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Leden van de commissie voor Veiligheid en Justitie en de leden van de commissie voor Immigratie & Asiel / JBZ-Raad van de Eerste Kamer der Staten-Generaal

Per e-mail: kim.vandooren@eerstekamer.nl

Datum
3 maart 2016

Ons kenmerk

Contactpersoon
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Onderwerp
Opinie Joint Supervisory Body van Eurojust

Geachte leden van de commissies,

Aanstaande dinsdag 8 maart staat – naar ik begreep - een overleg gepland waarbij onder meer de European Public Prosecutor's Office (EPPO) – het Europees Openbaar Ministerie - aan de orde komt.

In dit kader vestig ik graag uw aandacht op de bijgaande Opinie van de Joint Supervisory Body (JSB) Eurojust. De JSB houdt toezicht op de gegevensverwerking door Eurojust. De opinie gaat over enkele aspecten van de bescherming van persoonsgegevens in de concept-verordening voor de EPPO. De Autoriteit Persoonsgegevens onderschrijft deze Opinie.

Voor het toekomstige EPPO is zowel ten aanzien van zijn taken als zijn administratieve organisatie een nauwe band met Eurojust voorzien. De JSB is van opvatting dat ook in de toekomstige EPPO-verordening het fundamentele belang dat in de Europese Unie wordt gehecht aan de bescherming van persoonsgegevens moet worden verankerd. Ten behoeve van de concept-verordening voor EPPO werkt de JSB in bijgaande opinie dit uitgangspunt uit.

De JSB adviseert in de Opinie de EU-wetgever om duidelijkheid te verschaffen omtrent de toegang tot en het gebruik van Eurojust's Case Management System. Bovenal breekt de JSB een lans voor een stevig en alomvattend toezicht op de verwerking van persoonsgegevens door EPPO, met een rechtstreekse, effectieve betrokkenheid van de nationale toezichthouders uit de lidstaten. De JSB vindt het ook van belang dat het toekomstig toezicht op EPPO en Eurojust op gelijke wijze is georganiseerd, dus met een duidelijke rol voor vertegenwoordigers van nationale toezichthouders. Overigens is de structuur die de JSB

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in de Opinie hiervoor voorstelt, de *Cooperation Board*, inmiddels al in een vergelijkbaar kader terug te zien, namelijk in de verordening voor het 'nieuwe' Europol.

Ik hoop dat u aanstaande dinsdag of op andere daartoe geëigende momenten bovenstaande twee punten zult betrekken in uw standpuntbepaling.

Mocht u nadere informatie wensen, dan ben ik vanzelfsprekend gaarne bereid die te geven.

Met vriendelijke groet,

Mr. W. B. M. Tomesen
Vicevoorzitter Autoriteit Persoonsgegevens en Voorzitter van de Joint Supervisory Body Eurojust

Bijlage
'Opinion of the Joint Supervisory Body of Eurojust about the protection of personal data in the Proposal for a Regulation on the Establishment of the European Public Prosecutor's Office'

Opinion of the Joint Supervisory Body of Eurojust about the protection of personal data in the Proposal for a Regulation on the Establishment of the European Public Prosecutor's Office

The Joint Supervisory Body of Eurojust (hereinafter the "JSB") closely monitors the discussions on the Proposal for a Regulation on the Establishment of the European Public Prosecutor's Office (hereinafter the "EPPO"). The core business and tasks of the latter will involve processing case-related personal data with law enforcement, prosecutorial authorities of Member States, similar to Eurojust. The future EPPO will, in the undertaking of its tasks, as well as for its administration, be closely related to Eurojust.

The JSB believes that the protection of personal data should be at the heart of the Regulation on the Establishment of the EPPO. Its provisions should accordingly reflect the importance that the EU legislature grants to the protection of personal data, also in the specific context of the EPPO.

The Regulation needs to comply with all applicable fundamental data protection principles, such as purpose limitation and the related appropriate time-limits for the limited duration of storage of personal data. As the Fundamental Rights Agency pointed out, "[p]*ersonal data collected and stored by the EPPO should be strictly limited to such data linked to on-going investigations and may only be transferred for associated investigatory purposes. Accordingly, the time limits currently outlined by the proposed regulation should be reviewed in order to ensure the shortest possible duration of storage*."[1]

In particular, the EU legislature should ensure that the EPPO efficiently and reliably receives case-related personal data from relevant prosecutorial authorities of Member States. The EPPO will need a secure information technology system to successfully carry out its mandate. To process its own case-related personal data, it is foreseen that the EPPO will have access to the Case Management System (hereinafter "CMS") that Eurojust has established to fulfil its own tasks.

