

(Acts adopted under Title VI of the Treaty on European Union)

COUNCIL ACT
of 19 December 2002
amending the Staff Regulations applicable to Europol employees

(2003/C 24/01)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Convention on the establishment of a European Police Office (Europol Convention) ⁽¹⁾, and in particular Article 30(3) thereof,

Having regard to the initiative of the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands,

Having regard to the Opinion of the European Parliament,

Having regard to the opinion of the Management Board of Europol,

Whereas:

(1) It is desirable to amend the Staff Regulations applicable to Europol employees, as laid down in the Council Act of 3 December 1998 ⁽²⁾, (hereinafter referred to as 'the Staff Regulations'), in particular in order to establish the procedures for the nomination of the Director and Deputy Directors and for the application of other powers in their respect by the authority vested with nominating powers.

(2) It is for the Council, acting unanimously, to lay down detailed arrangements applicable to Europol employees, and subsequent amendments thereto,

HAS ADOPTED THIS ACT:

Article 1

The Staff Regulations shall be amended as follows:

1. Article 1(2) shall be replaced by the following:

'2. The Staff Regulations shall also apply to the Director and Deputy Directors of Europol, without prejudice to the Europol Convention and as far as not otherwise provided in Appendix 8, which establishes special provisions concerning the Director and Deputy Directors.'

2. Appendix 8 shall be replaced ⁽³⁾ by the following:

'APPENDIX 8

Special provisions concerning the Director and Deputy Directors

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⁽¹⁾ OJ C 316, 27.11.1995, p. 2.

⁽²⁾ OJ C 26, 30.1.1999, p. 23, Staff Regulations, as last amended by Council Decision of 13 June 2002 (OJ C 150, 22.6.2002, p. 2).

⁽³⁾ The taxation provisions of the original Appendix 8 to the Council Act of 3 December 1998 are covered by the Decision of the Europol Management Board of 16 November 1999 (OJ C 65, 28.2.2001, p. 6).

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CHAPTER 1

SELECTION PROCEDURES

Article 1

The preparation of the opinion of the Management Board on the appointment of the Director or a Deputy Director to be provided to the Council pursuant to Article 29(1) of the Europol Convention shall take place in accordance with the provisions of this Chapter.

Article 2

1. Selection for the post of Director or Deputy Director of Europol shall have the objective of securing for Europol the services of persons of the highest standard of ability, efficiency and integrity.

2. The selection procedure shall fully respect the principles enshrined in Article 24(1) of the Staff Regulations.

Article 3

1. A post for Director or Deputy Director of Europol shall be deemed to be vacant for the purpose of the application of the provisions of this Chapter:

- as from nine months before the end of the term of office of the Director or a Deputy Director,
- upon receipt by the Council of a letter of resignation of the Director or a Deputy Director, in accordance with Article 14,
- upon a decision of the Council on compulsory resignation, in accordance with Article 15,
- upon a decision of the Council on retirement in the interest of the service, in accordance with Article 16,
- upon a decision of the Council on dismissal, in accordance with Article 17,
- as from nine months before the date on which the Director or Deputy Director reaches the age of 65,
- upon the death of the Director or a Deputy Director.

2. For each vacant post, an advertisement shall be drawn up by the Management Board describing in detail the nature of the post, including remuneration, the duties to be performed, and the qualifications, skills and experience required.

The advertisement shall indicate that applicants must submit their applications in writing, accompanied by a curriculum vitae, to the Chairman of the Management Board within 60 days of the date of publication in the *Official Journal of the European Communities* of the advertisement, referred to in the first subparagraph, as specified in the advertisement.

The said advertisement shall also provide information on the security screening to be applied to the successful applicant in compliance with the confidentiality regulations adopted pursuant to Article 31 of the Europol Convention.

Article 4

1. The Management Board shall ensure that the advertisement referred to in Article 3(2) shall be published in the *Official Journal of the European Communities*, and in other media, including national newspapers and specialised periodicals, to ensure maximum exposure in all the Member States.

