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NOTE

From:	General Secretariat of the Council
To:	Delegations
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Subject:	Sixth Activity Report of the Joint Supervisory Body of Europol

1. Article 34(6) of the Europol Council Decision ¹ reads:

"The Joint Supervisory Body shall draw up activity reports at regular intervals. Such reports shall be forwarded to the European Parliament and to the Council. The Management shall have the opportunity to make comments, which shall be attached to the reports.

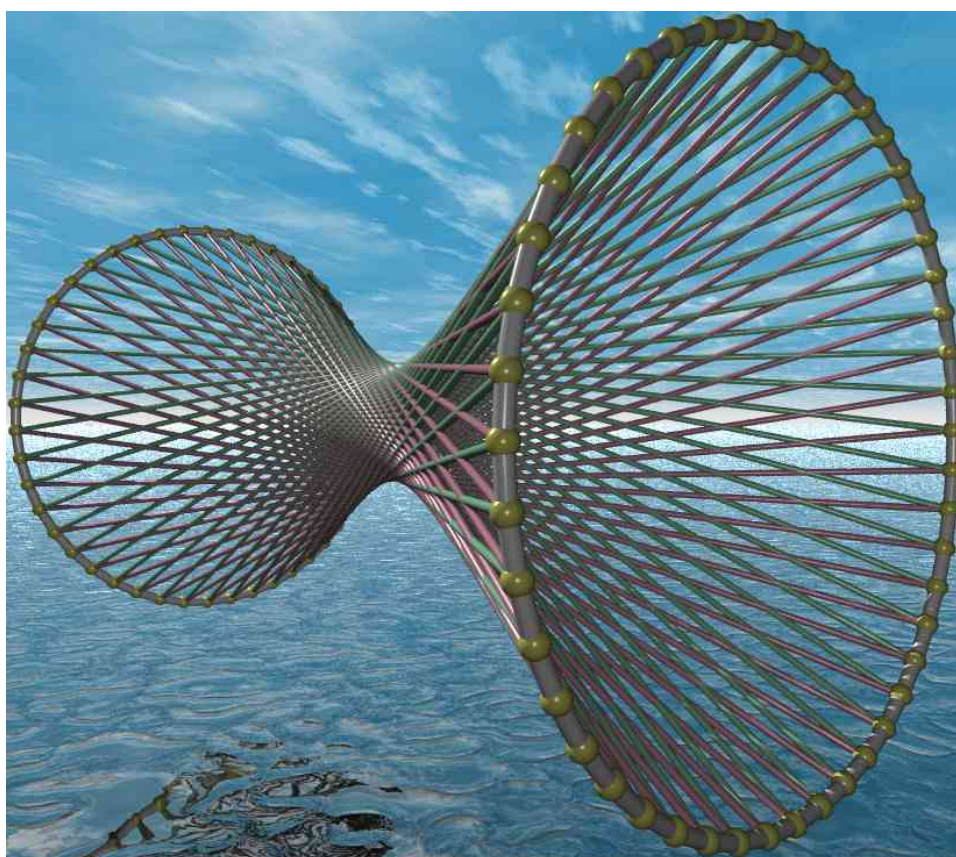
The Joint Supervisory Body shall decide whether or not to publish its activity report, and, if it decides to do so, shall determine how it should be published."

2. Recently the Europol Joint Supervisory Body has drawn up its sixth activity report (November 2012 - April 2017), as included in the annex to the current document.
3. The Europol Management Board was consulted on the report by a written procedure, which is included in the last section of the report.

¹ Council Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA), OJ L 121 of 15.5.2009, p. 37.



