



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

THE EUROPEAN UNION AGENCY FOR CRIMINAL JUSTICE COOPERATION (EUROJUST),

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', and in particular Articles 26, 75(1), (3) and (5) thereof,

Having regard to the Institutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by OLAF,

Having regard to Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 establishing the European Anti-Fraud Office, hereinafter referred to as 'OLAF', as last amended by Commission Decision 2015/248 of 18 December 2015,

Having regard to Regulation (EC, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, as last amended by Regulation (EU, Euratom) 2016/2030 of the European Parliament and of the Council of 26 October 2016, hereinafter referred to as 'Regulation 883/2013',

Having regard to Council Regulation (EC, Euratom) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities,

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, hereinafter referred to as 'Regulation 2018/1725',

Having regard to the Rules of Procedure on the processing and protection of personal data at Eurojust approved by the Council by means of Implementing Decision (EU) 2019/2250 of 19 December 2019 and adopted by the College on 20 December 2019,

Having regard to the Staff Regulations of Officials of the European Union (hereinafter referred to as the 'Staff Regulations') and the Conditions of Employment of Other Servants of the European Union

(hereinafter referred to as the 'CEOS'), as laid down by Council Regulation (EEC, EURATOM, ECSC) 259/1968 and last amended by Regulation (EU, EURATOM) 1023/2013 of the European Parliament and the Council of 22 October 2013, and in particular Articles 11 to 26a, Title VI and Annex IX of the Staff Regulations applicable by analogy to temporary agents and contract agents by virtue of Articles 11, 50a, 81 and 119 of the CEOS,

Whereas,

- (1) In accordance with Article 75(3) of the Eurojust Regulation, *'OLAF may carry out investigations, including on-the-spot checks and inspections, in accordance with the provisions and procedures laid down in Regulation (EU, Euratom) No 883/2013 and Council Regulation (Euratom, EC) No 2185/96, with a view to establishing whether there have been any irregularities affecting the financial interests of the Union in connection with expenditure funded by Eurojust.'*
- (2) Article 1(4) of Regulation 883/2013 provides that OLAF shall conduct internal administrative investigations ('internal investigations') for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union, within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties. To that end, OLAF shall investigate serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations.
- (3) The European Parliament, the Council of the European Union and the European Commission stressed that the responsibilities of OLAF, as established by the Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999, extend beyond the protection of the financial interests to include all activities related to the need to safeguard the Union's interests against irregular conduct liable to give rise to administrative or criminal proceedings.
- (4) Pursuant to Article 2(1) last subparagraph of the Commission Decision 1999/352/EC, ECSC, Euratom of 28 April 1999 and as recalled by recital (6) of Regulation 883/2013, OLAF may be entrusted by the European Commission or by the other institutions or bodies with investigations in other areas than the ones referred to in recital (2) above.
- (5) In accordance with Article 75(1) of the Eurojust Regulation, *'in order to facilitate the combating of fraud, corruption and other unlawful activities under Regulation (EU, Euratom) No 883/2013, within six months from the entry into force of this Regulation, Eurojust shall accede to the Interinstitutional Agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-Fraud Office (OLAF). Eurojust shall adopt appropriate provisions that apply to all national members, their deputies and assistants, all seconded national experts and all Eurojust staff, using the template set out in the Annex to that Agreement.'*

- (6) Therefore, on the basis of its administrative autonomy, Eurojust entrusts to OLAF the task of conducting internal investigations with a view to bringing to light serious matters related to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Union as referred to in Articles 11 to 26a of the Staff Regulations and Articles 11 and 81 of the CEOS, detrimental to the Union's interests and liable to result in disciplinary or, as the case may be, criminal proceedings, or serious misconduct/failure, as referred to, in particular, in Articles 22, 22a and 22b of the Staff Regulations and Articles 11 and 81 of the CEOS, or a failure as referred to in Article 86 of the Staff Regulations and Articles 50a and 119 of the CEOS; or an equivalent failure to discharge obligations on the part of national members, their deputies and assistants, the members of the Executive Board, all seconded national experts, staff members of Eurojust not subject to the Staff Regulations and the CEOS, and other staff referred to in Article 66(1) of the Eurojust Regulation.
- (7) In accordance with Article 75(5) of the Eurojust Regulation, 'the staff of Eurojust, the Administrative Director and the members of the College and Executive Board shall, without delay and without their responsibility being called into question as a result, notify OLAF and the EPPO of any suspicion of irregular or illegal activity within their respective mandate, which has come to their attention in the fulfilment of their duties.'
- (8) Pursuant to Article 4(1) second paragraph and (7) of Regulation 883/2013, internal investigations at Eurojust shall be conducted in accordance with Regulation 883/2013, Commission Decision 352/1999 and with the present decision adopted by Eurojust. This decision includes, in particular, a duty on the part of the national members, their deputies and assistants, the members of the Executive Board, the Administrative Director, all the staff of Eurojust, all seconded national experts, staff members of Eurojust not subject to the Staff Regulations and the CEOS, and other staff referred to in Article 66(1) of the Eurojust Regulation to cooperate with and supply information to OLAF, while ensuring the confidentiality of internal investigations.
- (9) Such investigations shall be conducted in accordance with the Treaties, and in particular with Protocol No 7 on the privileges and immunities of the European Union attached to the Treaty on the European Union (TEU) and to the Treaty on the Functioning of the European Union (TFEU), while respecting the Staff Regulations and the CEOS, the Seat Agreement between Eurojust and the Kingdom of the Netherlands of 15 March 2006, the Eurojust Regulation, Regulation 2018/1725 and the Rules of Procedure on the processing and protection of personal data at Eurojust.
- (10) The assignment of investigating tasks to OLAF shall not affect the responsibilities of Eurojust itself and shall in no way reduce the legal protection of the persons concerned.
- (11) Eurojust has adopted Guidelines on whistleblowing by College Decision 2019-2 of 29 January 2019 and has updated its Anti-Fraud Strategy by Executive Board Decision 2020-07 of 15 June 2020 in order to continue improving the prevention, detection and the conditions for investigations of fraud cases.