2. Europol shall inform the Europol National Units of a vacancy for a post of Director or Deputy Director. The National Units shall inform the relevant agencies within their Member State of the vacancy. The competent national authorities shall be responsible for ensuring that the vacancy is brought to the attention of the agencies and all the personnel concerned.

3. For all vacant posts, both internal and external applications shall be considered.

4. Europol shall send an acknowledgement of receipt to the applicants.

5. Europol shall inform the Europol National Units of the applications received in order to allow the Member States, through their National Unit or otherwise, to forward to the Management Board an advice regarding the applicants. The authorities of the Member States involved in this procedure shall maintain the strictest confidentiality with regard to the information received.

6. As part of the admissibility procedure, evidence shall be provided through documentation issued by the Member State concerned that a candidate complies with the appropriate character references as to the suitability for the performance of the vacant function.

Article 5

1. The Management Board shall set up a Committee (hereinafter referred to as "the Committee") to prepare the Management Board's opinion to be submitted to the Council in accordance with Article 29(1) of the Europol Convention. The Committee shall make an initial assessment of the applicants.

2. For the post of Deputy Director, the Committee shall comprise the Director or his delegate as one of its members. Furthermore, four Member States indicated to that end by drawing lots by the Management Board, shall assign a representative to serve as a member of the Committee.

3. For the post of Director, five Member States indicated to that end by drawing lots by the Management Board, shall assign a representative to serve as a member of the Committee.

4. The members of the Committee assigned to serve pursuant to paragraphs 2 and 3 shall serve as members of the Committee until the selection procedure has been completed.

5. Where there is reason to believe that a member of the Committee has a personal relationship with one of the applicants for the post, he shall not participate in the selection process. In such cases, the Member State which presented the member shall propose to the Management Board that he be replaced and shall assign another representative to serve as a member of the Committee.

6. The secretariat of the Management Board shall provide the secretariat of the Committee.

Article 6

1. At the first meeting of the Committee, the members shall indicate one of its members as Chairman.

2. The Committee may request the assistance of one or more assessors for the performance of its tasks. Such request shall be addressed to the Chairman of the Management Board who shall decide on the matter. Assessors shall not have the status of members of the Committee.

3. The tasks of the Committee shall include:

(a) making an initial assessment of the applicants, taking into account their professional qualifications, skills and experience;

(b) interviewing applicants;

(c) reporting to the Management Board.

Article 7

1. Where it is deemed necessary, the Management Board may decide to organise a specific post-related assessment procedure. The Management Board shall decide on the specific necessities.

In that case, the assessment procedure shall be conducted by the Committee in order to appraise the specific qualifications and expertise of the applicants for the post concerned.

2. The Committee shall interview all applicants whose application is admissible and who meet the requirements set out in the advertisement, with a view to assessing their qualifications, skills and experience required and their ability to perform the duties inherent to the post to be filled. The interviews shall also be used to test the applicants' knowledge of the official languages of the institutions of the European Union with reference to Article 30(2) of the Europol Convention and Article 1 of this Appendix.

3. Where considered necessary by the Committee, a second round of interviews for all or some of the applicants may be held.

Article 8

The tests and interviews shall be held in The Hague. Travel expenses and any subsistence and hotel accommodation expenses shall be reimbursed to the applicants, the members of the Committee and the assessors in accordance with the rules laid down in Appendix 5.

Article 9

Once the interviews have been completed, the Committee shall draw up a duly reasoned report on the applications received and the procedure followed by it. The decision of the Committee establishing the report shall be taken by simple majority. The said report shall be forwarded to the Management Board as soon as possible after the interviews have been held, together with the curriculum vitae of the applicants whose application is admissible and who meet the requirements set out in the advertisement.

Article 10

1. On the basis of the report of the Committee and any further information it may wish to obtain from the Committee, the Management Board shall draw up an opinion to be submitted to the Council.

