

Final

12th meeting of the Coordinated Supervision Committee (CSC)

19-20 March 2024, in person

Summary

The Coordinated Supervision Committee (“the Committee”) met on 19 and 20 March 2024, in person.

First Day (19 March)

Item 1: Welcome and Introduction

The agenda of the first day was adopted, with the insertion of an AOB under item 2.1.

Item 2: Police and Judicial Cooperation

2.1. Europol

2.1.1 Information by the EDPS: The EDPS presented the key elements of its prior consultation Opinion on a new Facial Recognition system for Europol, which was issued on 20 December 2023 and was published on its website. There was a brief exchange among the CSC members on this new system. The CSC is to be kept informed of the developments in this regard, in particular on how the recommendations made by the EDPS will be implemented.

The EDPS also presented its opinion regarding the joint operational analysis under Article 20(2a) of the amended Europol Regulation. The EDPS explained further that it constitutes a novelty, which expresses the way Europol would like to cooperate with the law enforcement authorities of Member States. The Committee discussed the joint controllership issues that this new working method may raise between Europol and the Member States participating in the joint operational analysis, what may bring the need for enhanced coordinated supervision at central and national level, representing new challenges for the CSC.

The EDPS provided additional information on its 2023 Europol inspection, presenting first insights in relation to Europol’s request of access to data in the VIS information system and to the data subject categorisation (DSC) of large data sets. The EDPS is currently finalizing its report, which shall include a set of recommendations to Europol. The CSC members discussed and acknowledged that some of the

topics addressed during the inspection (e.g. DSC of large data sets) may be important for the Committee to decide on its future activity.

2.1.2. Interpretation of lawfulness checks in the context of Article 47 ER: Under Article 47 of the Europol Regulation, the EDPS has to consult the national DPA of the MS that provided the data to Europol and has to reply within a maximum of three months. Consequently, the EDPS has to take into account the DPA's opinion when issuing its decision. There is a lengthy procedure that involves verification at Europol and at Member State level by the national DPAs, and sometimes the complexity of complaints require additional checks. It was discussed by the Committee the need to make the process more efficient, as well as the need to ensure a common understanding of the provisions and the respective obligations among the Committee's members. There was some exchange of opinions on the reading of Article 47 and the extent of the verifications at national level. It was agreed to start working on a brief guidance note for cooperation in the implementation of Article 47 complaints, containing specific steps, procedures, indicative deadlines, as well as a common understanding of the interpretation of the legal provision. A drafting team was set up for that purpose.

2.1.3 New coordinated activity on the processing of personal data in support of a criminal investigation without data subject categorization, under Article 18a of the amended Europol Regulation: It was proposed to develop a coordinated activity related to the Article 18a of the amended Europol Regulation, which provides for the possibility of Europol processing data without data subject categorisation in support of a criminal investigation of a MS. This would be in line with the CSC working programme 2022-2024, as part of addressing the big data challenge. The CSC members endorsed the activity, as it was outlined, and some CSC members volunteered as rapporteurs to start working on a checklist for inspection.

2.1.4 AOB - Point of information on last years' statistics on minors in Europol

The EDPS expressed its intention to share information with the supervisory authorities of those Member States that sent to Europol, in 2023, data on minors under fifteen years old, labelled as potential criminals or suspects. Similar information was the basis in the previous year for launching a coordinated exercise regarding minors, in which the concerned national DPAs took part. This updated information allows CSC members to carry out checks on the lawfulness of the transmission of such data, taking into account the national legal framework.

2.2. Eurojust

Some national data protection authorities have reported to the Committee that they were experiencing difficulties in supervising national judicial authorities in what regards Eurojust. Their competence is hardly recognised due to the interpretation that such data processing falls within the exception of courts when acting in their judicial capacity, provided for in Article 45 of the Law Enforcement Directive. The Committee decided to get an overview of the supervision at national level in this field, and asked all members to provide information on areas not covered by any data protection supervision, on areas supervised by a different authority, on the relevant legal provisions governing the regime, including the status of independence, in order to map such situations and decide on the way forward.

Second Day (20 March)

Item 3: Welcome and Election

3.1. **Adoption of Agenda for 2nd day:** The participants adopted the agenda of the second day.

3.2 **Election of the 2nd Deputy Coordinator:** Mr. Matej Sironič, from the Slovenian DPA, was elected unanimously as the second Deputy Coordinator of the CSC.

