



**College Decision 2021-12
of 7 December 2021**

**on the adoption of rules for implementing Regulation (EC) No 1049/2001
on public access to documents at Eurojust**

THE COLLEGE OF EUROJUST,

Having regard to the Treaty on the Functioning of the European Union, in particular Article 15(3) thereof,

Having regard to Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust) and replacing and repealing Council Decision 2002/187/JHA (hereinafter referred to as ‘the Eurojust Regulation’)¹ and in particular Article 74 thereof.

Whereas:

- (1) In accordance with Article 42 of the Charter of Fundamental Rights of the European Union, 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 European Parliament, Council and Commission documents.
- (2) Article 74(1) of the Eurojust Regulation foresees that Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents² (hereinafter referred to as ‘Regulation (EC) No 1049/2001’) shall apply to documents held by Eurojust.
- (3) The College adopted on 9 July 2020 College Decision 2020-02 implementing Regulation (EC) No 1049/2001 on public access to documents. The College subsequently identified the need to make certain changes to this College Decision, in particular Articles 6 and 7 thereof.
- (4) In principle, all documents should be accessible to the public. However, public and private interests should be protected by way of exceptions, where necessary, and in particular, the protection of personal data should be taken into account.
- (5) In order to safeguard the ability to carry out its tasks, the rules must reflect the specific requirements of Eurojust as a European Union Agency for criminal justice cooperation, acting as a College or through its National Members. The rules must take full account of the sensitive operations carried out by Eurojust, in particular in relation to investigations and prosecutions,

HAS DECIDED AS FOLLOWS:

¹ OJ L 295, 21.11.2018, p. 138.

² OJ L 145, 31.5.2001, p. 43.

Article 1

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 audiovisual recording) held by Eurojust concerning a matter relating to the policies, activities and decisions falling within Eurojust’s sphere of responsibility;
- (b) “Third party” shall mean any natural or legal person, or any entity outside Eurojust, including the Member States, other Union or non-Union institutions and bodies and third countries;
- (c) “EU classified document” shall mean any document containing EU classified information whether such document originates from Eurojust or is received by Eurojust from outside, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of the European Union, or one or more Member States or Eurojust.
- (d) “Sensitive non-classified document” shall mean any document Eurojust must protect because of legal obligations laid down in the Treaties or in acts adopted in implementation thereof, and/or because of its sensitivity.

Article 2

Purpose

The present Decision prescribes the principles, conditions and limits under which the public shall be granted access to documents held by Eurojust in such a way as to ensure the widest possible access to documents.

Article 3

Beneficiaries and scope

1. Citizens of the Union and natural or legal persons residing or having its registered office in a Member State shall exercise their right of access to Eurojust documents under Regulation (EC) No 1049/2001 in accordance with these rules.
2. Eurojust may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.
3. 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.
4. Requests for information fall outside the scope of these rules as they are addressed and will be handled in accordance with the Eurojust Code of Good Administrative Behaviour.
5. These rules are without prejudice to Article 31 of the Eurojust Regulation and Articles 17 and 80 of Regulation (EU) 2018/1725 on the right of access of the data subject to information on whether personal data relating to him or her are processed by Eurojust.

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, in particular to ensure the proper fulfilment of Eurojust’s mandate to strengthen coordination and cooperation between national investigating and prosecuting authorities in relation to serious crime which Eurojust is competent to deal with in accordance with Article 3(1) and (3) of the Eurojust Regulation,
 - defence and military matters,
 - international relations,
 - the financial, monetary or economic policy of the Union or a Member State.
 - (b) the privacy and integrity of the individual, in particular in accordance with Union legislation regarding the protection of personal data.
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,
 - the purpose of inspections, investigations and audits,unless there is an overriding public interest in disclosure.
3. Access to a document, drawn up by Eurojust 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 seriously undermine the decision-making process of Eurojust, 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 seriously undermine the decision-making process of Eurojust, unless there is an overriding public interest in disclosure.
4. As regards third party documents, Eurojust shall consult the third party with a view to assessing whether an exception in paragraph 1 or 2 is applicable, unless it is clear that the document shall or shall not be disclosed, as provided for in Article 8(3) of these Rules. The third party shall provide its assessment taking into account the deadline referred to in Article 6 of these Rules.
5. A Member State may request Eurojust not to disclose a document originating from the Member State without its prior agreement, on the basis of the exceptions listed in paragraphs 1 and 2 of this Article.
6. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.
7. The exceptions as laid down in paragraph 1 to 3 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 privacy or integrity of individuals or commercial interests and in the case of classified and