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[1] Opinion of the European Union Agency for Fundamental Rights on a proposal to establish a European Public Prosecutor's Office, 4 February 2014, p. 12, available at: http://fra.europa.eu/sites/default/files/fra-2014-opinion-european-public-prosecutors-office_en.pdf
Regarding Article 38(1) on time limits for the storage of personal data of the Regulation, the JSB is concerned that possible contradictions between this provision and time limits set out in domestic law of Member States may damage the interests of data subjects. The JSB draws the attention of the EU legislature to Article 37(6)(c) on the erasure of personal data of the proposal for a regulation on Europol. Although the latter provision does not solve the issue of possible contradictions between Article 38(1) of the Regulation and time limits set out in domestic law of Member States, the JSB trusts that the wording of Article 37(6)(c) on the erasure of personal data of the proposal for a regulation on Europol could assist in tackling it.

Without prejudice to possible additional opinions about other aspects of the Proposal on the Establishment of the EPPO, the JSB is concerned about two main issues, *i.e*. access of the EPPO to the CMS, as well as relations of the EPPO with Eurojust. The JSB accordingly elaborates on these two points in this opinion. Furthermore, the JSB wants to draw attention to the need for an integrated supervisory scheme.

1. Access of the EPPO to the CMS

Article 24(7) and (8) of the draft Eurojust Regulation clearly foresees that Eurojust will provide the EPPO with access to the CMS.[2] Recital 44 of the proposed EPPO Regulation foresees that "[t]*he data processing system of the European Public Prosecutor's Office should build on the Case Management System of Eurojust, but its temporary work files should be considered case-files from the time an investigation is initiated*."[3] As pointed out by the JSB in its Opinion on data protection in the proposed new Eurojust legal framework dated 14 November 2013,[4] the exact meaning of the verb "build on" is unclear in this particular context. The second part of the recital is equally unclear to the extent that temporary work files in the CMS are all case-files.

Article 22(5) of the proposed EPPO Regulation provides for the legal obligations of the EPPO: **(1)** to allow its Data Protection Officer (hereinafter "DPO") to have access to the temporary work file (hereinafter "TWF"); and **(2)** to inform its DPO each time a new temporary work file containing personal data is opened. These two legal obligations require amendments to the technical architecture of the CMS. Such amendments include an automated notification to the DPO of the EPPO. In addition, the access of the DPO of the EPPO will be limited to the cases opened by the EPPO.

Article 24 of the proposed EPPO Regulation sets out that the access of European delegated prosecutors and their staff to the CMS will also be limited. The responsibility in data protection matters accordingly needs to be clarified. For instance, Eurojust established a procedure for National Desks to grant the authorisation for access to the CMS, pursuant to Article 26(3) of the Data Protection Rules. National Members complete a form to notify such access to the DPO who then forwards the authorisation to the Information Management Unit of Eurojust. The

2 Interinstitutional File: 2013/056 (COD) of 27 February 2015.
3 Interinstitutional File: 2013/0255 (APP) of 18 July 2013.
4 Published on the Internet site of Eurojust and available at: http://eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/opinions/Opinion%20on%20the%20new%20Eurojust%20Regulation%2c%202013/OpinionJSB_new_Eurojust_Regulation_2013-11-14_EN.pdf

latter provides access to the CMS and disables the access when so requested or upon termination of the accessor's duties at the National Desk. The EPPO could consider this implementation of the applicable provisions by Eurojust and establish its own procedures for access to the CMS.

The implementation of this structure is rather complex in light of the likely overlaps between the data management and monitoring of Eurojust and the EPPO as well as the tasks of the DPOs of Eurojust and the EPPO. Their functions will be similar and call for a close co-operation between them. Last, the College of Eurojust will bear the decision-making responsibility for all issues about the data management in the CMS. The role played by the EPPO will be restricted to an observer in this area. The JSB respectfully requests the EU legislature to clarify both the Eurojust and the EPPO Regulation in this respect.