CROSSING BRIDGES



SIXTH ACTIVITY REPORT

November 2012 - April 2017

Europol Joint Supervisory Body

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I. Foreword

I am pleased to present the sixth activity report of the Europol Joint Supervisory Body to the Council of the European Union and the European Parliament. This report – as also shown by the period it covers – is the last one submitted by the Europol JSB to take stock and inform of its supervision and control tasks as set forth in the current legal framework. Following entry into force of Regulation 2016/694, repealing and superseding Decision 2009/371/JHA, supervision over Europol's activities will be arranged differently. After having supervised Europol since October 1998, the JSB will hand over the supervision of Europol to the European Data Protection Supervisor on 1 May 2017; accordingly, there will be a shift from collegiate supervision by the competent data protection authorities in Member States to supervision by the data protection authority tasked with supervising data processing by EU institutions and bodies. Cooperation with national authorities will be achieved by way of a Coordination Board.

The almost five years covered by this report can best be symbolised as crossing bridges. Europol, as the European law enforcement agency, must support the Member States of the European Union in preventing and combating all forms of serious international crime and terrorism whilst respecting fundamental elements of the right to privacy and data protection. It is understandable that this is not always easy. The past decade has been marked by increasing threats to society. The terrorist attacks that hit some members of the European Union are just an example of the increasing need to combine forces, to enhance cooperation and to use Europol.

From the start of its supervision, the JSB invested in bringing together the experience of its members, its secretariat and its experts with Europol's staff in building up Europol's working processes taking careful account of Europol's operational requirements. This way it was ensured that all Europol's activities would be compliant with the principles laid down in the legal framework. The JSB did not limit its role to issuing opinions as requested and rubber-stamping the formal fulfilment of the applicable obligations; in fact, it has been increasingly pursuing a proactive approach focused on understanding the operational requirements arising from new processing operations and procedures in order to assess whether and how they could be implemented in line with the legal basis. Let me only refer to the work done on SIENA and the European Most Wanted List.

Personally and on behalf of all my colleagues in the JSB, I would like to thank Ms. Isabel Cruz for the important contribution to the work of the JSB during her chairwomanship.

I would also like to thank Mr. Peter Michael and the JSB secretariat without whom the JSB could never have accomplished so much, the Chair of the Appeals Committee for this period, Mr. Heikki Huhtiniemi, the colleagues charged with the additional tasks, such as participation in the inspection team and/or in the new project group and all the JSB's members, for the good cooperation and the sharing of common values.

The investment of the JSB is highlighted in this report, which presents an overview of our most important activities. For a more comprehensive overview we refer you to our website.

Brussels, 19 April 2017,

Vanna Palumbo

Chair

II. About the Joint Supervisory Body

In pursuit of its aim to support Member States in preventing and combating all forms of serious international crime and terrorism through the exchange and analysis of criminal intelligence, Europol handles a vast amount of information about persons.

The Joint Supervisory Body (JSB) is the independent body established² to ensure the protection of citizens' data protection rights in relation to Europol's storage, processing and use of personal data.

The JSB is composed of representatives designated by the national Data Protection Authorities of each EU Member State and assisted by alternates where appropriate. Members (and their alternates) serve for a renewable five-year period. Each Member State delegation is entitled to one vote. The JSB elects a Chairman from among its members. In the performance of their duties, members (and their alternates) of the JSB shall not receive instructions from any other body. The JSB is supported by its own independent secretariat, based in Brussels.

The JSB is obliged to submit regular activity reports to the Council of the European Union and to the European Parliament.

III. Changing legal basis

Europol was originally set up by the Europol Convention of 26 July 1995 that was replaced by the Europol Council Decision (ECD) of 6 April 2009. Following the entry into force of the Lisbon Treaty, a new legal basis for Europol was needed. This new legal base, the Europol Regulation of 11 May 2016, shall apply as of 1 May 2017. The JSB has prepared in cooperation with the EDPS a smooth transition to ensure the continuation of the effective supervision.

² The JSB is established under the Council Decision of 6 April 2009 establishing the European Police Office (Europol), which replaced the Europol Convention as of 1/1/2010.

IV. Supervision

The ECD sets out the JSB's tasks, which are:

- to review the activities of Europol in order to ensure the rights of the individual are not violated by Europol's storage, processing and use of data
- to monitor the permissibility of the transmission of data originating from Europol
- to examine questions relating to implementation and interpretation in connection with Europol's activities as regards processing and use of personal data; to examine questions relating to checks carried out independently by Member States' national supervisory bodies, or relating to the exercise of the right of access; and to draw up harmonised proposals for common solutions to existing problems
- to set up an internal committee (the Appeals Committee) tasked with examining citizens' appeals related to a request for checking of/access to/correction or deletion of their personal data.

