

THE COLLEGE OF EUROJUST

DECISION TO ADOPT RULES REGARDING PUBLIC ACCESS TO EUROJUST DOCUMENTS

(adopted on 13 July 2004)

THE COLLEGE OF EUROJUST,

Having regard to the Council Decision of 28 February 2002 (2002/187/JHA) setting up Eurojust with a view to reinforcing the fight against serious crime¹, amended by Decision of 18 June 2003² (2003/659/JHA) (hereinafter referred to as the “Eurojust Decision”), and in particular Article 39 thereof,

Having regard to the proposal by the Administrative Director of 12 January 2004 and his revised Proposal of 7 July 2004.

Whereas:

1. According to Article 39 of the Eurojust Decision, on the basis of a proposal by the Administrative Director, the College shall adopt rules for access to Eurojust documents, taking into account the principles and limitations stated in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.
2. The second subparagraph of Article I of the Treaty on European Union

(hereinafter referred to as “the EU Treaty”) enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

3. Openness enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty, in Article 255 of the Treaty establishing the European Community (hereinafter referred to as “the EC Treaty”) and in Article 42 of the Charter of Fundamental Rights of the European Union.
4. In accordance with Article 41(1) of the EU Treaty, the right of access also applies to documents relating to police and judicial cooperation in criminal matters.

¹ OJ L 63, 06.03.2002, p.1

² OJ L 245, 29.09.2003, p.44

5. Regulation (EC) No 1049/2001 of 30 May 2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (hereinafter referred to as "Regulation 1049/2001") lays down the general principles and limits governing the right of access to European Parliament, Council and Commission documents. Article 39 of the Eurojust Decision refers to the principles and limits stated in this Regulation.

6. In principle, all documents should be accessible to the public. However, public and private interests should be protected, where necessary, and, in particular, the protection of personal data and the applicable rules on professional secrecy should be taken into account.

7. In order to safeguard the ability to carry out its tasks, the rules must reflect the specific requirements of Eurojust as a judicial cooperation body in criminal matters, acting as a College or through its National Members. It should take full account of the sensitive operations carried out by Eurojust, in particular in relation to investigations and prosecutions. In any case, the judicial function as foreseen in the Eurojust Decision must not be affected.

8. These rules are without prejudice to Article 19 of the Eurojust Decision on the right of access to personal data.

Has adopted these rules:

Article 1

Purpose

The purpose of these rules is:

- (a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to Eurojust documents in such a way as to ensure the widest possible access to documents;
- (b) to establish practical rules ensuring the easiest possible exercise of this right; and
- (c) to promote good administrative practice on access to documents.

Article 2

Beneficiaries and scope

- 1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of Eurojust, subject to the principles, conditions and limits defined by these rules.
- 2. These rules shall apply to all documents held by Eurojust, that is to say, documents drawn up or received by it and in its possession, concerning matters relating to the policies, activities and decisions falling within Eurojust's sphere of responsibility.
- 3. The Joint Supervisory Body might want to specify further these rules in its own rules of procedure.
- 4. Classified documents as defined in Article 3(e) shall be subject to special treatment in accordance with Article 10.

Article 3

Definitions

For the purpose of these rules:

- (a) "Eurojust document" or "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or decisions falling within Eurojust's sphere

of responsibility;
audiovisual recording) concerning a matter relating to the policies, activities and
(b) “third party” shall mean any natural or legal person, or any entity outside Eurojust, including the Member States, other institutions, bodies and agencies of the European Union, international organisations and third countries;

(c) “case-related documents” shall mean documents which relate to investigations or prosecutions in which Eurojust is involved in accordance with the Eurojust Decision;

(d) “professional secrecy” shall mean the confidentiality obligations as stated in Article 25 of the Eurojust Decision and the rules of the Member States regarding secrecy of investigation and prosecution; and

(e) “classified documents” shall mean documents that have been classified by Eurojust in accordance with its security rules in order to protect essential interests of Eurojust, the European Union or one or

more Member States, third countries or international organisations.

