

19.2.2014

A7-0096/235

Amendment 235

Cornelia Ernst

on behalf of the GUE/NGL Group

Report

A7-0096/2014

Agustín Díaz de Mera García Consuegra

European Union Agency for Law Enforcement Cooperation and Training (Europol)

COM(2013)0173 – C7-0094/2013 – 2013/0091(COD)

Proposal for a regulation

Article 46

Text proposed by the Commission

Amendment

Supervision by the ***European Data Protection Supervisor***

Supervision by the ***Joint Supervisory Authority***

1. The European Data Protection ***Supervisor*** shall be responsible for monitoring and ensuring the application of the provisions of this Regulation relating to the protection of fundamental rights and freedoms of natural persons with regard to processing personal data by Europol, and for advising Europol and data subjects on all matters concerning the processing of personal data. To this end, ***he/she*** shall fulfil the duties set out in paragraph 2 and shall exercise the powers granted in paragraph 3.

1. ***An independent Joint Supervisory Authority, comprised of the European Data Protection Supervisor and the Joint Supervisory Body***, shall be responsible for monitoring and ensuring the application of the provisions of this Regulation relating to the protection of fundamental rights and freedoms of natural persons with regard to processing personal data by Europol, and for advising Europol and data subjects on all matters concerning the processing of personal data. To this end, ***it*** shall fulfil the duties set out in paragraph 2 and shall exercise the powers granted in paragraph 3.

The Joint Supervisory Authority shall be composed of the European Data Protection Supervisor and of a maximum of two members or representatives from the independent national data protection supervisory authorities from each Member State. Those members or representatives shall have the necessary abilities and shall be appointed for five years. The EDPS and each delegation shall be entitled to one vote.

The Joint Supervisory Body shall choose a chairman from among its members.

In the performance of their duties, the members of the Joint Supervisory Body shall not receive instructions from any other body.

The Joint Supervisory Body shall adopt its rules of procedure by a majority of two thirds of its members.

2. The ***European Data Protection Supervisor*** shall have the following duties under this Regulation:

- (a) hear and investigate complaints, and inform the data subject of the outcome within a reasonable period;
- (b) conduct inquiries either on his/her own initiative or on the basis of a complaint, and inform the data subjects of the outcome within a reasonable period;
- (c) monitor and ensure the application of the provisions of this Regulation and any other Union act relating to the protection of natural persons with regard to the processing of personal data by Europol;
- (d) advise Europol, either on his/her own initiative or in response to a consultation, on all matters concerning the processing of personal data, in particular before they draw up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of personal data;
- (e) determine, give reasons for and make public the exemptions, safeguards, authorisations and conditions mentioned in Article 36(4).
- (f) keep a register of processing operations notified to him/her by virtue of Article 42(1) and registered in accordance with 42(4),
- (g) carry out a prior check of processing notified to him/her.

3. The ***European Data Protection Supervisor*** may under this Regulation:

- (a) give advice to data subjects in the

2. The ***Joint Supervisory Authority*** shall have the following duties under this Regulation:

- (a) hear and investigate complaints, and inform the data subject of the outcome within a reasonable period;
- (b) conduct inquiries either on his/her own initiative or on the basis of a complaint, and inform the data subjects of the outcome within a reasonable period;
- (c) monitor and ensure the application of the provisions of this Regulation and any other Union act relating to the protection of natural persons with regard to the processing of personal data by Europol;
- (d) advise Europol, either on his/her own initiative or in response to a consultation, on all matters concerning the processing of personal data, in particular before they draw up internal rules relating to the protection of fundamental rights and freedoms with regard to the processing of personal data;
- (e) determine, give reasons for and make public the exemptions, safeguards, authorisations and conditions mentioned in Article 36(4).
- (f) keep a register of processing operations notified to him/her by virtue of Article 42(1) and registered in accordance with 42(4),
- (g) carry out a prior check of processing notified to him/her.

3. The ***Joint Supervisory Authority*** may under this Regulation:

- (a) give advice to data subjects in the

- exercise of their rights;
- (b) refer the matter to Europol in the event of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, make proposals for remedying that breach and for improving the protection of the data subjects;
 - (c) order that requests to exercise certain rights in relation to data be complied with where such requests have been refused in breach of Articles 39 and 40;
 - (d) warn or admonish Europol;
 - (e) order the rectification, blocking, erasure or destruction of all data when they have been processed in breach of the provisions governing the processing of personal data and the notification of such actions to third parties to whom the data have been disclosed;
 - (f) impose a temporary or definitive ban on processing;
 - (g) refer the matter to Europol and, if necessary, to the European Parliament, the Council and the Commission;
 - (h) refer the matter to the Court of Justice of the European Union under the conditions provided for in the Treaty;
 - (i) intervene in actions brought before the Court of Justice of the European Union.