The ECD obliges Europol to implement the principles of Regulation 45/2001³, creating a specific data protection regime for the processing of staff data. Europol implemented specific data protection rules for staff by a decision of Europol's Director dated 16 February 2010. Compliance with these rules is supervised by the JSB.

The ECD ensures that the JSB is able to properly carry out its tasks. In particular, it provides that Europol must:

- supply the information the JSB requests;
- give the JSB access to all documents and paper files, as well as to the data stored in its data files;
- allow the JSB free access at all times to all its premises; and
- implement the JSB's decisions on citizens' appeals regarding the processing of their personal data.

³ Article 39 of the Europol Council Decision states that Europol shall apply *the principles* of Regulation (EC) No 45/2001 to the processing of personal data relating to Europol staff.

Additionally, the ECD provides that where the JSB identifies violations of the provisions of the ECD regarding Europol's storage, processing or use of personal data, it shall make any complaints it deems necessary to the Director of Europol, requesting him to reply within a specified time limit. The Director must keep the Europol Management Board informed of the entire procedure. If not satisfied with the Director's response, the JSB shall refer the matter to the Europol Management Board. This so called "escalation procedure" was not used.

Supervision in practice

Based on its long experience with supervising a law enforcement authority, the JSB organised its supervision work along the following lines:

- Annual general inspections
- Ad-hoc inspections where a particular issue requiring attention arises - for example, Europol's role in the TFTP Agreement⁴
- Prior-checking 'riskier' staff data processing operations
- Regular, active participation in meetings or workshops with Europol's operational and data protection staff
- Contributing towards, and issuing opinions on, Europol's proposed new initiatives or changes to existing operational activities
- Issuing opinions on draft agreements with EU bodies and third States, including providing opinions on the data protection level in third States
- Assessing the opening of analytical work files, their three-year reviews and specific projects

⁴ Agreement between the European Union and the United States of America on the processing and transfer of Financial Messaging Data from the European Union to the United States for the purposes of the Terrorist Finance Tracking Program

a) Annual general inspections

In the period covered by this report, five general inspections were executed. These inspections aim to ensure that Europol processes personal data in accordance with relevant data protection principles; namely, the relevant provisions of the ECD together with the principles of the Council of Europe Convention (ETS NO 108) of 28 January 1981 and of Recommendation No R(87)15 of the Committee of Ministers of the Council of Europe, and the Decision of the Director implementing the principles of Regulation 45/2001 (Staff data rules). The JSB also monitors compliance with the internal procedures for handling operational information. In particular, the JSB aims to ensure that data are adequate, relevant, not excessive, correct and accurate in relation to the purposes for which they are collected and subsequently processed.

The JSB checks the content of the analytical work files, the Europol Information System and the staff data processing systems. These checks may lead to further checks on national level performed by the national data protection authorities. The inspections also encompass the technical and procedural facilities and measures for the processing of these data. This includes a check on the compliance of data security.

When necessary the JSB will make recommendations. The follow-up of these recommendations is checked in the following inspection.

The reports on the inspections are presented to the Director of Europol and to the Management Board of Europol.

Such inspections give a comprehensive overview on data availability in certain crime areas as well as differences in approach between Member States. This practical insight creates the opportunity to initiate activities aimed to improve the level of data protection and the efficiency of operational activities. An example is the initiative of the JSB to improve the accuracy of processing data on persons who - as victim of trafficking in human beings - need to be protected. This initiative involves both Europol as well as the national law enforcement authorities ⁵. Another example is the publishing of a handbook on the transmission of personal data to Europol. This handbook provides for practical guidance to the Europol National Units and other national competent authorities how to ensure compliance with national law and the Europol legal basis when sending personal data to Europol.