- (12) Eurojust carries out sensitive work in the context of criminal investigations and prosecutions and the national members, their deputies and assistants, the staff of Eurojust and seconded national experts are under a strict obligation of confidentiality under Article 72 of the Eurojust Regulation with respect to any information which has come to their knowledge in the course of the performance of their tasks.
- (13) Providing OLAF access to documents, evidence, reports, notes or information, in whatever form, which are held or created in the course of Eurojust's case-related activities, whether in progress or already concluded, and the transmission of such documents, evidence, reports, notes and information to OLAF, should be prohibited in the context of internal investigations conducted by OLAF within Eurojust.
- (14) This decision does not affect the operational cooperation between Eurojust and OLAF taking place in accordance with Articles 2(1), 3(6) and 51(2) and (4) of the Eurojust Regulation and the Practical Agreement on arrangements of cooperation between Eurojust and OLAF of 24 September 2008.

HAS DECIDED AS FOLLOWS:

Article 1

Duty to cooperate with OLAF

1. The Administrative Director, all the staff members of Eurojust, all seconded national experts and other staff as referred to in Article 66(1) of the Eurojust Regulation shall be required to cooperate fully with the staff of OLAF and to lend any assistance required to the investigation related to fraud, corruption or to any other illegal activity detrimental to the interests of the Union or to serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of national members, their deputies and assistants, the members of the Executive Board, all seconded national experts, staff members of Eurojust not subject to the Staff Regulations and the CEOS, and other staff referred to in Article 66(1) of the Eurojust Regulation. With that aim in view, they shall supply the staff of OLAF with all useful information and explanations.
2. Without prejudice to the relevant provisions of the Treaties and the texts implementing them as well as the Seat Agreement between Eurojust and the Kingdom of the Netherlands of 15 March 2006, the national members, deputies and assistants and the members of the Executive Board shall cooperate fully with OLAF as foreseen in paragraph (1) above.

Article 2

Duty to supply information

1. Any member of the staff of Eurojust, seconded national expert and other staff as referred to in Article 66(1) of the Eurojust Regulation who becomes aware of evidence which gives rise to a presumption of the existence of possible cases of fraud, corruption or any other illegal activity detrimental to the interests of the Union or of serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of national members, their deputies and assistants, the members of the Executive Board, all seconded national experts, Eurojust staff not subject to the Staff Regulations and the CEOS, and other staff referred to in Article 66(1) of the Eurojust Regulation, shall inform, without delay, in writing and without their responsibility being called into question as a result, his/her immediate superior or the Administrative Director. In the case of presumed personal involvement of the immediate superior and/or the Administrative Director in the illegal activities mentioned above, the President shall be informed¹.
2. The staff of Eurojust must not suffer inequitable or discriminatory treatment because of having communicated the information referred to in paragraph (1) of this article².
3. National members, their deputies and assistants, the members of the Executive Board and/or the Administrative Director, who acquire knowledge of facts as referred to in paragraph (1) of this article, shall inform the President; in the case of presumed involvement of the President in the illegal activities mentioned in paragraph (1) of this article, a Vice-President shall be informed.
4. The President, a Vice-President or the Administrative Director shall transmit to OLAF, without delay, any information and/or evidence of which they are aware and from which the existence of irregularities as referred to in paragraph (1) of this article may be presumed.
5. Where a national member, a deputy or an assistant, a member of the Executive Board, the Administrative Director, a staff member of Eurojust, a seconded national expert and/or other staff member as referred to in Article 66(1) of the Eurojust Regulation has concrete evidence supporting the suspicion of the existence of irregularities mentioned in paragraph (1) of this Article, and has justified reasons to consider that the procedure foreseen in the above paragraphs would prevent a proper reporting of such evidence to OLAF, he/she may report it directly to OLAF.

