

## II

(Non-legislative acts)

## RULES OF PROCEDURE

### COLLEGE DECISION 2020-04

of 15 July 2020

#### **on internal rules concerning restrictions of certain data subject rights in relation to the processing of personal data in the framework of activities carried out by Eurojust**

THE COLLEGE OF EUROJUST,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC <sup>(1)</sup> (hereinafter referred to as 'the Regulation'), and in particular Article 25 thereof,

Having regard to the opinion of the European Data Protection Supervisor ('EDPS') of 25 June 2020,

Whereas:

- (1) Eurojust is empowered to conduct administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings, in accordance with the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ('Staff Regulations') <sup>(2)</sup>, and with the Eurojust Decision of 23 September 2013 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary procedures. If required, it also notifies cases to OLAF, in accordance with College Decision 2020-03 of 15 July 2020 concerning the terms and conditions for internal investigations at Eurojust in relation with the prevention of fraud, corruption and any illegal activity detrimental to the interests of the Union.
- (2) Eurojust staff members are under an obligation to report potentially illegal activities, including fraud and corruption, which are detrimental to the interests of the Union. Staff members are also obliged to report conduct relating to the discharge of professional duties which may constitute a serious failure to comply with the obligations of officials of the Union. This is regulated by College Decision 2019-02 of 29 January 2019 on Eurojust guidelines on whistleblowing.
- (3) Eurojust has put in place a policy to prevent and deal effectively with actual or potential cases of psychological or sexual harassment in the workplace, as provided for in its Decision of 31 January 2012 on the policy of Eurojust for protecting the dignity of the person and preventing psychological and sexual harassment. The Decision establishes an informal procedure whereby the alleged victim of the harassment can contact the Eurojust's 'confidential' counsellors.
- (4) Eurojust can also conduct investigations into potential breaches of security rules for European Union classified information ('EUCI'), based on College Decision 2016-4 of 22 March 2016 adopting the revised Security Rules of Eurojust, as amended by College Decision 2016-24 of 13 December 2016.

<sup>(1)</sup> OJ L 295, 21.11.2018, p. 39.

<sup>(2)</sup> Regulation (EEC, Euratom, ECSC) No 259/68 of the Council of 29 February 1968 laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities and instituting special measures temporarily applicable to officials of the Commission (OJ L 56, 4.3.1968, p. 1).

- (5) Eurojust is subject to both internal and external audits concerning its activities.
- (6) In the context of such administrative inquiries, audits and investigations, Eurojust cooperates with other Union institutions, bodies, offices and agencies.
- (7) Eurojust can cooperate with third countries' national authorities and international organisations, either at their request or on its own initiative.
- (8) Eurojust can also cooperate with EU Member States' public authorities, either at their request or on its own initiative.
- (9) Eurojust is involved in cases before the Court of Justice of the European Union when it either refers a matter to the Court, defends a decision it has taken and which has been challenged before the Court, or intervenes in cases relevant to its tasks. In this context, Eurojust might need to preserve the confidentiality of personal data contained in documents obtained by the parties or the interveners.
- (10) To fulfil its tasks, Eurojust collects and processes information and several categories of personal data, including identification data of natural persons (e.g. name, surname, date of birth, etc.), contact information (e.g. home address, telephone number, email address, etc.), professional roles and tasks, information on private and professional conduct and performance (behavioural data which may be relevant and limited only to the purpose of ongoing administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings, preliminary activities related to cases of potential irregularities reported to OLAF, processing whistleblowing cases and similar proceedings), and financial data. Eurojust acts as data controller.
- (11) Under the Regulation, Eurojust is therefore obliged to provide information to data subjects on those processing activities and to respect their rights as data subjects.
- (12) Eurojust might be required to reconcile those rights with the objectives of administrative inquiries, audits, investigations and court proceedings. It might also be required to balance a data subject's rights against the fundamental rights and freedoms of other data subjects. To that end, Article 25 of the Regulation (EU) 2018/1725 gives Eurojust the possibility to restrict, under strict conditions, the application of Articles 14 to 22, 35 and 36 of the Regulation, as well as its Article 4 in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 20. Unless restrictions are provided for in a legal act adopted on the basis of the Treaties, it is necessary to adopt internal rules under which Eurojust is entitled to restrict those rights.
- (13) Eurojust might, for instance, need to restrict the information it provides to a data subject about the processing of his or her personal data during the preliminary assessment phase of an administrative inquiry or during the inquiry itself, prior to a possible dismissal of case or at the pre-disciplinary stage. In certain circumstances, providing such information might seriously affect Eurojust's capacity to conduct the inquiry in an effective way, whenever, for example, there is a risk that the person concerned might destroy evidence or interfere with potential witnesses before they are interviewed. Eurojust might also need to protect the rights and freedoms of witnesses as well as those of other persons involved.
- (14) It might be necessary to protect the anonymity of a witness or whistle-blower who has asked not to be identified. In such a case, Eurojust might decide to restrict access to the identity, statements and other personal data of such persons, in order to protect their rights and freedoms.
- (15) It might be necessary to protect confidential information concerning a staff member who has contacted Eurojust confidential counsellors in the context of a harassment procedure. In such cases, Eurojust might need to restrict access to the identity, statements and other personal data of the alleged victim, the alleged harasser and other persons involved, in order to protect the rights and freedoms of all concerned.
- (16) Eurojust should apply restrictions only when they respect the essence of fundamental rights and freedoms, are strictly necessary and are a proportionate measure in a democratic society. Eurojust should give reasons explaining the justification for those restrictions.
- (17) In application of the principle of accountability, Eurojust should keep a record of its application of restrictions.