When the supervision regime changes on 1 May, the conclusions drawn in past inspections and especially the recommendations made remain valid and important. In view of this, the JSB conducted a last inspection in January 2017. This inspection was limited to checking Europol's follow-up to the recommendations made. The results of this inspection may help the new supervisor and the Cooperation Board in developing a supervision strategy.

The January 2017 inspection clearly demonstrates that many recommendations are now fulfilled and others close to fulfilment. The JSB noticed Europol's positive attitude towards fulfilling the recommendations and the efforts undertaken.

The JSB thanks Europol for its open approach towards the JSB and the inspections. A special word of thanks is for the Data Protection Officer and his staff. They have been a crucial factor for the smooth cooperation between Europol and the JSB.

⁵ Report is available on <http://www.europoljsb.europa.eu/media/279501/victims%20of%20thb.pdf>

b) Ad-hoc inspections

The JSB carries out ad-hoc inspections if a particular issue arises which the JSB feels demands attention. This happened four times in the period covered by this report.

The EU-US Agreement concerning the TFTP and Europol's role

The JSB further inspected Europol's implementation of the implementation of the Terrorist Finance Tracking Program (TFTP) Agreement in November 2012 and May 2015. The TFTP Agreement gives Europol a specific role to verify whether requests for data from the US Treasury Department for data comply with the conditions set out in Article 4 of the TFTP Agreement.

The TFTP Agreement also provides for other forms of data exchange. Information can spontaneously be provided by the US Treasury Department (Article 9) or provided based on an EU request (Article 10). The data processing following these exchanges was also checked.

The reports on both inspections were presented to Europol and the Europol Management Board.

The report of the inspection in May 2015 was made public⁶ and also presented to the European Parliament, The European Commission and the Council. In the report the JSB noted that it is "*satisfied that it can report that concerning Europol's verification task as defined in Article 4 of the TFTP Agreement as well as the requests there is a continuation of the situation as checked in the inspection of November 2012. Although there is some room for improvement, the overall conclusion is positive.*"

The JSB also highlighted that "*Although the present assessment of the JSB is focussed on how Europol fulfils its task under the TFTP Agreement, the JSB likes to restate its assessment that due to the nature of the TFTP and the scope of the agreement there is a massive, regular, data transfer from the EU to the US. This causes a clear tension between the idea of limiting the amount of data to be transmitted by tailoring and narrowing the requests and the nature of the TFTP.*"

⁶ <http://www.europoljsb.europa.eu/media/275252/15-28%20final%20tftp%202015%20inspection%20report.pdf>

Checks on request from the EP on the US NSA surveillance programme

On 21 February 2014, the European Parliament adopted a resolution on the US NSA surveillance programme, surveillance bodies in various Member States and their impact on EU citizens' fundamental rights and on transatlantic cooperation in Justice and Home Affairs⁷.

In this resolution, based on a report of the Committee on Civil Liberties, Justice and Home Affairs, many concerns are raised following the revelations of Mr. Edward Snowden. In that resolution, the European Parliament calls on the Europol Joint Supervisory Body, together with national data protection authorities " *to conduct a joint inspection before the end of 2014 in order to ascertain whether information and personal data shared with Europol have been lawfully acquired by national authorities, particularly if the information or data were initially acquired by intelligence services in the EU or a third country, and whether appropriate measures are in place to prevent the use and further dissemination of such information or data; considers that Europol should not process any information or data which were obtained in violation of fundamental rights which would be protected under the Charter of Fundamental Rights;*"⁸

The JSB reacted to this call and inspected Europol in September 2014. The inspection was used to describe the allocation of data responsibilities of the different actors involved in the data processing by Europol and to check data processed by Europol to establish whether these data were unlawfully obtained by the party transmitting them to Europol.

In its report the JSB concluded that no information obtained in violation of human rights or not in compliance with the national laws of the contributing parties is processed by Europol. The report was presented to the Director of Europol, the Management Board of Europol and the Chair of the Committee of Civil Liberties, Justice and Home Affairs of the European Parliament.