sensitive non-classified documents, the exceptions may, if necessary, continue to apply after this period.

Article 5

Applications for access

1. Applications for access to a document shall be sent to Eurojust in any written form, preferably in electronic form, in one of the languages referred to in Article 55 of the Treaty on European Union and in a sufficiently precise manner to enable Eurojust to identify the document. The applicant is not obliged to state reasons for the application. The address to which applications are to be sent shall be published in the practical guide referred to in Article 12(3) of these Rules.
2. If an application is imprecise, as defined in Article 6(2) of Regulation (EC) No 1049/2001, Eurojust shall invite the applicant to provide additional information to clarify the application and shall assist the applicant in doing so. The deadline to reply as set in Article 6(2) of these Rules shall start to run only after Eurojust has received the information necessary to identify the document in question and shall be communicated to the applicant.
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 informally, 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 6

Processing of initial applications

1. As soon as possible after the application is registered, an acknowledgement of receipt shall be sent to the applicant, unless the reply can be sent immediately. The acknowledgment of receipt shall mention the deadline for Eurojust to reply to the initial application. The acknowledgement of receipt and the reply shall be sent in writing, preferably in electronic form.
2. Within 15 working days from registration of the application, Eurojust shall either grant access to the document requested and provide access in accordance with Article 9 of these Rules 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 paragraph 7 of this Article.
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 2 of this Article may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.
4. The decision on the application shall be taken,

- (a) by the **President**, where the application concerns documents related to the operational functions of the College³, documents related to the administrative functions of the College or of the Executive Board⁴,
- (b) by the **national member(s)** concerned, where the application concerns documents related to the operational functions of the national members (casework)⁵,
- (c) by the **Head of the Legal Affairs Unit** in all other cases.

In all instances, the applicant shall be informed via the Head of the Legal Affairs Unit.

- 5. The decision shall be notified to the applicant in writing, preferably by electronic means.
- 6. Where the document requested is directly accessible as defined in Article 12 of Regulation (EC) No 1049/2001, the applicant shall be notified as such together with details of how to retrieve the document in question.
- 7. Any reply by Eurojust refusing access to a document or part of a document shall state the reasons for the total or partial refusal based on the exceptions listed in Article 4 of these Rules. The reply shall inform the applicant that he/she may, within 15 working days of receiving Eurojust's reply, submit a confirmatory application asking Eurojust to reconsider its position.
- 8. Failure from Eurojust to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

Article 7

Processing of confirmatory applications

- 1. Within 15 working days from registration of the confirmatory application, Eurojust shall reconsider its position and either grant access to the document requested and provide access in accordance with Article 11 of these Rules within that period or, in a written reply, state the reasons for the total or partial refusal.
- 2. The decision on the confirmatory application shall be taken,
 - (a) by the **College**, where the application concerns documents related to the operational functions of the College⁶, documents related to the operational functions of the national

³ Documents linked to the operational functions of Eurojust referred to in Article 5(2)(j) of the Eurojust Regulation (reports, policy papers, guidelines for the benefit of national authorities and opinions pertaining to operational work of Eurojust, whenever those documents are of a strategic nature), which are prepared by the College Working Groups in accordance with their Work Plan or are assigned to them by the College.

