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After those two highly informative topical speeches from our colleagues Michael Kennedy and Will Bruggeman, what I would now like to do is try and give an initial summary of our future work as European supervisory authorities. This will be in three parts:

- A. What bases do we have for our work today?
- B. What bases will we have in the future?
- C. What are the demands this makes on our work?

### **A. What bases do we have for our work today?**

Although we were all very enthusiastic about the abolition of inner-European national borders and have the feeling that we live together in a great free space that is the European Union, one or two legal boundaries are still required for everyday life. These we find in Article 6 paragraphs 1 and 2 of the EU Treaty of Amsterdam and stated in more concrete terms in the provisions governing police and judicial co-operation in criminal cases in Section VI of the Treaty. The articles worthy of our attention are

Article 30 (police co-operation) and  
Article 31 (judicial co-operation)

The individual bases for the specific areas are

- the Schengen Convention
- the Europol Convention
- the CIS Convention and
- the EU Council decision on Eurojust of 28 February 2002.

We must not forget

- the principles of the Council of Europe Convention for the Protection of Individuals No. 108 of 28 January 1981
- Recommendation No. R(87)15 Council of Europe/Committee of ministers regulating the use of personal data in the police sector, and last but not least

- Article 8 of the Council of Europe Convention for the protection of human rights and fundamental freedoms.

Our colleague Willy Bruggeman already mentioned the UN-decision on terrorism.

## **B. What bases will we have in the future?**

The most important new basis will be

- Article II-8 Protection of personal data in the Charter of fundamental rights of the Union

And the new articles that will be gaining particular importance are

- Articles III-171 to 174 on judicial co-operation and
  - Articles III-176 and 177 on police co-operation
- in the new Constitution for Europe.

The legal bases originating from the Council of Europe that I referred to in Part A will of course retain their importance in the future as well.

## **C. What are the demands this makes on our work?**

1.

Our primary task should be to keep an eye on the future legal arrangements for Eurojust and Europol. Which is why I would like to draw your attention once more to Europol's future in Article III-177, and focus on the second paragraph. You will find a similar legal provision for Eurojust in Article III-174 par. 2.

There it states – at any rate this is something new for Eurojust – that the future structure of work and sphere of responsibility are to be regulated by **European law**. For Europol this can be accomplished in a simplified manner by the Europol Convention first being assimilated as law.

No one knows how the two legal provision will be worked out in the end.

In terms of content we should take this opportunity to urge that an end will be brought to the co-existence of the different supervisory authorities under data protection legislation – at present there are four plus the (new) European Data Protection Supervisor (Article 286 of the EC Treaty). I have not yet exchanged thoughts about this with Peter Hustinx, but in my view it is imperative that an amalgamation will be brought about as soon as possible, perhaps in stages. The altruistic and purposive objective must be to concentrate and bolster data protection in the European Union. Sets of circumstances and the people that move in them cannot be split up into various pillars just because the European Union grew that way. The result of a fragmentation in supervision under data protection legislation will be loopholes in the protection of fundamental rights. The instruments created by the EU regarding mutual judicial assistance in criminal cases are hard enough to grasp, let alone keep up with competently in terms of data protection legislation. Another example is defence against and prosecution of terrorists. In this it is particularly clear how what is

essentially the same circumstance can quickly pass from the first to the third column and back (I'm talking about the registration of air passenger data) without a satisfactory outcome in the end. I'll come back to terrorism later on.

Amalgamation is the expedient means of making the most of the best staff resources to focus a high level of expertise and cut costs at the same time. It is not just the enlargement of the European Union by ten more member states but also the plethora of new tasks of a European community that is developing ever closer ties in an area of freedom, security and law that calls for standardised provisions of data protection legislation and uniform application of legal bases. This brings me to my second point.

2.

Back when the EU Data Protection Directive (Directive 95/46 EU) was introduced, our esteemed colleague Dr Ulf Brühmann was already urging standardised terms in European data protection legislation. It is not only in German literature and science it is said we need standardised legal bases for the equal treatment and understanding of the citizens concerned and in prosecution matters. These include standardising criminal offences in key areas of life and business and harmonising rules of procedure in criminal proceedings. Admittedly the European arrest warrant soon coming into force and the new designated European order of evidence mark a cautious start, but the practical pitfalls in day-to-day operation will be apparent in no time. The Council's framework ruling on combating terror also contains points of reference that leave (too) much scope for application in practice.

3.

It is not enough, though, to turn our attention to future standardised regulations. We already have major problems with the uniform application of the same legal provisions in our member states today. For the new member states in particular it is not enough that identically worded regulations on data protection are put into operation there. The citizens in the new states first have to understand and accept data protection, then it is easier for the police and judicial authorities to assimilate the special constitutional significance of legal protection of personality and respect for human dignity it enshrines.

I now come to my fourth and last point:

4.

When considering security we have to pay special attention to freedom. The terrorist attacks carried out by misguided offenders in connection with Islam represent a massive threat to the basic freedoms that European citizens still have. Here in Europe we had a history of bad experiences with dictatorships in the last century. That sets us apart from America for instance. Some of these dictatorships were in the not-too-distant past.

The high regard in which the democratic constitutional state holds freedom has to be made clear both in Europe and outside Europe – yet another task for data protection supervisors. What we have to do is constantly re-address the notional and actual split between safeguarding our freedom and consistently guaranteeing our security. That includes very precise considerations as to what extent we regard more intense

meshing and implementation of co-operation in the future between secret services, the police and the judiciary as justifiable. Welcome to the well known problem of hard and soft data and the difference in assessing them! It was not only Benjamin Franklin reminding us in 1759:

“They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety”. But also in Europe this danger was seen soon:

The European Court of Human Rights stated in his judgement on 6<sup>th</sup> September 1978 (Row A No. 28 – Klass and others vs. Fed. Rep. of Germany):

“... states must not resort to all possible actions suitable in fighting against espionage and terrorism ... the danger then appears that democracy will be undermined or even destroyed instead of being defended”.

Therefore the end result cannot be that the free citizens of Europe seal themselves off from the outside like in the Middle Ages whilst being monitored and led by the nose at home by their own national bureaucracy – that would mean a few thousand terrorist offenders being the only ones capable of moving freely the world over.