⁷ (2013/2188(INI))

⁸ Point 84 of the Resolution(2013/2188(INI))

Europol's gathering of information on the Internet

In the annual Europol inspection of March 2016, the JSB signalled that Europol's information gathering activities on the Internet is a subject that needs a further exchange of information between Europol and the JSB.

The JSB decided to further inspect Europol's information gathering activities on the Internet and to use the results of that inspection to enable Europol to fulfill its activities in full compliance with the legal framework. That inspection took place in November 2016.

c) Prior-checking staff data notifications

The JSB is responsible for monitoring Europol's compliance with the Decision of the Director implementing the principles of Regulation 45/2001.

Prior-checking is an important part of supervision of staff data. This is the moment to check plans for future staff data processing operations (or for existing processing operations where these were in place prior to the duty to prior-check) considered to present specific data protection risks to staff. The prior-check involves a 'desk inspection' of completed processing operation notification forms and any accompanying documentation (for example, privacy statements, draft Director's Decisions, templates and forms, etc). In addition to our desk-based checks, we carried out on-site inspections of Europol staff data operations in the annual inspection of 2013-2017.

Each prior-check results in a formal opinion, including any recommendations necessary to improve data protection compliance; Europol then has two months to respond to that opinion and to ensure that the recommendations made are implemented.

In the period covered by this report the JSB issued 14 opinions following a prior check.

The JSB also provides informal guidance on the draft plans for certain processing operations which do not fall into the 'prior-check category'. Europol's proactive approach in this regard is very welcome by the JSB and shows their interest in 'getting things right' in this area.

d) Participation in meetings or workshops with Europol's operational and data protection staff

The changing world and the increasing threat of terrorism and other forms of crime has changed Europol's landscape. On the European Union level, various decisions were taken and conclusions drawn to further enhance and improve the fight against crime. This has its impact on the data processing activities of Europol. Pursuant to its policy to contribute towards, and issuing opinions on Europol's proposed new initiatives or changes to existing operational activities, the JSB set up its New Projects Group. This group has regular meetings with Europol staff. In these meetings new plans are discussed and data protection implications assessed. Some of the subjects discussed are the work of the European Cybercrime Centre, SIENA, the creation of the Internet Referral Unit, the introduction of a Unified Audit Solution, access to the second generation of the Schengen Information System, Europol's activities promoting the establishment of a Europe's Most Wanted List and the replacement of the Financial Information Units Network by SIENA.

e) Contributing towards, and issuing opinions on, Europol's proposed new initiatives or changes to existing operational activities

One of the tasks of the JSB is to draw up harmonised proposals for common solutions to existing problems. As a result of one of its inspections it became clear that effective mechanisms should be developed guaranteeing users of the Europol Information System that the data processed actually cover crimes for which Europol is competent. Such mechanisms should also include harmonised inputting criteria developed by the Member States and Europol and in agreement with the JSB. The JSB organised in 2013 a survey to check in which way Member States comply with their responsibilities for inputting data into the EIS.

Based on the results of this survey, the JSB made several recommendations to improve a harmonised input of data. The handbook referred to in the Annual General Inspections chapter was the end product of this survey.

A very important initiative of the JSB was its report on Victims of Trafficking in Human Beings.

The JSB noted in its inspections that on national and on international level more attention and harmonisation is needed for data processing activities by all competent authorities - police, prosecutors and investigative judges - involved in the fight against trafficking in human beings.

The victim centred approach of the European Union forces to invest in accurate data processing since the protection of these victims is directly linked to this processing. The JSB report explores the synergy between the responsibility for the law enforcement process and the data protection responsibility for data processing. Specific conditions are introduced that will assist these authorities which according to the national law will be accountable and responsible for the processing of data on persons who - as victim of trafficking in human beings - need to be protected. These conditions are on the initiative of the JSB widely promoted. The implementation and the use of these conditions are subject of control by the national data protection authorities.

f) Opinions on draft agreements with EU bodies and third States, including providing opinions on the data protection level in third States

In so far as it is relevant to the performance of its tasks, Europol may establish and maintain cooperative relations with the institutions, bodies, offices and agencies set up by, or on the basis of, the Treaty on European Union and the Treaties establishing the European Communities.⁹

Europol shall conclude agreements or working arrangements with these entities, which may concern the exchange of operational, strategic or technical information, including personal data and classified information. Any such agreement or working arrangement may be concluded only after approval by the Management Board which shall previously have obtained, as far as it concerns the exchange of personal data, the opinion of the JSB.