2. The Management Board may, if it deems this necessary, hear some or all of the applicants before drawing up its opinion. If it so happens that a member of the Management Board is also on the list of applicants, he shall not be present when the opinion of the Management Board is drawn up.

3. In its opinion, the Management Board shall present the full list of the applicants, indicating among them a short-list of suitable applicants together with the full file of each of those applicants.

4. The Management Board shall ensure that the applicants on the short-list meet the conditions for engagement provided for in Article 24(2)(d) and (3) of the Staff Regulations.

5. The Chairman of the Management Board shall forward the opinion of the Management Board to the Council in order to allow the latter to take its decision as envisaged by Article 29(1) of the Europol Convention on the basis of all relevant information.

Article 11

Members of the Committee, assessors, as well as members of the Management Board and Europol officials involved, shall maintain the strictest confidentiality with regard to the applicants and the results of the selection procedure.

Article 12

Where the terms of office of the Director or a Deputy Director can be renewed in accordance with Article 29(1) or (2) of the Europol Convention, the Management Board may decide, by majority vote, to derogate from the procedure established in this Chapter. In such cases the Management Board shall draw up, at the latest twelve months before the term of office ends, an opinion advising the Council to renew the term of office. The procedure laid down in this Chapter shall be followed when the Council decides not to renew the nomination or when the Council fails to take a decision in this respect within three months after the receipt of the Management Board opinion.

CHAPTER 2

TERMINATION OF SERVICE

Article 13

The service of the Director or a Deputy Director of Europol shall be terminated by:

- (a) resignation;
- (b) compulsory resignation;
- (c) retirement in the interests of Europol;

(d) dismissal following a disciplinary procedure;

(e) retirement; or

(f) death.

Section 1

Resignation

Article 14

1. A Director or Deputy Director who wishes to resign before the end of his term of office shall state unequivocally in writing his intention to leave the service of Europol, proposing the date on which his resignation should take effect. The letter of resignation shall be addressed to the President of the Council, with a copy to the Chairman of the Management Board.

2. The Council shall take its decision confirming the resignation within two months of receiving the letter of resignation. The Council may, however, refuse to accept the resignation if disciplinary proceedings against the person concerned are in progress at the date of the receipt of the letter or if such proceedings are started within the following 60 days.

3. Resignation shall take effect on the date specified by the Council. That date shall not be later than three months after the date proposed by the person concerned in his letter of resignation. However, the Council may, if necessary for the good functioning of Europol, stipulate that such resignation shall not take effect until his successor has taken up his duties.

Section 2

Compulsory resignation

Article 15

The service of the Director or a Deputy Director may be terminated by the Council upon request of the Management Board, without notice, where the conditions referred to in Article 95(b) or (c) of the Staff Regulations are met.

Section 3

Retirement in the interests of Europol

Article 16

1. The Director or a Deputy Director may be retired in the interests of Europol by a decision of the Council. The Council shall take such a decision after obtaining the opinion of the Management Board and hearing the person concerned, with a two-thirds majority. Such retirement shall not constitute a disciplinary measure.

2. The Director or Deputy Director thus retired shall, until the date envisaged for the end of his term of office, receive an allowance as follows:

- (a) for three months, a monthly allowance equal to his basic salary;
- (b) for the fourth to the sixth month, a monthly allowance of 85 % of his basic salary;
- (c) for the following period, a monthly allowance of 70 % of his basic salary.

3. During the period of entitlement to the allowance, the Director or Deputy Director shall not be entitled to the monthly unemployment allowance referred to in Article 59 of the Staff Regulations. Where the Director or Deputy Director is after this period entitled to an unemployment allowance pursuant to Article 59 of the Staff Regulations, the period of entitlement to the allowance referred to in paragraph 2 shall be deducted from the period of entitlement of the unemployment allowance.