2. Relations of the EPPO with Eurojust

Article 41 of the draft Eurojust Regulation regulates its close relations with the EPPO. The co-operation entails the exchange of information including personal data. This provision foresees that any exchanged data shall only be used for the purposes for which it was provided. Any other usage of data shall only be allowed as long as it falls within the mandate of the body receiving the data. From the perspective of data protection, such formulation is improper to the extent that all the data exchange should fall within the remit of the two bodies' mandates. The JSB has already proposed to make clear that all the data exchanged between Eurojust and the EPPO shall fall within their respective mandates and be used for the purposes for which it was provided.[5] Any other usage of the data, falling within their mandate, shall be subject to the prior authorisation of the body or the (authority of the) Member State which provided the data.

In addition, Article 41(6) of the proposed Eurojust Regulation foresees the legal obligation of Eurojust to designate and inform the EPPO, which staff members will have access to the results of the cross-matching. Such obligation should also be provided for in the proposed EPPO Regulation. Eurojust is the data controller of the CMS and manages the access accounts to the CMS. Therefore, the information on which staff members of the EPPO are authorised to access the CMS is essential for Eurojust to guarantee the lawfulness of the access to case-related data. This logging information will also be essential for the DPO of the EPPO and its external supervisor

[5] *Idem*.

to properly monitor the lawfulness of the data processing carried out by the staff members of the EPPO. Eurojust will log this data. Therefore, the JSB suggests that a similar legal obligation should be added to the proposed EPPO Regulation about the prior provision by the EPPO of information to Eurojust on the designated persons with access to the CMS. If the proposed EPPO Regulation establishes a similar procedure (article 24) to the form used by Eurojust to authorise access to the CMS pursuant to Article 26(3) of the Eurojust Data Protection Rules,[6] this, once implemented, may also assist the EPPO in informing Eurojust about the staff members of the EPPO who are authorised to access the CMS.

3. Supervision

As emphasised in the JSB's statement to the College of Eurojust at the plenary meeting of 22 September 2015,[7] the strong and direct involvement of Member States is essential in the oversight on the protection of personal data. According to the JSB Eurojust it is essential that the EPPO is provided with a proper and comprehensive data protection oversight-scheme, with the effective involvement of national supervisory authorities. The representatives thereof should have judicial expertise and/or experience of this kind.

Data processed by the EPPO will almost always originate from national judicial authorities and almost always return to them afterwards. The EPPO is bound to play a crucial role in the enforcement activities of Member States and hence a critical role in the processing of personal data of European citizens. Consistency in the data protection supervision of the EPPO is best served by the creation of an independent and effective joint supervisory structure – *Cooperation Board* – with the equal, structural participation of national authorities and the EDPS. Extensive national experience with how to deal with law enforcement information, as well as thorough and authoritative knowledge of data protection, is essential.[8] Last but not least, the JSB considers it essential that the organisation of supervision at the EPPO is drafted similarly to the supervision foreseen in the (new) Eurojust Regulation.

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6 See section 1 above.

7 By the chair of the JSB. Published on the Internet site of Eurojust and available at: http://eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/meetings/Statement%20of%20Chair%20of%20JSB%20to%20College%202015-09-22/Statement%20of%20Chair%20of%20JSB%20to%20the%20College%20of%20Eurojust%20of%2022-09-2015.pdf

8 See Third opinion of the Joint Supervisory Body of Eurojust about the data protection regime in the proposed Eurojust Regulation, 6 May 2015, published on the Internet site of Eurojust and available at:http://eurojust.europa.eu/doclibrary/Eurojust-framework/jsb/opinions/Third%20Opinion%20on%20the%20data%20protection%20regime%20in%20the%20proposed%20Eurojust%20Regulation%2c%202015/3rdOpinionJSB_on-data-protection-in-proposed-Eurojust-Regulation_2015-05-06_EN.pdf

The JSB is eager to actively participate in discussion with the EU legislature about the protection of personal data in the Proposal for a Regulation on the Establishment of the EPPO. The JSB offers its full assistance and expertise to provide constructive contributions to this important matter.

Done at The Hague,
8 January 2016

Wilbert Tomesen
Chair of the Joint Supervisory Body