

# EUROPOL JOINT SUPERVISORY BODY



## THE **FOURTH** ACTIVITY REPORT OF THE JOINT SUPERVISORY BODY OF EUROPOL

**2006 - 2008**

The fourth activity report of the  
Joint Supervisory Body of Europol

November 2006 – November 2008

## **The mission of the Joint Supervisory Body of Europol**

The mission of the Joint Supervisory Body is to independently review, in accordance with the Europol Convention, the activities of Europol to make sure the rights of the concerned individuals are not violated by the storage, processing and use of the data held by Europol. In addition, the Joint Supervisory Body monitors the permissibility of the transmission of data originating from Europol.

Each individual has the right to ask the Joint Supervisory Body to make sure that the manner in which their personal data have been collected, stored, processed and used by Europol is lawful and accurate. In this way the Joint Supervisory Body acts as reliable intermediary between the individual and Europol.

The Joint Supervisory Body promotes a co-operative approach when examining the questions relating to the harmonised interpretation and application of the provisions of the Europol Convention, as well as for drawing up harmonised proposals for common solutions to existing problems as regards the processing and use of personal data by Europol.

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## Foreword



In 2008 the Joint Supervisory Body reached an important milestone. It celebrated 10 years of data protection supervision at Europol. Right from the start of the JSB's work in October 1998, Europol and the JSB recognised their joint interest in achieving a high standard of data protection at Europol. From the beginning a good working relationship was established and this has further developed over the years resulting in constructive dialogue and practical achievements in building data protection requirements into the daily work of Europol.

Data protection imposes proper information handling standards on law enforcement agencies, including Europol. These may sometimes be seen as a burden but they are not a barrier to effective investigation and policing. In fact they help to ensure the quality and reliability of Europol's information. Data protection is like a speed limit. It may slow a driver down but the reason it does this is to protect the safety of the driver and other road users. It makes it more likely that Europol will achieve its long term law enforcement objectives, not less likely.

Achieving high data protection standards at Europol relies in part on the quality of personal information received from member states and others. There is an increasing need to explore whether practices and procedures governing data quality at national level meet the standards needed to ensure high quality data processing at Europol. There is a role here for Europol in educating and encouraging law enforcement agencies in member states but there is also a role for national data protection authorities particularly given their right to inspect national units. Bringing about improvements requires cooperation not just between the JSB and Europol but also between the JSB and national data protection authorities.

The JSB is looking forward to implementation of the Council Decision that establishes a new legal framework for Europol. The development of this new legal framework has

provided a unique opportunity to improve the data protection provisions in those areas where this is needed. One area involves the individual's right of access to personal information held by Europol. As a result of effective working between Europol and the JSB the Council Decision sets out a mechanism that will not only strengthen individual rights but will also preserve the important law enforcement interests that Europol rightly seeks to protect. As Europol moves to implement the Council Decision there will be further opportunities to both strengthen and streamline data protection practice.

A range of developments in the area of law enforcement and data protection are taking place, in addition to the new Europol Decision, which will have implications for how law enforcement agencies including Europol are supervised. What is clear for now is that the JSB will retain its supervisory functions for the foreseeable future. The JSB will also retain its commitment to delivering effective data protection supervision of Europol's activities whilst respecting Europol's operational needs. Furthermore it will continue to work hard to maintain close and effective cooperation with both Europol and national data protection authorities.

David Smith  
Chairman

# **Chapter I**

## **I.1 Introduction**

This is the fourth activity report of the Joint Supervisory Body (JSB). It reflects on the activities and results achieved during the last two years (2006 – 2008) relating to making data protection principles in the area of law enforcement work in practice. In addition, the report is dedicated to the history of the whole JSB's existence, as we celebrate our 10-year anniversary, at the same time focusing on the future challenges and new developments of data protection in law enforcement co-operation in the European Union.

This report demonstrates that clear allocation of responsibilities between stakeholders, mutual co-operation and trust result in the effective day-to-day implementation of the data protection principles without detriment to individuals' rights and freedoms.

### **Summary of the report**

The first chapter – Historical review – presents a short overview of the activities of the JSB through the whole decade 1998 – 2008, recalling its history, experience and accomplishments, and concentrating on future challenges.

The second chapter – Supervisory work – presents the results of the work of the JSB acting as the independent supervisor of the processing of personal data by Europol and protector of data subjects' rights. The developments and achievements working as an advisor to Europol will be reflected in this chapter by presenting the opinions on certain data protection issues. Due attention will be given management issues.

The role and the decisions of the Appeals Committee are presented in the third chapter providing a summary of the decisions taken, and reflecting on the investigation and analysis of the Committee and the complexity of the issues.

The fourth chapter focuses on self-evaluation, and the short and long-term objectives of the Joint Supervisory Body.

## **I.2 A glance at the past activities of the Joint Supervisory Body**

*"We are made wise not by the recollection of our past, but by the responsibility for our future."*

*George Bernard Shaw*

However, it is wise to look to the past before going to the future especially if the past is marked by the experience necessary to tackle future challenges.

The JSB's experience in law enforcement and data protection is now a clear given and has allowed this authority to become the reliable protector of individuals' rights and the constructive partner for Europol. This came about by offering assistance and advice on how to make sure that any changes proposed resulted in practical achievements and with respect to the rights of individuals.

The establishment of the JSB of Europol is naturally connected with the establishment of Europol. Europol was agreed in the Maastricht Treaty on the European Union on 7 February 1992. The Europol Convention was ratified by all Member States and came into force on 1 October 1998. Following a number of legal acts related to the Convention, Europol commenced its full activities on 1 July 1999. According to the Europol Convention, Europol is a support service for the law enforcement agencies of the EU Member States. Europol collects and analyses personal information on individuals from police authorities in all Member States relating to the crimes for which Europol is made competent. The first and founding meeting of the JSB of Europol took place in The Hague on 9 October 1998. This date marks the beginning of the activities of the Joint Supervisory Body assuming the responsibilities allocated by the Europol Convention.

To start with the JSB had a secretariat made up of staff from the General-Secretariat of the Council of the European Union. However, there was an initiative to establish an independent secretariat and, following the Council decision of 17 October 2000, a permanent and independent secretariat was created on 1 September 2001.



Since its establishment in 1998, the JSB has been entrusted with the task of supervising Europol's activities when processing personal data. Its tasks are even more important from the perspective of the types of information Europol processes and the possible negative consequences to those individuals concerned if this information is processed without proper and strict safeguards.

The JSB in its work already had guidelines – the data protection outline implemented in the Europol Convention. The Europol Convention establishes a comprehensive data protection regime obliging the Member States to ensure a standard of data protection which at least corresponds to the standard resulting from the implementation of the principles of the Council of Europe Convention of 28 January 1981, and, in doing so, shall take account of Recommendation No R (87) 15 of the Committee of Ministers of the Council of Europe of 17 September 1987 concerning the use of personal data in the police sector. Thus, the Convention itself provides for certain rights and safeguards to individuals in relation to the processing of their personal data and the challenge was to make sure the agreed rights and safeguards are properly implemented in practice.