4. Income received by the persons concerned from any new employment or from a retirement pension pursuant to Article 72 of the Staff Regulations during the period in which they receive an allowance in accordance with paragraph 2 shall be deducted from the allowance provided for in that paragraph if that income and the allowance together exceed the total remuneration last received by the official calculated by reference to the table of salaries applicable on the first day of the month for which the allowance is to be paid. The person concerned shall furnish such written proof as may be required and inform Europol of any facts liable to affect his entitlement.

5. During the period of entitlement to the allowance, the person concerned shall be entitled, in respect of himself and persons covered by his insurance, to benefits under the sickness insurance scheme provided for in Article 56(1) of the Staff Regulations, on condition that he pays the appropriate contribution calculated by reference to the allowance specified in paragraph 2 of this Article and that he cannot be covered by any other public scheme against the same risks.

6. As from the end of the period referred to in paragraph 5, Article 56(2) of the Staff Regulations shall apply *mutatis mutandis*.

Section 4

Dismissal following a disciplinary procedure

Article 17

After the disciplinary proceedings provided for in Chapter 3 have been followed, service may be terminated by the Council in accordance with Article 29(6) of the Europol Convention on disciplinary grounds in serious cases of intentional or negligent failure of the Director or a Deputy Director to comply with his obligations.

Section 5

Retirement

Article 18

The service of the Director or a Deputy Director shall cease on the last day of the month in which the person concerned reaches the age of 65.

CHAPTER 3

DISCIPLINARY PROCEEDINGS

Section 1

Disciplinary measures

Article 19

1. Any failure by the Director or a Deputy Director to comply with his obligations under the Staff Regulations or the Europol Convention, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.

Such a failure shall inter alia include the proven deliberate furnishing of false information as to either his professional ability or the requirements of Article 24(2) of the Staff Regulations, where the false information furnished was a determining factor in his being engaged.

2. Disciplinary measures shall take one of the following forms:

- (a) written warning;
- (b) reprimand;
- (c) reduction of his basic monthly salary up to a maximum amount of 25 % for a period not exceeding six months;
- (d) removal from post and, where appropriate, reduction or withdrawal of entitlement to retirement pension, but the consequences of this measure shall not affect the dependants of the Director or the Deputy Director.

3. Article 88(3) to (6) of the Staff Regulations shall apply in the case of disciplinary proceedings against the Director or a Deputy Director.

Article 20

1. The Director shall have the right to issue a written warning or a reprimand to the Deputy Director on his own initiative without consulting a Disciplinary Board. The person concerned shall be informed of this in writing, and be heard by the Director before such action is taken.

2. The Management Board shall have the right to issue a written warning or a reprimand to the Director on its own initiative without consulting a Disciplinary Board. The person concerned shall be informed of this in writing, and be heard by the Management Board before such action is taken.

Article 21

Where an allegation of serious misconduct is made against the Director or a Deputy Director, whether this amounts to failure to carry out his official duties or to a breach of law, the Management Board, acting by a two-thirds majority and after having given the person concerned the opportunity to state his views, may order that he be suspended forthwith, under the conditions laid down by Article 90 of the Staff Regulations. Such decision shall be in writing and duly reasoned.

Section 2

Special provisions for the case provided for in Article 29(6) Europol Convention

Article 22

1. Without prejudice to Article 20, the Council may decide to order any of the disciplinary measures indicated in Article 19(2) after the disciplinary proceedings provided for in this section have been completed.

2. Disciplinary proceedings shall be initiated by decision of the Management Board on its own initiative, after hearing the person concerned.

3. A Disciplinary Board shall be set up by the Management Board. It shall prepare the Management Board's opinion on the need for disciplinary measures indicated in Article 19(2) to be submitted to the Council in accordance with Article 29(6) of the Europol Convention.