4. The ***European Data Protection Supervisor*** shall have the power:

- (a) to obtain from Europol access to all personal data and to all information necessary for his/her enquiries;
- (b) to obtain access to any premises in which Europol carries on its activities when there are reasonable grounds for presuming that an activity covered by this Regulation is being carried out there.

5. The ***European Data Protection Supervisor*** shall draw up an annual report on the supervisory activities on Europol. This report ***shall be part of*** the annual

- exercise of their rights;
- (b) refer the matter to Europol in the event of an alleged breach of the provisions governing the processing of personal data, and, where appropriate, make proposals for remedying that breach and for improving the protection of the data subjects;
 - (c) order that requests to exercise certain rights in relation to data be complied with where such requests have been refused in breach of Articles 39 and 40;
 - (d) warn or admonish Europol;
 - (e) order the rectification, blocking, erasure or destruction of all data when they have been processed in breach of the provisions governing the processing of personal data and the notification of such actions to third parties to whom the data have been disclosed;
 - (f) impose a temporary or definitive ban on processing;
 - (g) refer the matter to Europol and, if necessary, to the European Parliament, the Council and the Commission;
 - (h) refer the matter to the Court of Justice of the European Union under the conditions provided for in the Treaty;
 - (i) intervene in actions brought before the Court of Justice of the European Union.

4. The ***Joint Supervisory Authority*** shall have the power:

- (a) to obtain from Europol access to all personal data and to all information necessary for his/her enquiries;
- (b) to obtain access to any premises in which Europol carries on its activities when there are reasonable grounds for presuming that an activity covered by this Regulation is being carried out there.

5. The ***Joint Supervisory Authority*** shall draw up an annual report on the supervisory activities on Europol. This report ***may be published jointly with*** the

report of the European Data Protection Supervisor referred to in Article 48 of Regulation (EC) No 45/2001.

6. Members and staff of the **European Data Protection Supervisor** shall be bound by the obligation of confidentiality in accordance with Article 69.

annual report of the European Data Protection Supervisor referred to in Article 48 of Regulation (EC) No 45/2001.

6. Members and staff of the **Joint Supervisory Authority** shall be bound by the obligation of confidentiality in accordance with Article 69.

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Justification

The current proposal does not guarantee a sufficient level of data protection given that it does not reflect the reality of the law enforcement data exchange model currently in place. The vast majority of personal data originates from the Member states and will eventually be sent back to the Member States. This reality necessitates an equal involvement of the national Data Protection Authorities (DPAs) with the European Data Protection Supervisor. The national DPAs as currently represented in the Joint Supervisory Body (JSB) of Europol have already got extensive experience in dealing with Europol's data exchange model, and it would be ludicrous to not take advantage of their long-standing experience. Also, the EDPS mandate does not entail the same far-reaching intervention and inquiry powers that the JSB has. In sum, to guarantee the highest possible protection of personal data, it is primordial that both the national DPAs and the EDPS are involved on equal footing. This is best done by creating a Joint Supervisory Authority.

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Proposal for a regulation

Article 53

Text proposed by the Commission

Amendment

Parliamentary scrutiny

Joint Parliamentary Scrutiny

1. ***The Chairperson of the Management Board and the Executive Director shall appear before the European Parliament, jointly with national Parliaments, at their request to discuss matters relating to Europol, taking into account the obligations of discretion and confidentiality.***

1. ***The mechanism for the control of Europol's activities by the European Parliament, together with national Parliaments, shall take the form of a specialised Joint Parliamentary Scrutiny Group, to be established within the competent committee of the European Parliament, comprising the full members of the competent committee of the European Parliament and one representative of the competent committee of the national parliament for each Member State and a substitute. Member States with bicameral parliamentary systems may instead be represented by a representative from each chamber.***

2. Parliamentary scrutiny by the European Parliament, ***together with national Parliaments, of Europol's activities shall be exercised in accordance with this Regulation.***

2. ***The Joint Parliamentary Scrutiny Group meetings shall always be convened in the European Parliament premises by the Chair of the European Parliament's competent committee. The meetings shall be co-chaired by the Chair of the competent committee of the European Parliament and the representative from the national Parliament of the Member State holding the rotating Council Presidency.***

3. The Joint Parliamentary Scrutiny Group shall monitor the application of the provisions of this Regulation, in particular in relation to their impact on the fundamental rights and freedoms of natural persons.