From the very beginning the JSB had to develop working methods that would enable it to function as an independent supervisory body. One of these working methods, which allowed the members of the JSB to build their experience and knowledge, was the creation of the working groups with delegated tasks relating to work in certain areas and on specific projects. Working groups were created to assess Opening Orders of the Analytical Work Files (AWF); to deal with questions concerning relations with third states or bodies; to look at information technology matters; and to promote and make transparent the work of the JSB by skilfully managing its public relations. The work done by such groups made it possible not only to prepare the meetings of the JSB, it also invested in building up the knowledge and experience on police co-operation and the work of Europol.

As a joint supervisory authority, in charge of monitoring the data processing activities of Europol, the JSB has always acted as an independent supervisor. The independence of the supervisory authority is an essential condition to guarantee the proper protection of the rights and freedoms of individuals. This independence should not be perceived as a

privilege but rather as a duty and a responsibility. Article 24(1) of the Europol Convention stipulates that the JSB shall fulfil its tasks in full independence and provides for guarantees of institutional and organisational independence as follows.

- Composition of not more than two members or representatives of each of the national supervisory bodies guaranteed to be independent.
- The requirement for the necessary abilities of the members.
- Term of appointment for five years by each Member State.
- The prohibition to receive any instructions from any other body.
- Access to all documents and paper files as well as access to the data stored in Europol.
- Free access at any time to all Europol's premises.
- Binding decisions of the Appeals Committee.
- Separate rules of procedure and budget.

The JSB took each opportunity to prove its independence by building a strong identity as an impartial supervisor, at the same time maintaining its qualities as co-operative and qualified partner. It is fair to say that during this decade the political situation posed challenges to the work of the JSB. However the full independence and comprehensive assumption of responsibilities arising from the Europol Convention allowed the JSB, even when under political pressure, to independently solve difficulties and problems while interpreting the Convention or responding to the needs of Europol.

Another important feature worth mentioning is the role of the co-ordinator of the joint supervisory activities. The JSB was probably the first joint supervisory authority which started to promote a practical approach to joint supervision at EU level as well as at national level. On 29 June 2000, the JSB set up an inspection group responsible for carrying out an inspection on security and the Analysis Work Files at Europol. In view of the inspection that was scheduled for November 2000 and for future inspections, Europol and the JSB adopted a protocol on the special arrangements with Europol concerning visits and inspections. A plan for periodic audits and on-the-spot inspections was established. The inspections of Europol enriched the JSB with the necessary experience and understanding

of Europol's activities and operational needs from a practical point of view. An advisory role without practical experience and understanding of the issues at stake does not add a lot to the activities of the supervisor itself nor to those who are supervised. The inspections also contributed to strengthening Europol's commitment to fulfil data protection requirements and to implement those into the daily work of Europol. The serious attitude of Europol and amount of work dedicated to the implementation of the JSB's recommendations gave substantial proof of the considerable value of this work. Having 10 years experience of carrying out inspections, and scrupulously following the implementation of the recommendations, has assisted the JSB to become a reliable and competent supervisor.

As the Europol Convention provided individuals with the right of access to information that Europol holds on them and the right to ask for such information to be checked, corrected or deleted, the JSB was entrusted with the power to review the decisions of Europol while implementing individuals' rights. Where the individual is not satisfied with Europol's response to their request, an appeal can be lodged with the JSB's Appeals Committee to which the power to investigate individuals' appeals was delegated by the Convention. The Appeals Committee acts as a quasi-judicial authority whose decisions are final and cannot be challenged, and for individuals concerned this is a very important remedy. During this decade seven appeals have been received and investigated.

Another important task of the JSB is delegated by Article 24(4) of the Europol Convention. An individual has the right to ask the Joint Supervisory Body to make sure that the manner in which their personal data have been collected, stored, processed and used by Europol is lawful and accurate. The role of the intermediary entitles the JSB to provide individuals with assistance in dealing with Europol. Through the decade the number of such requests increased. This is an indication that the public is more and more aware of the rights stipulated by the Europol Convention and trusts the protection and supervision of their rights to the JSB.



*“Knowledge is of no value unless you put it into practice” (Anton Chekhov).*

Probably the most valuable feature of the supervisory authority is the ability to give qualified advice on the issues in practice, and to provide necessary guidelines to ensure proper application of legal provisions and better compliance. Looking back at the developments and the results in practice, it is fair to say that the JSB coped with this task.

One aspect of the advisory role of the JSB was to give opinions on the opening orders of the Analytical Work Files. Opening orders specify the nature of one of the types of data files that are processed by Europol: the analysis file (Article 10 of the Europol Convention). According to Article 12(2) of the Europol Convention, the JSB shall immediately be advised by the Director of Europol of the order opening the file and shall receive the dossier. The JSB may address any comments it deems necessary to the Management Board. The JSB created a policy to issue an opinion on every Opening Order it receives. Here it should be mentioned that for the opening orders Europol uses a model opening order that was adopted after consultation with the JSB. The use of this model gives a clear overview of the purpose and the data that will be processed. The JSB provided Europol with many comments, which were taken into account when creating new files or when changing the common approach to these files. The JSB also provided its assistance and advice to Europol

while creating the new concept of analytical work files formulating specific conditions so the new analytical work files comply with the applicable legal rules. Advising on the Opening Order the JSB checked whether the stated purpose of the analysis file was in the area for which Europol has competence, and whether the data processed were necessary to achieve the objective of the file and fall within the scope of Article 6 of the Council Act on Analysis Rules.

In monitoring and supervising the work of Europol, the JSB did not limit itself to the burden of responsibilities of Europol. This authority always highlighted the importance of the shared responsibility between Europol and Member States embodied in the Europol Convention as an essential requirement and guarantee to comply with the Convention while processing personal data of individuals and to reach common goals.

According to Article 2(1) of the Europol Convention, Europol's task is to improve, by means of the measures referred to in the Convention, the effectiveness and co-operation of the competent authorities in the Member States in preventing and combating serious international crime where there are factual indications or reasonable grounds for believing that an organised criminal structure is involved, and two or more Member States are affected in such a way as to require a common approach by the Member States owing to the scale, significance and consequences of the offences concerned. To fight international organised crime effectively, Europol co-operates with a number of third countries and organisations. According to Europol "*a key feature for all the modern OC groups is that they are more and more acting on a translational scale*".<sup>1</sup> The JSB played an important role in this area by giving its advice in the process of negotiating agreements with third States and bodies. The Joint Supervisory Body is consulted at different stages in developing co-operation with third parties according to Article 18 of the Europol Convention; the Council Act of 3 November 1998 concerning the receipt of information by Europol from third parties; the Council Act of 12 March 1999 concerning the transmission of personal data by Europol to third States and third bodies; and the Council of the European Union decision of 27 March 2000 setting conditions for the Director of Europol to start negotiations with a

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<sup>1</sup> [http://www.europol.europa.eu/publications/Serious\\_Crime\\_Overviews/overview\\_SC1.pdf](http://www.europol.europa.eu/publications/Serious_Crime_Overviews/overview_SC1.pdf).

number of third States and third bodies. One of these negotiating processes is worth mentioning in this report as it emphasises the JSB's strong commitment to its tasks and responsibilities as independent supervisor. Following the events of 11 September 2001, a strong urge existed to construct a co-operation between Europol and the United States. The JSB was asked for an opinion on the procedure for authorisation to start the negotiations with the United States. The JSB reported to the Management Board that because of the lack of a report from Europol, it was not able to express an opinion on the level of data protection in the US. It furthermore stated that only a formal agreement with the United States offers the legal basis that is needed for the co-operation between Europol and the United States. The JSB explicitly noted that the data protection law and administrative practice in the United States differs in a number of ways from the legal framework of Europol. Furthermore, the JSB insisted that it be kept fully informed and involved in the process of addressing the data protection problems during the negotiations.

