



EUROJUST  
P.O. Box 16183  
2500 BD The Hague  
THE NETHERLANDS

**Ms Vivianne Reding**  
**Vice-President of the European Commission**  
**Commissioner for Justice, Fundamental Rights and Citizenship**  
**Rue de la Loi 200**  
**B-1049 Brussels**

The Hague, 23 April 2010

### **Data Protection after the Treaty of Lisbon**

Dear Ms Reding,

I understand that the European Data Protection Supervisor has recently written to you and requested the opinion of the Legal Service of the Commission, regarding the application of Regulation 45/2001 and the competence of the EDPS following the entry into force of the Treaty of Lisbon. As the letter specifically refers to Eurojust, I hope some information about our position on data protection may assist.

I hope that you will excuse the length of this letter but the issues raised are clearly important. In brief, our view is that because of the nature of the material handled and its supervisory needs, Eurojust's cross-border judicial co-operation work requires a specific data protection regime.

Eurojust has in place a comprehensive and robust system of data protection, based on the principles contained both in Convention 108 of the Council of Europe and in Directive 95/46/EC, but tailored to the specific mandate and tasks of Eurojust and its operational needs. The exclusion of Eurojust, Europol and others from the scope of application of the Framework Decision on data protection in the field of police and justice co-operation (2008/977/JHA, OJ L350, 30.12.2008, p.60) was supported by the relevant JLS Commission services during the negotiation of this instrument.



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The Eurojust Decision, as amended by Council Decision 2009/426/JHA of 16 December 2008 (OJ L138, 4.6.2009, p.14), contains detailed provisions on data protection, which were further developed by the Rules of Procedure on the Processing and Protection of Personal Data at Eurojust (OJ C68, 19.3.2005, p. 1.). These rules cover all data processing at Eurojust, covering both case-related processing (linked directly to the operational work of Eurojust), and its other activities which mainly involve administrative and staff-related data. The rules offer proper safeguards for the protection of data subjects' rights.

The application of the Eurojust data protection rules is supervised at a first level by our independent Data Protection Officer, and at a second level by the Joint Supervisory Body. The latter is the independent supervisor established by Article 23 of the Eurojust Decision to monitor collectively the data processing activities of Eurojust. The JSB is competent for the monitoring of all processing operations carried out at Eurojust, and has actively and efficiently exercised this supervision since its establishment. The processing of both case-related and administrative and staff data have been subject to monitoring during its regular inspections.

The processing of personal data at Eurojust is thus already regulated by rules and procedures, which remain fully applicable after the entry into force of the Treaty of Lisbon.

Eurojust is following with interest the review of existing legal instruments on data protection which your services are undertaking, and to which you have referred in various recent speeches. We fully agree with your statement on the occasion of the Data Protection Day in January this year, that the fundamental principles of data protection should be fully applicable to all areas of EU competence, including police and judicial cooperation in criminal matters. We also believe, in line with Declaration 21 attached to the Lisbon Treaty, and with the recent joint contribution of the Article 29 Working Party and the Working Party on Police and Justice of 1 December 2009, that data protection in the field of police and justice is a subject which requires specific attention, and that the specificity of this area does not merely arise from the former pillar structure of previous EU Treaties.

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While the principles established in Convention 108 and further developed in Directive 95/46/EC have general application, their implementation in cross-border judicial co-operation requires particular treatment. For example, consent is generally a legitimate ground for processing personal data, but cannot apply where the operational activities of Eurojust are concerned; particular safeguards are necessary for sensitive data subjects such as suspects, witnesses and victims in criminal investigations or prosecutions; in the context of ongoing investigations and prosecutions, particular safeguards are necessary for large-scale information systems; in the same context, transfers of data to third countries and organizations need specific attention. The processing of sensitive data, data quality, data security and confidentiality require special attention where cross-border investigations and prosecutions are concerned.

We also consider that compliance with data protection rules relies to a great extent on the quality and efficiency of supervision. In that respect, there are good reasons for maintaining the present system of specialised effective supervision offered by the Joint Supervisory Body. Due to its composition (judges and members of equal independence, in practice data protection commissioners), the JSB has invaluable expertise in data protection in the judicial sector. Because of its small size and non-bureaucratic working practices, the JSB operates efficiently, ensuring excellent communication with Eurojust on a very limited budget. The JSB holds frequent and regular inspections, covering both case-related and administrative processing operations at Eurojust, and delivers very extensive and detailed reports on such inspections, with findings and recommendations. These reports are extremely valuable to the organization, and underpin further improvements in the protection of personal data at Eurojust, because their implementation is closely monitored by the JSB.

Article 16 TFEU may offer a basis for one general EU instrument regulating data protection in all sectors of activities, and Eurojust would not, of course, oppose an obligation to ensure a level of protection equivalent to that generally applicable. However, because of the particular nature and sensitivity of data processing in cross-border judicial co-operation, Eurojust would urge strongly that the specific rules and specialised supervision already successfully established in this area should be maintained.



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I am delighted that we will have the opportunity to receive you at Eurojust on the 11<sup>th</sup> June, and hope that the meeting may allow us to discuss the matters raised in this letter. I would like to stress that Eurojust, and in particular our Data Protection Officer (Ms Diana Alonso Blas +31 70 412 5510), remains at your disposal, and would be very glad to contribute to further discussions regarding the future of data protection in the European Union.

Yours sincerely,

**ALED WILLIAMS**  
**PRESIDENT OF EUROJUST**