4. To this end, the Joint Parliamentary Scrutiny Group shall have the following powers:

a) it may summon the Chairperson of the Management Board, the Executive Director and a representative of the Commission before the Joint Parliamentary Scrutiny Group to discuss matters relating to Europol, taking into account, if appropriate, the obligations of discretion and confidentiality. The Group may decide to invite to its meetings other relevant persons, if appropriate;

b) it may summon the Joint Supervisory Authority before the Joint Parliamentary Scrutiny Group at least once per year to discuss matters relating to the protection of fundamental rights and freedoms of natural persons, and in particular the protection of personal data, with regard to Europol's operations, taking into account, if appropriate, the obligations of discretion and confidentiality;

c) it shall have the power to conduct inquiries either on its own initiative or on the basis of a complaint, and report to the European Parliament and the public of the outcome within a reasonable period;

d) it may formulate proposals for remedying breaches in the application of this Regulation in order to uphold the protection of fundamental rights and freedoms;

e) it may instruct the Management Board on the removal of the Executive Director where in the monitoring of this Regulation persistent irregularities have been found, and after proposals for remedying those breaches and for

improving the protection of fundamental rights and freedoms have not been adequately implemented;

f) it shall consent to the draft annual work programme in accordance with Article 15;

g) it shall consent to the appointment of the Executive Director;

h) in cases where irregularities in the application of this Regulation have been found and have not been remedied in accordance with Article 53(4), it may refer the matter to the Court of Justice of the European Union under the conditions provided for in the Treaty;

(i) it may obtain access to the premises of Europol in order to fully monitor the application of this Regulation, as laid down in this article.

5. In order to facilitate the exercise of its powers, the following documents shall be presented and debated in the Joint Parliamentary Scrutiny Group meetings:

- the draft annual and multiannual work programmes, referred to in Article 15;

- the consolidated annual activity report on Europol's activities, referred to in Article 14;

- the annual report of the European Data Protection Supervisor on the supervisory activities of Europol, referred to in Article 46;

- the evaluation report drawn up by the Commission to review the effectiveness and efficiency of Europol, referred to in Article 70.

6. The following persons shall appear before the Joint Parliamentary Scrutiny Group at its request:

- the selected candidates for the posts of Executive Director, referred to in Article 56(2);

- the Executive Director, whose term of office is intended to be extended, as

provided for in Article 56(5);

- the Executive Director, in order to report on the performance of their duties.

The Chairperson of the Management Board shall inform the Joint Parliamentary Scrutiny Group before removing the Executive Director from office, as well as to the reasons or grounds for such decision.

7. The European Parliament shall adapt its rules of procedures in order to comply with the powers granted to it by this Regulation

3. In addition *to the obligations of information and consultation set out in this Regulation*, Europol shall transmit to the *European Parliament and to the national parliaments*, taking into account the obligations of discretion and confidentiality, for information:

(a) threat assessments, strategic analyses and general situation reports relating to Europol's objective as well as the results of studies and evaluations commissioned by Europol;

(b) the working arrangements adopted pursuant to Article 31(1).

8. In addition, Europol shall transmit to the *Joint Parliamentary Scrutiny Group*, taking into account, *if appropriate*, the obligations of discretion and confidentiality, for information :

(a) threat assessments, strategic analyses and general situation reports relating to Europol's objective as well as the results of studies and evaluations commissioned by Europol ;

(b) the working arrangements adopted pursuant to Article 31(1).

6. The Joint Parliamentary Scrutiny Group may request any relevant document necessary for the fulfilment of its tasks, subject to Regulation (EC) No 1049/2001^{1a} as well as rules governing the treatment of confidential information by the European Parliament.

7. The Joint Parliamentary Scrutiny Group may draw up summary conclusions on the supervisory activities on Europol to the European Parliament.

^{1a} *Regulation (EC) No 1049/2001 of the European parliament and of the Council of the European parliament and of the Council of 30 May 2001 regarding public*

*access to European Parliament, Council
and Commission documents.*

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