The JSB did not limit itself only to supervisory and advisory tasks but rather extended its activities to the following.

- Studies, especially initiating a questionnaire on the right of access focusing on the legal provisions in the Member States that deal with the right of access to police files.
- Assistance to new Member States, providing them with an opportunity to become familiar with the working methods of the JSB.
- Participation in seminars sharing experiences with the new Member States.
- Awareness raising by issuing a leaflet for individuals on their rights under the Europol Convention.
- The conference in 2006.
- Developing and maintaining the official website of the JSB, promoting the transparency of its functioning and decision-making process; and creating and maintaining a private website to work transparently with its members.

Since 2003, the JSB of Europol (together with other joint supervisory authorities such as JSA Schengen, JSA Customs) is an accredited member of the International Conference of Data Protection and Privacy Commissioners and the Spring Conference of European Data

Protection Authorities. Both conferences provide an excellent forum to exchange views, experiences, ideas and perceptions on the present and future challenges for effective data protection supervision.

Last but not least, the JSB actively took part in advising, together with other joint supervisory authorities and national Data Protection Authorities, on the conditions to be implemented to ensure the protection of individuals' rights and freedoms while processing and exchanging personal data between law enforcement authorities responding to new trends reflected in the European Union's new initiatives – enhancing interoperability of European databases.

### I.3 New developments in law enforcement and data protection across the EU

*"The probability that we may fail in the struggle ought not to deter us from the support of a cause we believe to be just."*

Abraham Lincoln

In 2004, The Hague programme stipulated that *"The European Council is convinced that strengthening freedom, security and justice requires an innovative approach to the cross-border exchange of law-enforcement information. The mere fact that information crosses borders should no longer be relevant."* Therefore key measures were foreseen aiming to make police information available to all law enforcement authorities of the EU Member States, including improving the use of Europol. In the context of combating terrorism and improving internal security, the European Union initiated several initiatives to improve the effectiveness of law enforcement in the European Union, using the concept of availability as a guiding principle for the exchange of law enforcement in third pillar co-operation. On several occasions, and in the context of combating terrorism and improving internal security, both the European Council and the Council of the European Union have called upon the Commission to submit proposals for improved effectiveness, enhanced interoperability and synergy among European databases<sup>2</sup>. In this context interoperability meant not only the common use of large-scale IT systems, but also possibilities of accessing or exchanging data, or even of merging databases.

The Joint Supervisory Body together with other joint supervisory authorities and national data protection authorities during the Spring Conference of European Data Protection Authorities in 2006 emphasised that *"In this context, <...> the sharing of personal information between law enforcement authorities is permissible only on the basis of data protection regulations ensuring a high and harmonised data protection standard in all participating states"*<sup>3</sup>. The agreement that there is no alternative to creating a high and harmonised data protection standard in the EU third pillar was jointly expressed during the

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<sup>2</sup> <http://eur-lex.europa.eu>.

<sup>3</sup> Budapest Declaration, 24<sup>th</sup>-25<sup>th</sup> April 2006.



conference. This is a logical consequence of the Hague Programme, according to which the safeguarding of freedom, security and justice are indivisible elements of an overall task of the whole EU. The European Data Protection Authorities called on the governments of the EU Member States *"to respect and strengthen the civil liberties of the citizens who live here when expanding the possibilities for information exchange among Member States' security agencies"*<sup>4</sup>.

Another important step in trying to respond adequately to the new initiatives was done during the conference of the European Data Protection Authorities, held in Larnaca (Cyprus), from 10-11 May 2007. The Working Party on Police and Justice was mandated by the conference to monitor developments in the area of law enforcement, to face the growing challenges for the protection of individuals with regard to the processing of their personal data. Needless to say, the JSB is an accredited member of this conference and Working Party and actively participates in the work of this group.

In the Commission's communication mentioned above, the *"principle of availability"* was described as a principle which means that authorities responsible for internal security in one Member State, or Europol officials, who need information to perform their duties should obtain it from another Member State if it is accessible there.<sup>5</sup> In 2007 the European Data Protection Authorities stressed the need *"to establish a comprehensive framework for assessing the data protection aspects relating to the use of this concept. By creating such a framework, guidance will be provided to assess every proposal that uses the existence of personal data as a chance to improve the effectiveness of law enforcement. Such a framework may thus contribute to a balanced assessment of the interrelation between public security and the fundamental right to the protection of personal data as enshrined in the Charter of Fundamental Rights of the European Union"*<sup>6</sup>. Stressing the need to create such a framework, the European Data Protection Authorities have developed some conditions and guidelines for assessing the use of the availability concept and checklist. This checklist can be used for assessing every proposal that foresees the use of the principle

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<sup>4</sup> Budapest Declaration, 24<sup>th</sup>-25<sup>th</sup> April 2006.

<sup>5</sup> <http://eur-lex.europa.eu>.

<sup>6</sup> Common position of the European Data Protection Authorities on the use of the concept of availability in law enforcement, Larnaca, 11<sup>th</sup> May 2007.

of availability of personal data as a stepping stone to improving law enforcement. The European Data Protection Authorities urged the Commission, Council and European Parliament to use this checklist when assessing, developing and adopting any new proposal dealing with the use of personal data while implementing the principle of availability.

Several legal instruments were proposed or have been adopted to facilitate the exchange of information between law enforcement. The discussions on the proposed Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters were linked with The Hague programme and the implementation of the "availability" principle, to create the appropriate data protection legal framework in the area of the co-operation between law enforcement authorities. The JSB, together with the European Data Protection Authorities, issued a declaration on the proposal for a Council Framework Decision on the protection of personal data processed in the framework of police and judicial co-operation in criminal matters on 11 May 2007 at the European Conference in Larnaca (Cyprus) stressing that "*creating a harmonised and high level of data protection covering police and judicial activities in the Union is indeed a crucial element for respecting and safeguarding fundamental rights such as the right of protection of personal data when creating an area of freedom, security and justice*".<sup>7</sup>

The bottom line of the proactive activities taken by the JSB together with its sister authorities and national partners was the need to create *a harmonised and high level of data protection covering police and judicial activities in the Union*. At the same time it was clear that there was a need for mutual trust between law enforcement forces co-operating in criminal matters, and for the comprehensive and conscious assumption of responsibilities of all stakeholders to fulfil their assigned duties in improving existing law enforcement co-operation.

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<sup>7</sup> Declaration adopted by the European Data Protection Authorities in Cyprus on 11 May 2007.