⁴ Documents related to the administrative functions of the College as referred to in Article 5(2) of the Eurojust Regulation or of the Executive Board as referred to in Articles 16(3), 36(4), 37(5), 38(4), 63(5) and (6) and 64(1) of the Eurojust Regulation. Moreover, the Executive Board can be competent on administrative matters upon delegation by the College in accordance with Article 5(4) of the Eurojust Regulation.

⁵ Documents linked to the operational functions of Eurojust referred to in Articles 4 and 5(2)(a) to (c) of the Eurojust Regulation, i.e. operational cases and/or documents containing personal data and operational details linked specifically to one or more operational cases (including legal opinions on case-specific conflicts of jurisdiction referred to in Article 4(4) of the Eurojust Regulation and on difficulties encountered in specific operational cases referred to in Article 4(5) of the Eurojust Regulation; case notes and other case-related documents in support of a specific operational case, in accordance with Articles 4(2) and 4(3) of the Eurojust Regulation.

⁶ See footnote 4.

members (casework)⁷ or documents related to the administrative functions of the College or of the Executive Board⁸, or

(b) by the **Administrative Director** in all other cases.

In both instances, the applicant shall be informed via the Head of the Legal Affairs Unit.

3. The decision shall be notified to the applicant in writing, preferably by electronic means.
4. In exceptional cases, for example in the event of a confirmatory application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 of this Article may be extended by 15 working days, provided that the applicant is notified in advance and that detailed reasons are given.
5. Any reply by Eurojust confirming refusal of access to a document or part of a document shall state the reasons for the total or partial refusal based on the exceptions listed in Article 4 of these Rules. The reply shall inform the applicant of the remedies open to him or her, namely instituting court proceedings against Eurojust and/or making a complaint to the Ombudsman.
6. Failure by Eurojust to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against Eurojust and/or make a complaint to the Ombudsman.

Article 8

Consultation on third party documents

1. Where Eurojust receives an application for access to a document which it holds but which originates from a third party and which does not contain EU classified or sensitive non-classified information, Eurojust shall check whether one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001 applies.
2. If, after that examination, Eurojust considers that access must be refused in accordance with one of the exceptions provided for by Article 4 of Regulation (EC) No 1049/2001, the decision to refuse access shall be sent to the applicant without consultation of the third-party author.
3. Without prejudice to paragraph 6 of this Article, Eurojust shall grant the access without consulting the third-party author where:
 - (a) the document requested has already been disclosed either by its author or under Regulation (EC) No 1049/2001 or similar provisions,
 - (b) the disclosure, or partial disclosure, of its contents would not obviously affect one of the interests referred to in Article 4 of Regulation (EC) No 1049/2001.
4. In all other cases, the third-party author shall be consulted. In particular, if an application for access concerns a document originating from a Member State, Eurojust shall consult the originating authority where the Member State has requested Eurojust not to disclose the document without its prior agreement, in accordance with Article 4(5) of Regulation (EC) No 1049/2001.

⁷ See footnote 5.

⁸ See footnote 6.

5. The third-party author consulted shall have a deadline for reply which shall be no shorter than five working days but must allow Eurojust to abide by its own deadlines to reply. Any objection by the third party to disclosure of the document shall be motivated on the basis of the exceptions referred to in Article 4.
6. In the absence of an answer within the prescribed period, or if the third party is untraceable or not identifiable, Eurojust shall decide in accordance with the rules on exceptions in Article 4 of Regulation (EC) No 1049/2001, taking into account the legitimate interests of the third party on the basis of the information at its disposal.
7. If Eurojust intends to give access to a document 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 and shall draw his attention to the remedies available to him to oppose disclosure.
8. Where a Member State receives an application for access to a document in its possession, originating from Eurojust, unless it is clear that the document shall or shall not be disclosed, the Member State shall consult with Eurojust in order to take a decision that does not jeopardise the attainment of the objectives of Regulation (EC) No 1049/2001. The Member State may instead refer the request to Eurojust.
9. If the application concerns a third party document which contains EU classified or sensitive non-classified information, Articles 9 and 10 of these Rules shall apply.