¹ Section two (reporting procedures) of College Decision 2019-2 of 29 January 2019 on the Eurojust Guidelines on whistleblowing.

² Section three (protection for whistleblowers) of College Decision 2019-2 of 29 January 2019 on the Eurojust Guidelines on whistleblowing.



Article 3

Request from Eurojust to OLAF to conduct an investigation

1. The President, a Vice-President and/or the Administrative Director can request OLAF to conduct an internal investigation within Eurojust for the purpose of fighting fraud, corruption and any other illegal activity detrimental to the interests of the Union as well as with a view to bringing to light serious matters related to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of national members, their deputies and assistants, the members of the Executive Board, all seconded national experts, and other staff of Eurojust not subject to the Staff Regulations and the CEOS, and other staff referred to in Article 66(1) of the Eurojust Regulation.
2. The President and the Administrative Director shall inform each other and the College before referring any matter to OLAF, provided that this is not harmful to the investigation.
3. While the Director-General of OLAF is considering whether or not to open an internal investigation following a request from Eurojust, and/or while OLAF is conducting an internal investigation, Eurojust shall not open a parallel investigation into the same facts, unless agreed otherwise with OLAF.

Article 4

Follow-up reports and recommendations of OLAF issued on completion of an internal investigation

OLAF shall send the reports and recommendations drawn up following an internal investigation to the Executive Board, excluding any of its members subject to that internal investigation. The Administrative Director shall prepare an action plan following the reports and recommendations of OLAF. In the case of an internal investigation involving the Administrative Director, the Executive Board shall ensure all necessary follow-up.

Article 5

Case-related documents

Articles 1 and 2 of this Decision are not applicable to documents, evidence, reports, notes or any other information, in whatever form, which are held or created in the course of case-related activities of Eurojust in the context of investigations and prosecutions, whether in progress or already concluded. The transmission of such documents, evidence, reports, notes or information to OLAF shall be prohibited in the context of internal investigations conducted by OLAF within Eurojust.

Article 6

Assistance from the Security Unit of Eurojust

At the request of the Director-General of OLAF addressed to the Administrative Director, the security officers of Eurojust shall assist the staff of OLAF in the practical conduct of investigations. Changes to the person to be addressed by the Director-General of OLAF for these requests for assistance shall be communicated to OLAF appropriately.

Article 7

Informing the person concerned

1. Where the possible implication of a national member, a deputy or an assistant, a member of the Executive Board, the Administrative Director, a member of the staff of Eurojust, a seconded national expert and/or other staff as referred to in Article 66(1) of the Eurojust Regulation emerges, the person concerned shall be informed as soon as possible, provided that this is not harmful to the investigation.
2. In any event, conclusions referring by name to a national member, a deputy or an assistant, a member of the Executive Board, the Administrative Director, a member of the staff of Eurojust, a seconded national expert and/or other staff as referred to in Article 66(1) of the Eurojust Regulation may not be drawn, once the investigation has been completed, without the person concerned having been enabled to express his/her views on all the facts which concern him/her. The persons concerned shall have the necessary procedural guarantees (e.g. presumption of innocence, right to avoid self-incriminating, right to be assisted by a person of his/her choice, etc.) as provided by Regulation 883/2013.
3. In cases necessitating the maintenance of absolute secrecy for the purposes of the investigation and requiring the use of investigative procedures falling within the remit of a national judicial authority, compliance with the obligation to invite a national member, a deputy or an assistant, a member of the Executive Board, the Administrative Director, a member of the staff of Eurojust, a seconded national expert and/or another staff member as referred to in Article 66(1) of the Eurojust Regulation to give his/her views may be deferred by agreement with the President, a Vice-President or the Administrative Director, respectively.

Article 8

Information on the closing of the investigation with no further action taken

If, on completion of an internal investigation within Eurojust, no case can be made out against the person(s) concerned, the internal investigation shall be closed, with no further action taken, by decision of the Director-General of OLAF, who shall inform the interested party in writing.



Article 9

Waiver of immunity

Any request from a national police or judicial authority regarding the waiver of the immunity from judicial proceedings of the Administrative Director and the staff of Eurojust concerning possible cases of fraud, corruption or any other illegal activity shall be transmitted to the Director-General of OLAF for his/her opinion. If a request for waiver of immunity concerns a national member, a deputy or an assistant, a member of the Executive Board or a seconded national expert, OLAF shall be informed.

Article 10

Repeal and entering into force

1. The College Decision of 13 July 2004 on the implementation of Regulation (EC) No 1073/1999 concerning investigations conducted by the European Anti-Fraud Office in accordance with Article 38(4) of the Eurojust Council Decision is hereby repealed.
2. The present Decision shall enter into force on the day of its adoption.

Done at The Hague on 15 July 2020

On behalf of the College of Eurojust,

A handwritten signature in blue ink, appearing to be "L. Hamran".

Ladislav Hamran

President of Eurojust