## I.4 The Future of Europol

The Hague programme stipulated that "*The Council should adopt the European law on Europol, provided for in Article III-276 of the Constitutional Treaty, as soon as possible after the entry into force of the Constitutional Treaty and no later than 1 January 2008, taking account of all tasks conferred upon to Europol*"<sup>8</sup>. During the Austrian EU Presidency discussions started about its future. The aim was to enhance even more Europol's role in the fight against serious crime, and Europol's contribution to the security policy of the European Union. Furthermore it was proposed to change the present legal basis of Europol – by replacing the Europol Convention with a Council Decision thus creating a more flexible legal basis. This was inspired by the ratification process of the three Protocols amending the Europol Convention which took up to seven years to be completed. On 20 December 2006, the Commission presented its proposal for a Council Decision establishing Europol<sup>9</sup>, on which the Joint Supervisory Body presented the opinion.

The principle goals of Europol determined in the Annual Work Programme 2009 are: information exchange, operational and strategic analysis, and support to Member States' operations<sup>10</sup>. These principles will be influenced by such factors as:

- (possible) entry into force of the Treaty of Lisbon in 2009;
- specific Council conclusions, Council Framework Decisions, Council Decisions and Commission proposals on specific policy issues and criminal phenomena (the entry into force of a Council Decision replacing the Europol Convention is foreseen in January 2010); and
- overall developments in the field of the exchange of information, with a particular focus on the “principle of availability”, the implementation of the Prüm Treaty at EU level and of the (“Swedish”) Framework Decision on Information Exchange.

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<sup>8</sup> [http://ec.europa.eu/justice\\_home/doc\\_centre/doc/hague\\_programme\\_en.pdf](http://ec.europa.eu/justice_home/doc_centre/doc/hague_programme_en.pdf).

<sup>9</sup> COM (2006)817.

<sup>10</sup> <http://register.consilium.europa.eu/pdf/en/08/st07/st07801.en08.pdf>.

As The Hague Programme set out the priorities for the European Union with a view to strengthening the area of freedom, security and justice in the period from 2005 to 2010, the preparatory works for a new five-year action plan for freedom, justice and security area have already started. A so-called Future Group (an informal Group at ministerial level) was created with the objective to consider the future of the European area of justice, freedom and security. The Future Group issued a report on the future of European Home Affairs policy "Freedom, Security, Privacy – European Home Affairs in an open world", which provided future policy guidelines as to the role of Europol. According to the report, Europol within its legal framework should be increasingly used and expanded into a centre of competence for technical support; it should further develop its capacity to diffuse intelligence to Member States' police forces; the use of Europol databases, namely the Europol Information System, should be intensified; and practical co-operation and information exchange between Europol and Eurojust should be improved, as well as co-operation with Frontex.

## **Chapter II**

### **II.1 Supervisory work**

*"The improvement of understanding is for two ends: first, our own increase of knowledge; secondly, to enable us to deliver that knowledge to others".*

John Locke

Since the beginning of its work, the Joint Supervisory Body committed itself to carry out its tasks by inspecting Europol on a regular basis and seeking to maintain dialogue with Europol and other institutions to uphold an adequate standard of data protection. This commitment of the JSB provided it with the insight and experience of Europol's operational activities and needs, and the day-to-day work of the supervised organisation. This experience allowed the JSB to become a reliable and constructive partner to Europol and a forum for the national data protection authorities. In this respect, reference to the successful co-operation between the JSB and the national supervisory authorities should be made. The involvement of the national data protection authorities was crucial and proved to be fruitful. The JSB shall further intensify this co-operation.

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

The JSB plans at least one inspection every year. Europol is an organisation in which the co-operation between Member States and Europol is the key factor for success. The inspections in the last two years and the feedback to the inspection reports clearly shows an increasing attention and commitment to comply with data protection rules from Europol, the Management Board and the Heads of the National Units.

##### Inspection – March 2007

The JSB has adopted a policy to inspect Europol once every year. The scope for each one of the inspections was different and was carefully selected based on the Europol Convention, the current developments of Europol and the challenges in the European area of law enforcement.

In December 2006 the JSB mandated its inspection team:

- a) to check the activities of the Serious Crime Department;
- b) to check the content of the Information System;
- c) to check two pre-selected analytical work files; and
- d) to check the follow up of the recommendations of the last inspection in 2006.

In March 2007, the inspection team spent four days inspecting Europol. This was the eighth inspection visit of the JSB. In view of the different responsibilities for the content of the Europol Information System (IS) which was one of the objects of the inspection, the JSB closely co-operated with national data protection authorities. The JSB concluded that since processing of personal data in a European police system such as the IS will no doubt increase the possibility of infringements on the privacy of the persons involved, the availability of these data at European level and the possibility to even transmit these data to third States and organisations forces investment in sufficient safeguards ensuring that the only data processed are those that will contribute to the objective of Europol. In its assessment of the content of this system, it became apparent that there was a clear and urgent need for further harmonisation of the use of that system. For some specific issues like the processing of minors, the position of persons who might be regarded as victims of trafficking in human beings, and members of certain motorcycle gangs, it was necessary to formulate guidelines for the processing of personal data. The JSB furthermore formulated specific recommendations concerning the Serious Crime Department to improve and harmonise the processing of data. The JSB as in its previous inspections once again repeated the responsibility of the Member States (and their National Europol Units) which is explicitly allocated to the Member States by Article 15 of the Europol Convention and is the essential condition of the successful work of Europol.

#### Inspection – March 2008

The preparation of a new inspection to be held in March 2008 was started in December 2007. To that end, at its meeting on 17 December 2007, the JSB set up an inspection group responsible for carrying out inspections. The scope of the visit was:

- a) to check the content and quality of the personal data processed by Europol in analytical work files (five pre-selected analytical work files) and in the Europol Information System;
- b) to check the functioning of the Europol Information System;
- c) to check the technical infrastructure and the follow-up on the recommendations of previous inspections.

The inspection also involved checking the procedures applied to Article 19 of the Europol Convention requests, and the content and functioning of "Check the Web" and OASIS projects.

The ninth inspection took place from 11 – 14 March 2008.

## II.1.2 Opinions of the Joint Supervisory Body<sup>11</sup>

*"Criticism may not be agreeable, but it is necessary. It fulfils the same function as pain in the human body. It calls attention to an unhealthy state of things".*

Winston Churchill

One of the elements of the JSB's role as advisor and reliable partner is the effective and constructive contribution to new initiatives concerning information processed by Europol or to the requests from Europol regarding its operational activities. Supporting its supervisory role the JSB also met regularly with Europol officials to discuss various data protection issues.

On 20 December 2006, the Commission presented its proposal for a Council Decision establishing Europol<sup>12</sup>. As this proposal has important implications for the processing of personal data by Europol, the JSB considered it as its task to present an opinion. The proposal for a Council Decision was not simply a copy of the Europol Convention including the three protocols amending that convention; it also contained some new elements relating to Europol's tasks and its information processing. The JSB assessed the effect of the proposal for the work of Europol and the shared responsibilities of the Member States and Europol in relation to the different aspects of processing personal data. Europol's information position, its new tasks and the enhancing of its operational role, should be accompanied by adequate data protection safeguards. The JSB studied all the new developments relating to the future of Europol.