Article 9

Treatment of applications for access to EU classified documents

Where an application for access concerns an EU classified document:

1. If the document originates from Eurojust, the document shall be handled by those persons entitled to acquaint themselves with the document in accordance with the Eurojust Security Rules⁹. Reasons shall be given on the basis of the exceptions listed in Article 4 of these Rules for any decision refusing access to all or part of a classified document in a manner which does not harm the interests protected in Article 4 of these Rules. If it proves that access to the requested document cannot be refused on the basis of these exceptions, the document shall be declassified before sending it to the applicant.
2. If the document originates from a third party, the document shall be released only with the consent of the originating authority.

Article 10

Treatment of applications for access to sensitive non-classified documents

Where an application concerns a sensitive non-classified document:

1. If the document originates from Eurojust, the application shall be handled by those persons entitled to acquaint themselves with the document. Reasons shall be given on the basis of the exceptions listed in Article 4 of these Rules for any decision refusing access to all or part of a

⁹ 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.

sensitive non-classified document in a manner which does not harm the interests protected in Article 4 of these Rules. If it proves that access to the requested document cannot be refused on the basis of these exceptions, the document shall be unmarked in accordance with the Rules established by Eurojust on the handling and confidentiality of information and on the protection of sensitive non-classified information referred to in Article 76(1) of the Eurojust Regulation¹⁰ before sending it to the applicant.

2. If the document originates from a third party, the document shall be released only with the consent of the originating authority.

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, including, where available, an electronic copy, according to the applicant's preference. The cost of producing and sending copies may be charged to the applicant in accordance with Article 10(1) of Regulation (EC) No 1049/2001.
2. If the requested document has already been released by Eurojust and is easily accessible to the applicant, Eurojust shall inform the applicant on how to obtain the document.

Article 12

Direct access to Eurojust's documents through a public register

1. Eurojust shall provide access to a public register of documents to make citizen's rights under Regulation (EC) No 1049/2001 effective. The public register allows citizens to access directly Eurojust documents without the need to make a formal access to documents request, and further enhances transparency and availability of information about Eurojust's activities.
2. The register shall contain a reference number, the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. References to those documents shall be made in a manner which does not undermine the protection of the interests set out in Article 4 of these Rules.
3. Eurojust shall draw up a practical guide to inform the public of their rights under Regulation (EC) No 1049/2001. The guide shall be made available on Eurojust's website.

Article 13

Documents directly accessible to the public

Eurojust shall, as far as possible, make documents directly accessible in electronic form on its website.

¹⁰ The provisions of this Article apply to documents and/or information marked "LIMITED" in accordance with College Decision 2015-6 of 26 May 2015 on a revised policy on Eurojust LIMITED documents. In accordance with Article 76(1) of the Eurojust Regulation, Eurojust shall adopt rules on sensitive non-classified information. Once these rules will be adopted, the provisions of this Article shall apply to documents and/or information marked following the conditions established in such rules.



Article 14

Internal organisation

The Administrative Director shall adopt a decision outlining the internal procedure for the handling of requests for public access to documents at Eurojust.

Article 15

Entry into force, scope of application and repeal

1. The present Decision shall enter into force on the day following that of its adoption and shall apply to any request for public access to documents received on or after its entry into force
2. College Decision 2020-02 of 9 July 2020 on the adoption of rules for implementing Regulation (EC) No 1049/2001 on public access to documents shall remain applicable to any such request for access to documents received before the date of entry into force of this Decision.
3. Subject to the provisions of paragraph 2, College Decision 2020-02 of 9 July 2020 on the adoption of rules for implementing Regulation (EC) No 1049/2001 on public access to documents is hereby repealed.

Done at The Hague on 7 December 2021

On behalf of the College of Eurojust,

Ladislav Hamran

President of Eurojust