Article 4

Exceptions

1. Eurojust shall refuse access to a document where disclosure would undermine the protection of:

(a) the public interest as regards:

- public security,
- defence and military matters,
- international relations,
- financial, monetary or economic policy of the Community or a Member State,
- fulfillment of Eurojust’s tasks in reinforcing the fight against serious crime,
- national investigations and

prosecutions in which Eurojust assists, or
- fulfillment of the applicable rules on professional secrecy; or

(b) the privacy and integrity of the individuals, in particular in accordance with the relevant international and European legislation regarding the protection of personal data and the Eurojust rules on data protection.

2. Eurojust shall refuse access to a document where disclosure would undermine the protection of:

- commercial interests of a natural or legal person, including intellectual property,
- court proceedings and legal advice, or
- the purpose of inspections, investigations and audits, other than those mentioned under paragraph 1(a),

unless there is an overriding public interest in disclosure.

3. Access to a document, drawn up for internal use or received by Eurojust, which relates to a matter where the decision has not been taken by Eurojust, shall be refused if disclosure of the document would undermine Eurojust’s decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within Eurojust shall be refused even after the decision has been taken if disclosure of the document would undermine Eurojust’s decision-making process, unless there is an overriding public interest in disclosure.

4. As regards third-party documents, Eurojust shall consult the third party in accordance with the procedure established

in Article 9 with a view to assessing whether an exception as described in paragraph 1, 2 or 3 is applicable. Notwithstanding Article 9(3)(c), if the third party document originates from a Member State, Eurojust will not disclose the document without that Member State's prior agreement.

5. Notwithstanding paragraph 4, Eurojust shall not disclose any case-related documents if any of the National Members concerned decides that any of the conditions described in paragraph 1 or 2 of this Article apply.

6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released. In cases where the protection of the privacy or integrity of individuals is at stake, Eurojust may decide to give access to the requested documents after having rendered them anonymous. This decision will be taken after having considered whether it would still be reasonably possible for the person requesting access or for a third party to identify the individual concerned in the light of the specific circumstances of the case even on the basis of the documents rendered anonymous. The Data Protection Officer shall be consulted in these cases.

7. The exceptions as laid down in paragraphs 1 to 5 shall only apply to the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to integrity or privacy of individuals or commercial interests and in the case of classified documents, the exceptions may, if necessary, continue to apply after this period.

Article 5

Eurojust documents in the Member States

When a Member State handles a request for access to documents originating from Eurojust, any consultation from the Member State shall be sent to the Administrative Director with a view to assessing whether, pursuant to the applicable rules, the documents should or should not be disclosed. The Administrative Director shall promptly reply. If the consultation concerns a case-related document, a response in favor of release of the document shall only be given with the consent of all the National Members concerned.

Article 6

Applications

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 31(2) of the Eurojust Decision and in a sufficiently precise manner to enable Eurojust to identify the document. They should be addressed to the Head of Legal Service of Eurojust or to an electronic mailbox that will be created for that purpose on Eurojust's website on the Internet. The applicant is not obliged to state reasons for the application.

2. If an application is not sufficiently precise, Eurojust shall invite the applicant to provide additional information making it possible to identify the documents requested; the deadline for reply as established in Article 7 shall run only from the time when Eurojust has this information.

3. In the event of an application relating to a very long document or to a very large number of documents, Eurojust may confer with the applicant, with a view to finding a fair solution.

4. Eurojust shall provide information and assistance to citizens on how and where applications for access to documents can be made.

Article 7

Processing of initial applications

1. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant, unless the answer can be sent by return post. The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.

2. The Head of Legal Service shall request the administrative unit holding the document, or, if the application concerns a case-related document, the National Members concerned, whether one of the exceptions provided for by Article 4 applies. The requested party shall state in writing whether the documents can be released, and, in the case of refusal, the reason for refusal. Case-related documents shall only be released with the written consent of all the National Members concerned. If the document requested is classified under Eurojust's security rules, Article 10 shall apply.

3. Within 30 working days from registration of the application, the Head of Legal Service of Eurojust shall either grant access to the document requested in accordance with Article 11 within that period or, in a written reply, state the reasons for the total or partial refusal and inform the applicant of his or her right to make a confirmatory application in accordance with Article 8.