- (18) When processing personal data exchanged with other organisations in the context of its tasks, Eurojust and those organisations should consult each other on potential grounds for imposing restrictions and the necessity and proportionality of those restrictions, unless this would jeopardise the activities of Eurojust.
- (19) Article 25(6) of the Regulation obliges the controller to inform data subjects of the principal reasons on which the application of the restriction is based and of their right to lodge a complaint with the EDPS.
- (20) Pursuant to Article 25(8) of the Regulation, Eurojust is entitled to defer, omit or deny the provision of information on the reasons for the application of a restriction to the data subject if this would in any way cancel the effect of the restriction. Eurojust should assess on a case-by-case basis whether the communication of the restriction would cancel its effect.
- (21) Eurojust should lift the restriction as soon as the conditions that justify the restriction no longer apply, and assess those conditions on a regular basis.
- (22) To guarantee utmost protection of the rights and freedoms of data subjects and in accordance with Article 44(1) of the Regulation, the DPO should be consulted in due time of any restrictions that may be applied and verify their compliance with this Decision.
- (23) Articles 16(5) and 17(4) of the Regulation provide for exceptions to data subjects' right to information and right of access. If these exceptions apply, Eurojust does not need to apply a restriction under this Decision,

HAS ADOPTED THIS DECISION:

#### *Article 1*

#### **Subject matter and scope**

1. This Decision lays down rules relating to the conditions under which Eurojust may restrict the application of Articles 4, 14 to 22, 35 and 36, pursuant to Article 25 of the Regulation.
2. Subject to the conditions set out in this Decision, the restrictions may apply to the following rights: provision of information to data subjects, right of access, rectification, erasure, restriction of processing, communication of a personal data breach to the data subject or confidentiality of electronic communications.
3. This Decision applies to the processing of personal data by Eurojust insofar as it processes personal data for purposes related to administrative inquiries, pre-disciplinary, disciplinary and suspension proceedings, preliminary activities related to cases of potential irregularities reported to OLAF, processing whistleblowing cases, (formal and informal) procedures of harassment, processing internal and external complaints, conducting internal audits, investigations carried out by the Data Protection Officer in line with Article 45(2) of Regulation (EU) 2018/1725 and (IT) security investigations handled internally or with external involvement (e.g. CERT-EU).
4. The categories of personal data covered by this Decision include identification, contact, behavioural and financial data.
5. Eurojust, as the controller, is represented by the Administrative Director.