Item 4: General issues

4.1. **Presentation on Access to Documents:** The Secretariat presented the topic of Access to Documents under EU law (particularly Regulation (EU) 2001/1049), explaining the principle of transparency and the right of access to documents, its material scope, the limitations to it, the beneficiaries, the time to provide the reply and the exceptions. The members asked the Secretariat for clarifications about access to documents procedures, and the Secretariat illustrated the procedure relevant for CSC.

4.2 **Takeaways of meeting with civil society:** There was an exchange among the members on the takeaways as regards the participation of the civil society organisations in the previous CSC meeting as a basis for drafting a letter to those NGOs. It was also agreed to discuss in the following meetings the future dialogue with other kind of organisations of the civil society, such as academia. It was further stressed out the importance of ensuring transparency in the choice of the stakeholders with whom the CSC will engage in the future. It was also decided that the letter, after being adopted and sent, will be published in the CSC website.

Item five: Presentation of the EDPS interoperability tool and Q&A with the contractors (external academics)

The EDPS briefly introduced the tool to the members and explained the context of the study and the decision to commission it. The contractors, Dr. Teresa Quintel and Dr. Niovi Vavoula, from the University of Maastricht, joined the meeting, and presented the tool saying that it was finalized in July 2023, and that it needed constant updates due to the evolving legislative framework. The contractors illustrated how to use the tool following data flows. Based on selected scenarios, the academics showed how the tool could be used. They also advocated that there was a need for DPAs to assist individuals exercising their rights. Data subjects located outside of the Schengen area would face even higher challenges. They highlighted the complexity of the system, also quantitatively (including the keeping of logs) and strongly advised to develop a strategic approach to supervision, prioritising according to the biggest. It was suggested to follow the data flows and to have at least one expert or rather dedicated Unit for interoperability within each DPA.

Dr. Quintel and Dr. Vavoula explained that the tool presented the potential of interoperability. They ended their presentation by explaining that since the interoperability was expanding and the systems became more connected, more fundamental rights entered the discussion, for example the right to non-discrimination. This implied that more coordination between authorities would be needed, in

order not to duplicate the tasks. The CSC members congratulate the contractors for their work, followed by an exchange of views on some of the issues raised and on the possible use of the interoperability tool at national level.

Item 6: Borders, asylum and migration

6.1 EES and ETIAS: role of the CSC: The members agreed to formalize the coordination of activities in regards of ETIAS and EES in the context of CSC.

6.2 Report on ETIAS II Data Protection Workshop: The rapporteur updated the members on this workshop, underlining that a key aspect of the workshop was the discussion about which legal framework was applicable according to Article 56(2) of the ETIAS Regulation. Some guidance on this matter is of the utmost importance.

In addition to the format of the two first workshops, a series of another format, namely less formal, virtual data protection workshops will take place throughout the year. To safeguard constant representation of the CSC and to prepare the possible interventions, a small working group was created. Five SAs volunteered to be part of the working group.

6.3 Tour de table: The members were invited to share on the state of play and their involvement as regards the implementation of ETIAS at national level. Some members shared their experience at national level. The exchange revealed a very diverse picture, ranging from advanced preparations in legislation, technical equipment and procedures to delayed stages with no implementing law in place, yet. The level of involvement of the members also seemed to be diverging largely.

6.4 SIS: Article 36 questionnaire – state of play: The rapporteur provided the members with an overview of the state of play, explaining the background of the matter, the findings, the problematic areas and some considerations and recommendations, and the possible next steps. The draft report will be circulated among the members for comments and discussion.

6.5 AOB: A member raised the issue of the legal framework applicable to the SIS data processing operations and on the handling of data subjects' rights. Some members shared their approach and their experience and it was agreed to continue this exchange in a dedicated thread in the forum on Confluence.

Item 7: Digital Single Market (IMI)

The Committee adopted Recommendations on Transparency Obligations for the Internal Market Information System (IMI) to assist data controllers to be more compliant with the IMI Regulation in conjunction with the GDPR. These recommendations contain as annexes to the main text an Example of Information to be provided to data subjects (Annex 1), and a Checklist for data controllers handling the requests from data subjects when exercising their rights, in particular the right of access (Annex 2). The IMI Recommendations are to be published in the CSC website and to be conveyed by the national DPAs to the national IMI coordinators and/or national competent authorities as data controllers.