4. In the event of a total or partial refusal, the applicant may, within 30 working days of receiving Eurojust's reply, make a confirmatory application to the Administrative Director asking Eurojust to reconsider its position.

5. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 15

working days, provided that the applicant receives reasoned notice in advance.

6. Failure by Eurojust to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 8

Processing of confirmatory applications

1. A confirmatory application shall be handled promptly. Within 30 working days from registration of such an application, the Administrative Director of Eurojust shall either grant access to the document requested in accordance with Article 11 within that period or, in a written reply, state the reasons for the total or partial refusal. The decision will be taken in accordance with the procedure laid down in Article 7(2).

2. The applicant shall be notified in writing of the decision, where appropriate by electronic means. Eurojust will inform the applicant of the remedies open to him or her.

3. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 15 working days, provided that the applicant receives reasoned notice in advance.

4. Failure by Eurojust to reply within the prescribed time limit shall be considered as a negative reply.

Article 9

Consultations

1. When Eurojust receives an initial or confirmatory application for access to a document which it holds but which originates from a third party, the Head of Legal Service or the Administrative Director, respectively, shall proceed

according to Articles 7(2) or 8(1), respectively.

2. If access to the documents must be refused, the Head of Legal Service or the Administrative Director, respectively, shall send the negative answer to the applicant without consulting the third-party author.

3. The Head of Legal Service or the Administrative Director, respectively, shall grant access without consulting the third-party author where:

(a) the document requested has already been disclosed either by its author or under Regulation 1049/2001 or similar provisions;

(b) the document does not originate from a Member State, the examination of the request according to paragraph 1 does not give reason for a refusal and the disclosure, or partial disclosure, of its contents would not obviously affect the interests of the third party; or

(c) the respective National Member has agreed in writing with the disclosure.

4. In all other cases, the Head of Legal Service or the Administrative Director, respectively, shall consult the third-party author.

5. The third-party author consulted shall have a deadline for reply which enables Eurojust to abide by its own deadlines for reply but shall be no shorter than five working days. In the absence of an answer by the third-party author other than a Member State within the prescribed period, or if the third party is untraceable or not identifiable, Eurojust shall proceed with the application in accordance with Article 4, taking into account the legitimate interests of the third party on the basis of the information at its disposal. In the absence of an answer by a Member State within the deadline, Eurojust shall refuse access to documents.

6. If Eurojust intends to give access to a document originating from a third party

other than a Member State against the explicit opinion of the author, it shall inform the author of its intention to disclose the document after a ten-working-day period.

Article 10

Treatment of classified documents

1. Classified documents shall be released only with the consent of the originator.

2. If Eurojust decides to totally or partially refuse access to a classified document it shall give the reasons for its decision in a manner which does not harm the interests protected by Article 4.

Article 11

Access following an application

1. The applicant shall have access to documents either by consulting them on the spot or by receiving a copy, where available in electronic form, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies (0,10 € per page plus carriage costs). Consultation on the spot, copies of less than 20 A4 pages and direct access in electronic form shall be free of charge.

2. If a document has already been released by Eurojust or the third party concerned and is easily accessible to the applicant, Eurojust may fulfill its obligation of granting access to documents by informing the applicant how to obtain the requested document.

3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) in accordance with the applicant's preference.

Article 12

Information

Eurojust shall take the requisite measures to inform the public of the rights they enjoy under these rules.

Article 13

Right of access to personal data

These rules shall be without prejudice to the right of individuals to have access to personal data concerning them, as stated in Article 19 of the Eurojust Decision and in the rules of procedure on data protection.

Article 14

Reproduction of documents

These rules shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

Article 15

Report

Eurojust shall include in its annual report the number of cases in which it refused to grant access to documents and the reasons for such refusals.

Article 16

Entry into force

These rules shall enter into force on the date of their adoption by the College of Eurojust.

Done on behalf of the College of Eurojust at The Hague, on 13 July 2004.

Michael G Kennedy
President of the College