In addition, Europol shall conclude agreements with certain third States and organisations¹⁰, which may concern the exchange of operational, strategic or technical information, including personal data and classified information. These agreements may be concluded only after the approval by the Council of the European Union, which shall previously have consulted its Management Board and, as far as it concerns the exchange of personal data, obtained the opinion of the JSB via the Management Board.

⁹ Article 22 ECD

¹⁰ Article 23 ECD

During the period covered by this report, the JSB issued the following opinions with a view to ensuring that any deficiencies in the data protection arrangements in the concerned third States or organisations are met by appropriate safeguards in the agreements Europol enters into:

- Opinion on the data protection level in Serbia
- Opinion on the data protection level in Bosnia-Herzegovina
- Opinion on the data protection level in Moldova
- Opinion on the data protection level in Montenegro
- Opinion on the data protection level in Georgia
- Opinion on the data protection level in Ukraine
- Opinion on the draft agreement to be signed between Europol and Serbia
- Opinion on the draft agreement to be signed between Europol and Bosnia-Herzegovina
- Opinion on the draft agreement to be signed between Europol and Moldova
- Opinion on the draft agreement to be signed between Europol and Montenegro
- Opinion on the draft agreement to be signed between Europol and Georgia
- Opinion on the draft agreement to be signed between Europol and Ukraine
- Opinion on a draft agreement being negotiated between Europol and the Russian Federation
- Opinion on the draft agreement to be signed between Europol and Frontex.
- Opinion on the data protection level in the Kingdom of Denmark
- Opinion the draft agreement to be signed between Europol and the Kingdom of Denmark

g) Other activities

Opinions on the new legal basis for Europol

On 27 March 2013, the Commission presented the regulation, which will repeal Decision 2009/371/JHA (Europol Council Decision) and Decision 2005/681/JHA (CEPOL Council Decision).

The JSB advised on this proposal by issuing two opinions in 2013 and one in 2014.¹¹

Two of the crucial messages of the JSB are the warning that the proposed regulation weakens the Europol data protection regime and the call to create a supervision structure in which the proposed supervisor - the European Data Protection Supervisor - and the national data protection supervisor cooperate effectively. The Europol Regulation as adopted on 11 May 2016 contains many improvements suggested by the JSB.

Opinions on specific data processing activities

The exchange of information between the New Projects Group and Europol were followed by opinions on several subjects such as SIENA, the use of the Unified Audit Solution for the SIS II - logs, the imbedding of the Financial Information Unit-Net, the Analytical Work File Manual and Europe's Most Wanted List.

Resolving citizens' problems

The ECD sets out a number of important rights for citizens. Regarding the right of access, the ECD provides that any person can obtain information on whether personal data relating to them are processed by Europol and to have such data checked and/or communicated to them in an intelligible form. The ECD also provides the right to ask for correction and deletion of personal data.

Citizens can also ask the JSB to ensure that the manner in which their personal data (may) have been collected, stored, processed and used by Europol is lawful and accurate. The JSB must notify the person concerned that it has carried out the necessary checks, without providing any information which might reveal whether or not their personal data are processed by Europol.

¹¹ <http://www.europoljsb.europa.eu/opinions/others.aspx?lang=en>

In the period covered by this report, 28 citizens asked the JSB to carry out the check described above. Most of the requesters were Finnish nationals, due to the fact that forms to request such checks are made readily available in Finnish police stations.

Cooperation with data protection authorities

In June 2014, the JSB organised a meeting with the data protection supervisors of the third States¹² and parties with which Europol concluded an operational agreement.