4. The Disciplinary Board shall consist of the following members: a representative of the Member State holding the Presidency of the Management Board at the time when the Management Board took the decision as referred to in paragraph 2, a representative of the Member State which held the Presidency immediately preceding, a representative of the Member State holding the Presidency immediately afterwards, and representatives of two other Member States, to be determined by lot. The representatives shall be of a higher or comparable rank or level of seniority as the Director or Deputy Director concerned, and shall not at the same time be a member of the Management Board. Where possible, they shall have experience with conducting disciplinary proceedings.

5. The Chairman of the Board shall also be determined by lot by the Management Board, but may not be the representative of the Member State holding the Presidency.

6. Within five days of the formation of the Disciplinary Board, the Director or Deputy Director charged may make an objection in respect of any of its members.

Within the same period, any member of the Disciplinary Board may request to be excused from serving, provided he has legitimate grounds.

The Management Board shall, where it decides to uphold the objection or to grant the request to be excused, by drawing lots, fill any vacancies arising ensuring that there is no more than one representative per Member State in the Disciplinary Board.

7. The members of the Disciplinary Board indicated pursuant to paragraphs 4 or 6 shall serve as members of the Board until the tasks of the Disciplinary Board in the disciplinary procedure have been completed.

8. However, where in the course of the disciplinary procedure there is reason to believe that a member of the Disciplinary Board has a personal relationship with the Director or the Deputy Director charged or is physically unable to fulfil his duties, he shall not participate in the disciplinary process. In such cases, the Member State which presented the member shall propose to the Management Board that he be replaced and shall assign another representative to serve as member of the Disciplinary Board.

9. Members of the Disciplinary Board shall be completely independent in the performance of their duties. The proceedings of the Board shall be secret.

10. The secretariat of the Management Board shall provide the secretariat of the Disciplinary Board.

Article 23

1. A report shall be submitted to the Disciplinary Board by the Management Board, stating clearly the facts complained of and, where appropriate, the circumstances in which they arose.

2. The Management Board shall appoint a representative in the disciplinary proceedings. He shall not be a member of the disciplinary board.

3. The report referred to in paragraph 1 shall be communicated to the Chairman of the Disciplinary Board, who shall bring it to the attention of the members of the board and the Director or Deputy Director charged.

4. On receipt of the said report, the Director or Deputy Director charged shall have the right to see his complete personal file and to take copies of all documents relevant to the proceedings.

Article 24

At the first meeting of the Disciplinary Board, the members shall indicate one of its members to prepare a general report on the matter.

Article 25

1. The Director or Deputy Director charged shall have not less than 15 days from the date of receipt of the report initiating disciplinary proceedings to prepare his defence.

2. When the Director or Deputy Director appears before the Disciplinary Board he shall have the right to submit observations in writing or orally, to call witnesses and to be assisted in his defence by a person of his own choice.

Article 26

The Management Board shall likewise have the right to call witnesses.

Article 27

1. If the Disciplinary Board requires further information concerning the facts complained of or the circumstances in which they arose, it may order an inquiry in which each side may submit its case and reply to the case of the other side.

2. The inquiry shall be conducted by the rapporteur. For the purpose of inquiry, the Disciplinary Board may call for the submission or productions of any documents relating to the matter before it.

Article 28

After consideration of the documents submitted and having regard to any statements made orally or in writing by the Director or Deputy Director concerned and by witnesses, and to the results of any inquiry undertaken, the Disciplinary Board shall, by majority vote, deliver a duly reasoned opinion on the disciplinary measure appropriate to the facts complained of and transmit the opinion to the Management Board and to the Director or Deputy Director concerned within one month of the date on which the matter was referred to the Disciplinary Board. This time limit shall be three months where an inquiry has been held on the instructions of the Board.

Article 29

1. The secretariat shall keep minutes of the meetings of the Disciplinary Board.

2. Witnesses shall sign the minute recording their depositions.

3. The duly reasoned opinion provided for in Article 28 shall be signed by all members of the Disciplinary Board.

Article 30

Costs incurred on the initiative of the Director or Deputy Director concerned in the course of disciplinary proceedings, in particular fees due to a person chosen for his defence, shall be borne by the Director or Deputy Director concerned where the disciplinary proceedings result in any of the measures provided for in Article 19(2)(c) or (d).