The JSB opinion emphasised that the proposal should include a comprehensive data protection regime, it insisted on the clarification of the distinction between the objectives and competences of Europol and possible consequences this might have for the information structures within Europol, with Member States and third parties. It also repeated once again the importance of the specification in the legal instruments of the different data protection

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<sup>11</sup> All the JSB opinions can be found in the website: <http://europoljsb.consilium.europa.eu/>.

<sup>12</sup> COM (2006)817.



responsibilities; the purpose of the system and the structure of the information processed in Europol's information systems; the obligation to consult the JSB on data protection issues; the limitation of the access to the information system; the necessity of the annual review of data in analysis work files; specific rules concerning the correction and storage of data in paper files; specific regulation of access by Europol to international and national information systems; and the necessity for the comprehensive harmonised provision guaranteeing data subjects a high level of rights of access and to have data checked without the applicability of national laws. The JSB particularly emphasised the importance of the introduction of the Data Protection Officer in Europol.

One of the important issues discussed and elaborated in close co-operation between the JSB and Europol was the new system of the right of access. At present, Article 19(3) of the Europol Convention provides that the right of any individual to have access to data relating to him or to have such data checked shall be exercised in accordance with the law of the Member State where the right is claimed. The co-operative work of the JSB and Europol during the drafting process of the Council Decision establishing Europol resulted in the new system of the right of access. Article 30(1) of the Council Decision unifies the exercise of the right of access providing that it shall be exercised in all cases under the conditions laid down in this Article, and no longer refers to the law of the Member States. The JSB actively participated in the discussions and preparatory works drafting necessary legal instruments to prepare for the entry into force of the Europol Council Decision.

During this period the JSB was also contributing as the advisor to Europol on the new projects driven by its deep conviction that a proactive role addressing the data protection questions and issues at the very beginning of new developments within Europol will contribute to the efficiency of Europol's work as well as to compliance with the data protection rules.

The JSB participated in the work related to Europol's new analysis project (OASIS) as well as to developments of the new project "Check the Web".

**OASIS (Overall Analysis System for Intelligence and Support project).** The JSB has been frequently consulted by Europol on this project since 2005. The JSB has issued a number of opinions concerning this project always stressing that according to the legal framework embodied in the Europol Convention this particular project should clearly specify and allocate the joint data protection responsibility shared between Europol and the Member States. The JSB also expressed its recognition of the potential business benefits of OASIS through the contribution it can make to more effective use of Europol's analytical resources. It also noted the potential data protection benefits of OASIS, demonstrating that the use of new technology can deliver both more effective crime analysis and improved data protection.

**"Check the Web"**. This project was initiated by the German Council Presidency providing for an information portal at Europol as a central tool, which was foreseen to go into operation in early May 2007. This initiative aimed at strengthening co-operation and sharing the task of monitoring and evaluating open internet sources on a voluntary basis. The main purpose for this portal was to present information from internet sites that can be related to terrorist attacks and can help Europol's and Member States' analysis activities and investigations.

Europol asked the JSB to review the data protection requirements undertaken in relation to this project and offered the possibility to inspect the portal. The JSB opinion considered the issues related to the competences and objectives of Europol, and the data protection implications and requirements especially related to the security and controllability of the portal.

### **II.1.3 Opening analysis files**

Every time Europol wants to start a new analysis file under Article 10 of the Europol Convention, an opening order must be drawn up opening the file. This opening order should set out, among other things, the purpose of the file, the participating Member States and the categories of personal data to be held.

The working group on opening orders was created to facilitate the work of the JSB and make it more efficient. According to the mandate, the JSB authorised the opening order working group to give an opinion on behalf of the JSB in those cases where the opening order concerns a specific analysis subject on which the JSB has already been able to give its opinion in the past. If one of the delegations requests a plenary discussion within five days of the distribution of the opening order, the opening order working group will prepare an opinion for the plenary.

The opening orders must be approved by the Europol Management Board, which is obliged to send the opening order to the JSB for comments. In this area the JSB always highlights the importance of the shared responsibility between Europol and Member States stemming from the Europol Convention as an essential aspect to achieve the common goals and to ensure better compliance with the Europol Convention.

During the period 2006 – 2008, the JSB issued opinions on two opening orders. The JSB commented on the categories of the data that can be lawfully processed and their relevance to the purpose of the analysis working files, the effects of the entering into force of the Protocol amending the Europol Convention on 18 April 2007 (OJ.C.2, 6.1.2004) related to the conditions and procedure under which personal data stored in the file may be communicated.

At the moment, Europol is processing personal data in 18 separate analysis working files.

#### **II.1.4 Agreements with third states / bodies**

According to Article 1(5) of the Council Decision authorising the Director of Europol to enter into negotiations on agreements with third states and non-EU related bodies, the consultation of the JSB is part of a procedure in which the Management Board must draft a report for the Council providing them with the information necessary to decide whether or not obstacles exist to start negotiations. Article 3, paragraph 3, of the rules governing the transmission of personal data to third states and third bodies, and Article 2, paragraph 4, of the rules concerning the receipt of information by Europol from third parties, explicitly recognise that the JSB must give an opinion during the procedure in which the Council has to decide whether to approve any agreement negotiated between Europol and third States. One opinion was adopted in respect of the draft agreement to be signed between Europol and Australia.

The JSB made a number of comments, particularly stressing the need to assure that the officers of Australia located in the Europol building cannot have direct access to data held by Europol or in any other way pose a risk for the data security as provided for in Article 25 of the Europol Convention. In general, the JSB concluded that, from a data protection perspective, there were no obstacles to prevent Europol from finalising the agreement.

In October 2008 the JSB was asked for two opinions on whether Europol can start negotiations with the Russian Federation and Israel which may lead to agreements on the transmission of personal data by Europol to the Russian Federation and Israel.

The JSB opinion as regards the data protection level in Israel concluded that based on the nature of differences between the level of data protection in Israel and the level required from Europol, from a data protection perspective no obstacles exist for Europol to start negotiations with Israel to prepare an agreement on the transmission of personal data by Europol to Israel. However, this conclusion was made conditional, meaning that certain issues are to be properly dealt with in the negotiations. The JSB particularly focused on the implementation of the agreement and direct applicability of the data subjects' rights; independent supervision with necessary competence and powers to investigate the law enforcement agencies; data quality issues; clear rules on the transmission of the sensitive data; time limits of the storage of the data; liability and legal remedies for individuals for the breaches of the agreement as well as for unauthorised or incorrect data processing; and data security issues.

In the case of the Russian Federation, the JSB asked the Management Board for additional information to be able to assess the level of data protection in the Russian Federation and to take a final decision.

The opinions on all agreements are on the website at <http://europoljsb.consilium.europa.eu/>

### **II.1.5 Rights of the data subject**

The classical element and one of pivotal conditions of each data protection system is the enforceable right of the data subject to access the data processed by the data controllers,

and to correct or delete incorrect or unlawful processed personal data. These rights are the safeguards to enable a data subject to defend their rights, to check whether the data are correct and whether they are being processed in accordance with the data protection rules. The subjective right of data subject to access information is indeed an important tool enabling the data subject to participate in the protection of their data. This right is even more important in the context of data processing by law enforcement.

Article 19 of the Europol Convention stipulates that an individual wishing to exercise their right of access to data relating to them 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 they wish, 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.

According to the statistics provided by Europol, the following numbers of Article 19 requests were received in the period 2003 – 2008.