As a follow up of this meeting the JSB adopted and distributed *Guidelines for the third States which signed an operational agreement with Europol allowing for the exchange of information, including personal data*.

In view of the links between data processing in the SIS II system, Eurojust and Europol, the JSB and the SIS II Coordination supervision Group and the Eurojust JSB worked closely together.

Data compromise

In November 2016, a Dutch television program revealed that some data processed by Europol were put on the Internet. Europol reported this data breach to the JSB. The JSB took the necessary steps to further assess this breach. In a letter to Europol, the JSB highlighted that this data compromise continues to demonstrate that data security is an issue that needs constant attention. The JSB furthermore stressed that data security is a principal element of data protection and lawful processing of personal data.

Relationship between Europol and the JSB

The JSB invested in an open and fair approach of Europol in the way it fulfilled its supervising activities. It is fair to say that this contributed to the open discussions and the cooperative attitude of Europol towards its data protection supervisor. The Data Protection Officer of Europol and his staff have been important to establish this good relationship and the way Europol commits itself to implementing the data protection principles in its daily practice.

¹² "third States" as referred to in Article 23(1)(a) of the Europol Council Decision means States not being Member States of the European Union

V. Appeals Committee

If citizens exercise their rights and are unsatisfied with Europol's response (or lack of response) or decision, they can appeal to the JSB's Appeals Committee.

This committee is composed of one qualified member of each JSB delegation. Each member may have an alternate. Appointments are made by the JSB, on the nomination of the concerned delegation, for a renewable five-year term. Members and alternates must have the necessary qualifications to examine and decide upon the appeals: legal expertise, conflict resolution experience and, of course, data protection expertise. The committee meets quarterly, in Brussels. The ECD provides that Europol must implement the committee's decisions on appeals. Decisions are final for all parties and are published on our website.

In the period covered by this report, the committee handled four appeals. The committee concluded in one of the appeals that the complaint did not meet the requirements and should be refused. Another appeal was declared not admissible.

In the other two appeals, Europol reviewed its decision on the data subjects request during the procedure.

VI. Organisation

Secretariat

An independent secretariat is hosted by the Secretariat-General of the Council of the European Union.

Budget

The JSB has its own budget, which is part of the general Europol budget. Under the ECD the JSB's Rules of Procedure foresee that the secretariat shall prepare proposals for an annual budget for the JSB which shall be forwarded to the Europol Management Board, prior to the consultation by the Management Board of the JSB on the part of Europol's budget which concerns the JSB. The JSB's opinion shall be annexed to the draft budget. The JSB decides on the disbursement of its budget, which is administered by the secretariat. For efficiency reasons this procedure has been applied covering a longer period than only one year.

Of our allocated budget of €565.000, some 80% is spent on meeting costs (travel and interpretation) and on translation of documents for publication on our website. Our budget contributes to our ability to exercise our functions effectively and in a fully independent manner.

Transparency

Transparency is fundamental to the JSB. As well as presenting our activity reports to the Council of the European Union and to the European Parliament the JSB publishes, where possible, its documents on our website¹³ in order to inform the public about our work. The Rules of Procedure¹⁴ regulate public access to our documents.

¹³ <http://europoljsb.consilium.europa.eu>

¹⁴ OJ C 45, 23.2.2010, p. 2

VI. Comments from Europol's Management Board



The Hague, 27 March 2017

MBS 050.2017

Management Board

Ms Vanna Palumbo
Chairperson
Joint Supervisory Body

Subject: JSB activity report 2012-2017

Dear Ms Palumbo,

Thank you for submitting the Joint Supervisory Body (JSB) Activity Report 2012-2017 to the Management Board (MB) for comments, in accordance with Article 34(6) of the Europol Council Decision.

The MB was consulted in a written procedure and no comments were received.

On behalf of the Board, I would like to offer my congratulations for the very comprehensive report, which reflects well the excellent work carried out by the JSB over the last 5 years.

I would like to thank you again for your continued cooperation and I remain at your disposal for any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Arie IJzerman", written in a cursive style.

Arie IJzerman

Chairperson