#### *Article 2*

#### **Restrictions**

1. Eurojust may restrict the application of Articles 14 to 22, 35 and 36, and Article 4 thereof in so far as its provisions correspond to the rights and obligations provided for in Articles 14 to 20:
  - (a) pursuant to Article 25(1)(b), (c), (f), (g) and (h) of the Regulation, when conducting administrative inquiries, pre-disciplinary, disciplinary or suspension proceedings under Article 86 and Annex IX of the Staff Regulations, and the Eurojust Decision of 23 September 2013 laying down general implementing provisions on the conduct of administrative inquiries and disciplinary procedures, and when notifying cases to OLAF;

- (b) pursuant to Article 25(1)(h) of the Regulation, when ensuring that Eurojust staff members may report facts confidentially where they believe there are serious irregularities, as set out in College Decision 2019-02 of 29 January 2019 on Eurojust guidelines on whistleblowing;
  - (c) pursuant to Article 25(1)(h) of the Regulation, when ensuring that Eurojust staff members are able to report to confidential counsellors in the context of a harassment procedure, as defined in its Decision of 31 January 2012 on the policy of Eurojust for protecting the dignity of the person and preventing psychological and sexual harassment;
  - (d) pursuant to Article 25(1)(c), (g) and (h) of the Regulation, when conducting internal audits in relation to activities or departments of Eurojust;
  - (e) pursuant to Article 25(1)(c), (d), (g) and (h) of the Regulation, when providing or receiving assistance to or from other Union institutions, bodies, offices and agencies or cooperating with them in the context of activities under points (a) to (d) of this paragraph and pursuant to relevant service level agreements, memoranda of understanding and cooperation agreements;
  - (f) pursuant to Article 25(1)(c), (g) and (h) of the Regulation, when providing or receiving assistance to or from third countries national authorities and international organisations or cooperating with such authorities and organisations, either at their request or on its own initiative;
  - (g) pursuant to Article 25(1)(c), (g) and (h) of the Regulation, when providing or receiving assistance and cooperation to and from EU Member States' public authorities, either at their request or on its own initiative;
  - (h) pursuant to Article 25(1)(e) of the Regulation, when processing personal data in documents obtained by the parties or interveners in the context of proceedings before the Court of Justice of the European Union;
  - (i) pursuant to Article 25(1)(i) of the Regulation, when processing of personal data is necessary for enforcement of civil law claims.
2. Any restriction shall respect the essence of fundamental rights and freedoms and be necessary and proportionate in a democratic society.
3. A necessity and proportionality test shall be carried out on a case-by-case basis before restrictions are applied. Restrictions shall be limited to what is strictly necessary to achieve their objective.
4. For accountability purposes, Eurojust shall draw up a record describing the reasons for restrictions that are applied, which grounds among those listed in paragraph 1 apply and the outcome of the necessity and proportionality test. Those records shall be part of a register, which shall be made available on request to the EDPS. Eurojust shall prepare periodic reports on the application of Article 25 of the Regulation.
5. When processing personal data received from other organisations in the context of its tasks, Eurojust shall consult those organisations on potential grounds for imposing restrictions and the necessity and proportionality of the restrictions concerned, unless this would jeopardise the activities of Eurojust.

### Article 3

#### **Risks to the rights and freedoms of data subjects**

1. Assessments of the risks to the rights and freedoms of data subjects of imposing restrictions and details of the period of application of those restrictions shall be registered in the record of processing activities maintained by Eurojust under Article 31 of the Regulation. They shall also be recorded in any data protection impact assessments regarding those restrictions conducted under Article 39 of the Regulation.
2. Whenever Eurojust assesses the necessity and proportionality of a restriction it shall consider the potential risks to the rights and freedoms of the data subject. In case where Eurojust considers to apply a restriction, the risk to the rights and freedoms of the data subject shall be weighed, in particular, against the risk to the rights and freedoms of other data subjects and the risk of cancelling the effect of Eurojust's investigations or procedures for example by destroying evidence. The risks to the rights and freedoms of the data subject concern primarily, but are not limited to, reputational risks and risks to the right of defence and the right to be heard.

*Article 4***Safeguards and storage periods**

1. Eurojust shall implement safeguards to prevent abuse and unlawful access or transfer of the personal data in respect of which restrictions apply or could be applied. Such safeguards shall include technical and organisational measures and be detailed as necessary in Eurojust internal decisions, procedures and implementing rules. The safeguards shall include:

- (a) a clear definition of roles, responsibilities and procedural steps;
- (b) all electronic data shall be stored in a secure IT application, which prevents unlawful and accidental access or transfer of electronic data to unauthorised persons, according to Eurojust's security standards, as well as in specific electronic folders accessible only to authorised staff. Appropriate levels of access shall be granted individually;
- (c) paper documents shall be kept in secured cupboards and only accessible to authorised staff;
- (d) due monitoring of restrictions and a periodic review of their application;
- (e) all persons having access to the data are bound by the obligation of confidentiality.

