Vaida LINARTAITĖ</p>	<p>LUXEMBOURG MEMBER Mr Georges WIVENES ALTERNATE Mr Thierry LALLEMANG</p>
<p>MALTA MEMBER Mr Paul Mifsud CREMONA</p>	<p>NETHERLANDS MEMBER Mr Jacob KOHNSTAM ALTERNATE Mrs Evelien van BEEK</p>
<p>POLAND MEMBER Mrs Ewa KULESZA ALTERNATE Mr Piotr DROBEK</p>	<p>PORTUGAL MEMBER Mr Amadeu Francisco RIBEIRO GUERRA ALTERNATE Mrs Isabel CERQUEIRA DA CRUZ</p>
<p>SLOVAK REPUBLIC MEMBER Mr Peter LIESKOVSKÝ ALTERNATE Mr Tomáš MIČO</p>	<p>SLOVENIA MEMBER Mr Andreja MRAK</p>
<p>SPAIN MEMBER Mr Emilio ACED FÉLEZ ALTERNATE Mrs Esperanza ZAMBRANO GÓMEZ</p>	<p>SWEDEN MEMBER Mrs Agneta RUNMARKER ALTERNATE Mrs Katja ISBERG AMNÄS</p>
<p>UNITED KINGDOM MEMBER Mr David Smith ALTERNATE Mr Jonathan Bamford</p>	