<b>Year</b>	<b>Number of Article 19 requests</b>
<b>2003</b>	<b>5</b>
<b>2004</b>	<b>9</b>
<b>2005</b>	<b>6</b>
<b>2006</b>	<b>19</b>
<b>2007</b>	<b>122</b>
<b>2008</b>	<b>135</b>

In 2007, applications from individuals to exercise their right of access using Article 19 increased by 84% compared with 2006. This new development has revealed new considerations to complete the available procedure for handling these requests by Europol. The actual increase in the requests was due to internet campaigns informing citizens about their rights as regards Europol and obviously had a positive effect on the awareness raising of individuals.

Another important right of individuals according to Article 24(4) of the Europol Convention is the right to ask the JSB to make sure that the manner in which their personal data have been collected, stored, processed, and used by Europol is lawful and accurate. So far, six requests have been received and, after checks were made, in all the cases Europol was found to have acted in compliance with the Europol Convention.

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

The JSB met nine times during the period November 2006 – October 2008. According to Article 24(1) the JSB shall be composed of not more than two members or representatives (where appropriate assisted by alternates) of each of the national supervisory bodies guaranteed to be independent and having the necessary abilities, and appointed for five years by each Member State. In the performance of their duties, the members of the JSB shall not receive instructions from any other body. Managing the JSB is the common task of all the members and the secretariat. This is not always an easy thing to do, especially when the number of members has increased up to 27.

The management of the JSB work could be described as follows.

- **Planning** – every two years the strategic objectives of the JSB are set up, all the inspections of Europol are discussed and planned in advance.
- **Organising** – the implementation of the objectives is usually the hardest work but nevertheless the most interesting and challenging. The work of the working groups in close co-operation with the secretariat proved to be efficient to prepare the documents for the plenary meetings. The documents are sent to the members of the JSB according to the rules of procedure two weeks before the meeting. This gives the members the possibility to prepare for the meetings and to contribute considerably to the discussions in the meetings.
- **Staffing** – a lot of attention is concentrated on the experience of the members of the JSB. The best example is the permanent composition of the inspection team which through the number of years inspecting Europol gained an insight into the practical and daily operational activities of Europol. This is an advantage for the supervisory and advisory work of the JSB.

- **Motivating** – the biggest motivation driving all the members of the JSB is the ultimate task – the protection of the rights of individuals – at both national and international levels.
- **Monitoring, self-evaluation** – every two years the JSB carries out its self-evaluation activities to evaluate the fulfilment of its task and duties.

All or the above contributes to the effective functioning of the JSB as a supervisory body. The internal relations between members of the JSB creating a co-operative atmosphere are as important as the external ties with Europol and other institutions / bodies. The key to the success of the JSB's work lies in the commitment, responsibility, and active participation of all the members.

## **II.2.1 Working groups**

To facilitate a pro-active approach towards Europol, the JSB created various working groups, some of them with regular contacts with Europol. One of the advantages of regular contacts with Europol is that the JSB has an insight into the daily working practices of Europol. The working groups add significant value to the work of the JSB as qualified members provide in-depth analysis of the issues discussed and contribute to the delivery of constructive results.

The current existing working groups are as follows.

- i) Inspection group: with the mandate to plan and execute the inspections at Europol.
- ii) New projects group: with the mandate to examine technical issues.
- iii) Third states relations: with the mandate to study the legal issues concerning the co-operation agreements of Europol with third states.
- iv) Opening order group: with the mandate to study the data protection issues concerning the opening orders of analysis files of Europol.
- v) Public relations group: with the mandate to make proposals to publicise the work of the JSB.
- vi) New Member States programme group: with the mandate to develop an information sheet about Europol together with some practical information about the functioning of the JSB and the Appeals Committee for the new Member States.

## **II.2.2 Transparency**

*"Public sentiment is everything. With public sentiment, nothing can fail. Without it, nothing can succeed."*

Abraham Lincoln

The concept of transparency is not an empty shell. The increase in the level of transparency of activities serves to increase confidence. Transparency is needed to gain the trust of the public. Individuals and public bodies have a right to know the Joint Supervisory Body's work and therefore, must have access to information on how and why the decisions are taken. The JSB always is concerned with enhancing transparency of its work.

The Council Act of 27 November 2003 amending the Europol Convention amended Article 24(6) of the Europol Convention making the JSB more accountable, responsible and transparent to the outside world. Now the activity reports are forwarded to the European Parliament and to the Council; the Management Board has the opportunity to deliver an opinion, which is attached to the reports. All the public minutes of each plenary meeting of the JSB are translated into all official languages of European Union and placed on the website of the JSB <http://europoljsb.consilium.europa.eu/>.

## **II.2.3 Budget**

The JSB has its own budget, which is the part of Europol budget. According to Article 31(1) of the rules of procedure of the JSB of Europol, the Secretariat shall prepare proposals for an annual budget for the JSB, which on approval shall be forwarded to the Management Board prior to the consultation, required in Article 24(9) of the Europol Convention. Article 24(9) of the Europol Convention foresees that the JSB shall be consulted on that part of the budget which concerns it. Its opinion shall be annexed to the draft budget in question. According to Article 35(5) of the Europol Convention, after obtaining the opinion of the Management Board, the Council adopts Europol's budget. Article 31(2) of the Rules of Procedure of the JSB stipulates that the JSB shall decide on the disbursement of the budget allocated to it which is administered by the secretariat.



The actual amounts allocated for the JSB in the period 2006 – 2008 were as follows.

<b>Year</b>	<b>Amount (Euros)</b>
<b>2006</b>	<b>1.135.00</b>
<b>2007</b>	<b>970.000</b>
<b>2008</b>	<b>600.000</b>
<b>2009</b>	<b>610.000</b>

Of the allocated amount, 80% is foreseen for the plenary meeting costs (translation, interpretation and travel costs).

#### **II.2.4 Conference 2008**

On 9 October 2008, the JSB of Europol celebrated the 10-year anniversary of its activity by organising the Conference *"What will the future bring? Rising to the challenge of maintaining effective data protection supervision at Europol"*.

The aim of the conference was not to just celebrate the achievements of the JSB in its first 10 years; more importantly, the attention focused on future challenges and the way the JSB should respond to these.

The conference provided an excellent platform to exchange views, ideas and perceptions on future challenges for effective data protection supervision at Europol. It created a rare opportunity to reflect on how to make data protection meaningful and effective, and thereby ensure protection for individuals in light of the many challenges posed by the wide range of European Union activity taking place in the area of security and law enforcement.

Various speakers in the conference reflected on the future change of the legal framework of Europol and its law enforcement environment in the European Union. They also discussed the Union's plans and activities in the area of justice, freedom and security and more specifically the introduction of the principle of availability, the principle of convergence and the increasing pressure to share data.

The discussions touched not only upon the data protection supervision of Europol, but were extended to these developments in the European Union and on how to provide real protection for the individual. The common perception of the participants was that one of the practical solutions to all current information exchange tendencies is to enhance effective and efficient joint supervision by the national data protection authorities and joint supervisory authorities.

A strong commitment to strike the right balance between strengthening the fight against crime and maintaining a high level of data protection supervision system was frequently mentioned during the conference.