The reviews referred to in point (d) shall be conducted at least every six months.

2. Restrictions shall be lifted as soon as the circumstances that justify them no longer apply.

3. The retention period of the personal data referred to in Article 1(4) shall be no longer than necessary and appropriate for the purposes for which the data are processed. The personal data shall be retained in accordance with the applicable Eurojust retention rules set in Article 18 and Annex of the Rules of Procedure on the Processing and Protection of Personal Data at Eurojust<sup>(?)</sup>, to be defined in the data protection records maintained under Article 31 of the Regulation. At the end of the retention period, the personal data shall be deleted, anonymised or transferred to archives in accordance with Article 13 of the Regulation.

*Article 5***Involvement of the Data Protection Officer**

1. Eurojust DPO shall be informed without undue delay whenever data subject rights are restricted in accordance with this Decision. He or she shall be given access to the associated records and any documents concerning the factual or legal context.

2. Eurojust DPO may request a review of the application of a restriction. Eurojust shall inform its DPO in writing of the outcome of the review.

3. Eurojust shall document the involvement of the DPO in the application of restrictions, including what information is shared with him or her.

*Article 6***Information to data subjects on restrictions of their rights**

1. Eurojust shall include a section in the data protection notices published on its website/intranet providing general information to data subjects on the potential for restriction of data subjects' rights pursuant to Article 2(1). The information shall cover which rights may be restricted, the grounds on which restrictions may be applied and their potential duration.

2. Eurojust shall inform data subjects individually, in writing and without undue delay of ongoing or future restrictions of their rights. Eurojust shall inform the data subject of the principal reasons on which the application of the restriction is based, of their right to consult the DPO with a view to challenging the restriction and of his/her right to lodge a complaint with the EDPS.

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(?) Rules of Procedure on the protection and processing of personal data at Eurojust (OJ L 50, 24.2.2020, p. 10).

3. Eurojust may defer, omit or deny the provision of information concerning the reasons for a restriction and the right to lodge a complaint with the EDPS for as long as it would cancel the effect of the restriction. Assessment of whether this would be justified shall take place on a case-by-case basis. As soon as it would no longer cancel the effect of the restriction, Eurojust shall provide the information to the data subject.

#### Article 7

### Communication of a personal data breach to the data subject

1. Where Eurojust is under an obligation to communicate a data breach under Article 35(1) of the Regulation, it may, in exceptional circumstances, restrict such communication wholly or partly. It shall document in a note the reasons for the restriction, the legal ground for it under Article 2 and an assessment of its necessity and proportionality. The note shall be communicated to the EDPS at the time of the notification of the personal data breach.

2. Where the reasons for the restriction no longer apply, Eurojust shall communicate the personal data breach to the data subject concerned and inform him or her of the principal reasons for the restriction and of his or her right to lodge a complaint with the EDPS.

#### Article 8

### Confidentiality of electronic communications

1. In exceptional circumstances, Eurojust may restrict the right to confidentiality of electronic communications under Article 36 of the Regulation. Such restrictions shall comply with Directive 2002/58/EC of the European Parliament and of the Council (\*).

2. Where Eurojust restricts the right to confidentiality of electronic communications, it shall inform the data subject concerned, in its reply to any request from the data subject, of the principal reasons on which the application of the restriction is based and of his or her right to lodge a complaint with the EDPS.

3. Eurojust may defer, omit or deny the provision of information concerning the reasons for a restriction and the right to lodge a complaint with the EDPS for as long as it would cancel the effect of the restriction. Assessment of whether this would be justified shall take place on a case-by-case basis.

#### Article 9

### Entry into force

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Done at The Hague, 15 July 2020.

For the College of Eurojust  
Ladislav HAMRAN  
President of Eurojust

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(\*) Directive 2002/58/EC of the European Parliament and of the Council of 12 July 2002 concerning the processing of personal data and the protection of privacy in the electronic communications sector (Directive on privacy and electronic communications) (OJ L 201, 31.7.2002, p. 37).