Article 31

1. Upon receipt of the report by the Disciplinary Board, the Management Board shall decide whether an opinion is to be submitted to the Council in accordance with Article 29(6) of the Europol Convention, and, if so, deliver a duly reasoned opinion on the disciplinary measure, indicated in Article 19(2), appropriate to the facts complained of.

2. The Management Board shall take the decision referred to in paragraph 1 as soon as possible. Before drawing up its opinion it shall give the Director or Deputy Director concerned the opportunity to be heard.

3. The Chairman of the Management Board shall forward the opinion of the Management Board to the Council as envisaged by Article 29(6) of the Europol Convention, and a copy thereof to the Director or Deputy Director charged.

4. Should the Management Board decide that no opinion is to be submitted to the Council in accordance with Article 29(6) of the Europol Convention, it shall have the right to issue a written warning or a reprimand in accordance with Article 20.

Article 32

1. Upon receipt of the opinion from the Management Board, the Council shall, in accordance with Article 29(6) of the Europol Convention, after having given the Director or Deputy Director concerned the opportunity to state his views, decide whether a disciplinary measure is to be applied.

2. Should the Council decide that a disciplinary measure as referred to in Article 19(2) is to be applied, it shall indicate in its decision the precise nature of the measure as well as the date from which the measure is to be applied. The decision shall be duly reasoned and shall be notified to the person concerned and to Europol.

3. The Council shall take the decision referred to in paragraph 1 without undue delay.

Article 33

1. Where there are new facts which are supported by relevant evidence, disciplinary proceedings may be reopened upon request by the Director or the Deputy Director concerned.
2. Where the final disciplinary measure is taken by the Director, the request shall be submitted to the Director. The Director shall decide whether to grant the Deputy Director's request.
3. Where the final disciplinary measure is taken by the Management Board, the request shall be submitted to the Management Board. The Management Board shall decide whether to grant the Director's or the Deputy Director's request.
4. Where the final disciplinary measure is taken by the Council, the request shall be submitted to the Management Board. The Management Board shall decide whether to submit an opinion to the Council advising the Council to grant the Director's or the Deputy Director's request.

CHAPTER 4

APPEALS*Article 34*

1. Complaints of the Director or a Deputy Director pursuant to Article 92(2) of the Staff Regulations shall be submitted to, and treated by, the authority which took the definitive decision in the matter.
2. Appeals from the Director or a Deputy Director to the Court of Justice of the European Communities as referred to in Article 93 of the Staff Regulations shall lie only if the authority which took the definitive decision in the matter has previously had a complaint submitted to it pursuant to paragraph 1 and that complaint has been rejected by

express decision or implicit decision. However, the person concerned may, after submitting a complaint pursuant to paragraph 1, immediately file an appeal with the Court of Justice of the European Communities, under the conditions set out in Article 93(4) of the Staff Regulations.

CHAPTER 5

SPECIAL PROVISIONS CONCERNING THE DIRECTOR*Article 35*

1. Wherever the Director wishes to exercise a right conferred upon him by virtue of the Staff Regulations with respect to himself, and the power to take a decision in the matter under the Staff Regulations is conferred upon the Director, he shall inform the chairman of the Management Board thereof. In such cases the Chairman may decide to put the case to the Management Board for final decision.
2. Where the Director is temporarily unable to exercise his functions for a period of more than one month, or the position of Director is vacant, his functions shall be exercised by a Deputy Director. For this purpose the Management Board shall indicate the order of replacement each time a new Deputy Director has been nominated.'

Article 2

This Act shall enter into force on the day after its adoption.

Article 3

This Act shall be published in the *Official Journal of the European Communities*.

Done at Brussels on 19 December 2002.

For the Council
The President
 L. ESPERSEN