The conference made it clear that the main challenge for data protection authorities and law enforcement agencies is to settle the right balance through dialogue.

Another important issue acknowledged by all participants of the conference was the need for raising awareness to individuals about their rights and freedoms, and the enhancement of the transparency towards individuals concerning all new policies and initiatives in the European Union.

As the conference objective was more perspective than retrospective, the consequences of the Lisbon Treaty and the Council Decision replacing the Europol Convention and the possible impact they may have on future activities of the JSB were presented. All agreed that future changes will only provide even stronger motivation to continue the task of the JSB.

The main conclusion drawn by the conference was that the Joint Supervisory Body of Europol continues to ensure effective data protection supervision at Europol including constructive co-operation with Europol assisting to implement legal data protection provision in the day-to-day work of Europol.

All participants agreed that faced with innovative approaches to information exchange in the European Union, joint supervisory authorities such as the JSB Europol together with national data protection authorities have to maintain the present data protection supervisory system and have to increase their activities to ensure real protection for individuals not only for now but also in the future.

## Chapter III

### III.1 The Appeals Committee

*"It has long been recognised that an essential element in protecting human rights was a widespread knowledge among the population of what their rights are and how they can be defended".*

Boutros Boutros-Ghali, Sixth UN Secretary-General, 1992-1996

One particular task given to the Joint Supervisory Body by the Europol Convention is to consider individuals' complaints concerning the reply received from Europol to their requests exercising their rights. The JSB therefore created its Appeals Committee on 23 November 1998. The work of this quasi-judicial body is a redress mechanism for individuals claiming their rights and freedoms in relation to the processing and use of the personal data carried out by Europol.

Individuals have a right of access to information that Europol holds on them and they also have a 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 make a complaint to the Appeals Committee of the JSB. The right of appeal is notified to the data subject in response to these requests. The Appeals Committee then investigates and determines if Europol had acted in accordance with relevant provisions in the Convention. The decision of the Appeals Committee is final for all parties involved.

It is important to mention that although its membership is drawn from the JSB, the Appeals Committee is independent and impartial, and not bound by any directions. The impartiality of the Appeals Committee ensures the fair and just investigation of the individual complaint. As the JSB receives individuals' complaints this improves public trust in its work.

The Appeals Committee has decided in six cases to date. In the last two years one decision was made and one case is still pending.

### **III.1.1 Summary of the appeal lodged by Mr S**

Mr S approached the Serious Organised Crime Agency (SOCA) in the United Kingdom with a request based on Article 19 and Article 20 of the Europol Convention. The request was forwarded to Europol.

Europol answered Mr S by letter stating:

*"In accordance with the procedure stipulated in the Europol Convention and the applicable national legislation of the United Kingdom, 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 the United Kingdom, 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."*

Mr S complained that the incorrect information which had come to his notice has had an extremely serious, even devastating effect on his career and welfare and the welfare of his family. Mr S also stated that this serious damage is continuing and will continue unless and until a retraction and correction is made by those responsible.

In his letters Mr S referred to the minutes of a meeting at Europol according to which information about the appellant was provided to the participants in that meeting by representatives of the United Kingdom.

In its first decision the Appeals Committee considered that the decision of Europol was not in compliance with Article 19(3) and 20(4) of the Europol Convention and that – in view of the circumstances of the case – it was appropriate for Europol to be given the opportunity to reconsider its decision.

Following the decision of the Appeals Committee, Europol reconsidered its decision on the initial request of Mr S and made a new decision. In its decision, Europol stated:

*"In accordance with the procedure stipulated in the Europol Convention and the applicable national law of the United Kingdom, I would like to inform you that following your request checks of Europol files have been made.*

*Following Article 19 and 20 of the Europol Convention in combination with the applicable national law of the United Kingdom, I would like to inform you that no data concerning you are processed by Europol. Therefore there is no data which Europol could consider to correct or delete in accordance with Article 20 of the Europol Convention."*

In a letter to the Appeals Committee, Europol informed the Committee that the new decision was only taken because of the very specific circumstances of this case and because Europol always examines the requests of individuals on a case-by-case basis.

The appellant stated that Europol's new decision does not clarify whether data concerning the appellant are processed by Europol.

The Europol Convention contains in Article 19(1) a right of access or to have such data checked. Article 20(4) of the Europol Convention gives any person the right to ask Europol to correct or delete incorrect data concerning to him.

The request of Mr S clearly concerned both the right to have data checked as well as the right to have data corrected or deleted. The Appeals Committee did not find any grounds in the documentation brought before it to also assess the request from Mr S as a request for access to data relating to him as referred to in Article 19(1) of the Europol Convention.

In view of the close relation between the data subjects' right to request a check of his data and the right as defined in Part V, Section 42 of the United Kingdom Data Protection Act, the existence in that Act of the possibility to be informed, leads to the applicability of the second sentence of Article 19(3) that gives a strict rule when the communication shall be refused. If one of the three exemptions of Article 19(3) is applicable, the communication must be refused. This means that every request for checks where the second sentence of Article 19(3) applies has to be assessed on a case-by-case basis if it is necessary for one of

the exemptions to refuse the communication. Although the exercise of the right of checks must be in accordance with the law of the Member State, Europol has a responsibility of checking if the exemptions of Article 19(3) apply.

In its new decision Europol informed the appellant that no data concerning him are processed, thus making an assessment in this specific case that no exemption as referred to in Article 19(3) of the Europol Convention is applicable.

In view of the law in the United Kingdom and in view of Article 19(3) of the Europol Convention, the new decision of Europol on the request of Mr S was in compliance with Article 19(3) of the Europol Convention.

## Chapter IV

### IV.1 Self-assessment

*"Without continual growth and progress, such words as improvement, achievement, and success have no meaning."*

Benjamin Franklin

Self-assessment assists and provides consultation towards increasing performance, efficiency, and quality of work, working methods and results achieved. An institution evaluating its own activities formulates its objectives and tasks, analyses its activities applying different approaches, and on the other hand reveals its activity problems and foresees the ways of resolving them.

Since its beginning 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 task. Throughout that period the JSB has endeavoured to become an effective control body.

Every two years the JSB sets up the lists of future commitments subject to periodic review and evaluation of the results achieved and pending issues. Now the activity reports are forwarded to the European Parliament and to the Council. The public minutes of the plenary meetings are placed on the JSB's website. This helps not only promote the profile of the JSB but also serves its accountability to the broader public.

In the overall context, data protection issues are rather dynamic in nature. This is the additional impulse and motivation which drives the JSB further. The new data protection challenges call for more effort and work. The results achieved do not allow the JSB to rest or stop, on the contrary, they oblige us to maintain the same level of quality and speed of work. This means more input, work and participation from all members of the JSB.

The activities of the JSB can be assessed by the fact that the requests from Europol on various data protection issues are frequent, including consultations on new and complex IT projects.

The work of this authority is organised in such way that each member of the JSB has the possibility to participate in this work. The creation of working groups provides in-depth analysis of the issues discussed and contributes to the delivery of constructive results. The JSB's work, inspecting Europol and involving the national data protection authorities in the investigations at national level, creates the experience and knowledge necessary for the supervisory work, especially in the field of law enforcement.

Various working methods used by the JSB contribute to its productivity (the opinions on data protection issues, assessment of the opening orders, agreements with third states ) as such proving its commitment to the fulfilment of the duties entrusted by the Europol Convention.



## **IV.2 The future**

Two years ago the Joint Supervisory Body committed itself to focus on the following subjects.

- i) Carrying out annual inspections of Europol paying particular attention to the quality of the data processed by Europol.
- ii) Improving methods of inspections.
- ii) Closely monitoring the new developments in the area of the data protection in the law enforcement area, and developments related with the EU information systems.
- iii) Co-ordinated common supervisory actions at national level.
- iv) Raising public awareness of the rights of individuals afforded by the Europol Convention and the role of JSB Europol alone and with co-operation with the national data protection authorities.

Although these objectives have largely been met, they will continue to be important. To be effective, the organisation and management of its work will be constantly subject to evaluation. The consequences of the Lisbon Treaty and the Council Decision replacing the Europol Convention will have an impact on the future activities of the JSB. Therefore this will give a strong impulse for revision of the organisational work and strategic objectives. However the priorities for the JSB will stay the same – to always protect the rights of individuals.

The main changes in the work of the JSB will be related to the entry into force of the Council Decision replacing the Europol Convention, in particular the strengthening of the co-operation and involvement of the national data protection authorities in the decision-making process while investigating the appeals of individuals. The Council Decision provides for a new unified system of the exercise of the right of access and formalises the position of Europol's Data Protection Officer and further co-operation with the JSB. The importance of the role and input of the JSB is emphasised in Article 10(2) of the Council Decision stating that the JSB shall be consulted before the establishment of a new system of

processing personal data. This proactive measure gives the JSB an opportunity to be involved in the process at an early stage.

Despite new strategic objectives and future challenges facing the JSB, its attention will be concentrated on continuing work already started – providing high-quality services for the protection of personal data at Europol for the coming years taking into account changes in the European area of law enforcement. As was concluded in the conference on 9 October 2008, the JSB Europol together with national data protection authorities will maintain the present data protection supervisory system and will further increase their activities to ensure real protection for individuals not only for now but also in the future.

## Chapter V

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

#### V.1.1 Joint Supervisory Body of Europol

**Chairman:** Mr David SMITH

**Vice-Chairman:** Mrs Isabel CERQUEIRA DA CRUZ

<p>Austria</p> <p>Members Mrs Waltraut KOTSCHY Mrs Eva SOUHRADA-KIRCHMAYER</p> <p>Alternates Mr Gregor KÖNIG Mrs Caroline FRITZ</p>	<p>Belgium</p> <p>Members Mr Willem DEBEUCKELAERÉ Mr Bart DE SCHUTTER</p> <p>Alternate Mrs Priscilla de LOCHT</p>
<p>Bulgaria</p> <p>Members Mrs Marija MATEVA Mr Veselin TSELKOV</p>	<p>Cyprus</p> <p>Member Mrs Goulla FRANGOU</p> <p>Alternate Mrs Louiza MARKIDOU</p>
<p>Czech Republic</p> <p>Member Mrs Miroslava MATOUŠOVÁ</p> <p>Alternate Mr Jiri MESICEK</p>	<p>Denmark</p> <p>Members Mrs Lena ANDERSEN Mr Sten HANSEN</p> <p>Alternates Mr Jens Harkov HANSEN Mr Ole TERKELSEN</p>
<p>Estonia</p> <p>Member Mr Taago PÄHKEL</p> <p>Alternate Mrs Kaja PUUSEPP</p>	<p>Finland</p> <p>Members Mr Reijo AARNIO Mr Heikki HUHTINIEMI</p> <p>Alternate Mrs Elisa KUMPULA</p>
<p>France</p> <p>Member Mr Georges de La LOYÈRE</p> <p>Alternate Mr Michel MAZARS</p>	<p>Germany</p> <p>Members Mr Michael RONELLENFITSCH Mr Roland BACHMEIER</p> <p>Alternates Mrs Angelika SCHRIEVER-STEINBERG Mr Wolfgang Von POMMER ESCHÉ</p>

<p>Greece</p> <p>Members Mr Grigorios LAZARAKOS Mr Leonidas KOTSALIS</p> <p>Alternates Mrs Dina KAMPOURAKI Mrs Maria ALIKAKOU</p>	<p>Hungary</p> <p>Member Mr András JÓRI Alternate Mrs Agnes PAJÓ</p>
<p>Italy</p> <p>Member Mrs Vanna PALUMBO</p>	<p>Ireland</p> <p>Members Mr Billy HAWKES Mr Gary DAVIS</p> <p>Alternates Mrs Ciara O'SULLIVAN Mr Diarmuid HALLINAN</p>
<p>Latvia</p> <p>Members Mrs Signe Plūmiņa Mrs Aiga BALODE</p>	<p>Lithuania</p> <p>Members Mrs Rita VAITKEVIČIENĖ Mrs Neringa KAKTAVIČIŪTĖ- MICKIENĖ</p>
<p>Luxembourg</p> <p>Members Mr Georges WIVENES Mr Thierry LALLEMANG</p> <p>Alternate Mr Pierre WEIMERSKIRCH</p>	<p>Malta</p> <p>Alternate Mr David CAUCHI</p>
<p>Netherlands</p> <p>Members Mr Jacob KOHNSTAMM Mrs Jannette BEUVING</p> <p>Alternate Mrs Laetitia KRÖNER</p>	<p>Poland</p> <p>Member Mr Michał SERZYCKI</p> <p>Alternate Mr Piotr DROBEK</p>
<p>Portugal</p> <p>Members Mrs Isabel CERQUEIRA DA CRUZ Mr Eduardo Manuel Castro GUIMARÃES DE CARVALHO</p> <p>Alternates Mrs Clara VIEIRA CARDOSO GUERRA Mr Vasco Rodrigo DUARTE DE ALMEIDA</p>	<p>Romania</p> <p>Members Mrs Georgeta BASARABESCU Mrs Nicoleta RUSU</p> <p>Alternates Mrs Simona SANDRU Mr George GRIGORE</p>
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## V.1.2 Appeals Committee

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<p>Luxembourg</p> <p>Member Mr Georges WIVENES</p> <p>Alternate Mr Thierry LALLEMANG</p>	<p>Malta</p> <p>Alternate Mr David CAUCHI</p>
<p>Netherlands</p> <p>Member Mr Jacob KOHNSTAMM</p> <p>Alternate Mrs Laetitia KRÖNER</p>	<p>Poland</p> <p>Member Mr Michał SERZYCKI</p> <p>Alternate Mr Piotr DROBEK</p>
<p>Portugal</p> <p>Member Mrs Isabel CERQUEIRA DA CRUZ</p> <p>Alternate Mrs Clara VIEIRA CARDOSO GUERRA</p>	<p>Romania</p> <p>Member Mrs Georgeta BASARABESCU</p> <p>Alternate Mr George GRIGORE</p>
<p>Slovak Republic</p> <p>Member Mr Peter LIESKOVSKÝ</p> <p>Alternate Mr Tomáš MIČO</p>	<p>Slovenia</p> <p>Alternate Mrs Alenka JERŠE</p>
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