



EUROJUST  
P.O. Box 16183  
2500 BD The Hague  
THE NETHERLANDS

## EUROJUST DECISION

### **General implementing provisions on the conduct of administrative inquiries and disciplinary procedures**

EUROJUST,

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"), laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68 and the amendments thereto, and in particular to Articles 22, 24, 73, 90 of the Staff Regulations, Articles 2(3) and 30 of Annex IX thereto and Articles 11 and 50a of the CEOS,

HAVING REGARD to Council Decision 2002/187/JHA of 28 February 2002 on the setting up of Eurojust with a view to reinforcing the fight against serious crime and the amendments thereto and in particular to Article 30 thereof,

HAVING REGARD to the Rules of Procedure of Eurojust (2002/C 286/01) and in particular to Articles 24 and 25 thereof,

HAVING REGARD to the Decision of the College of Eurojust of 22 March 2005 on the delegation of powers to the Administrative Director for the approval of the necessary implementing rules to the Staff Regulations,

After consultation of the Staff Committee of Eurojust and in agreement with the European Commission pursuant to Article 110(1) of the Staff Regulations,

WHEREAS:

1. Implementing provisions governing the conduct of administrative inquiry procedures shall be adopted,
2. Implementing arrangements for disciplinary procedures may be adopted,
3. A preventative approach to and transparency in disciplinary matters should be ensured,
4. Under Article 22 of the Staff Regulations and Article 11(1) of the CEOS, the formalities laid down for disciplinary matters must also be observed in the case of a procedure concerning the pecuniary responsibility of a staff member,



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5. A staff member carrying out an investigation procedure may not be involved in the assessment of the outcome of such procedures in the context of any disciplinary follow-up in order to guarantee the independence of the persons carrying out the assessment,
6. The Commission adopted Decision C(2004)1588 of 28 April 2004 on general implementing provisions on the conduct of administrative inquiries and disciplinary procedures, as amended by Commission Decision C(2010)8180 of 24 November 2010, which has been used as a basis for these rules,

HAS DECIDED AS FOLLOWS:

## TITLE I: GENERAL PROVISIONS

### *Article 1* *Definitions*

For the purpose of this Decision:

- a) “Administrative inquiries” shall mean all actions undertaken by the investigator(s) to establish the facts in order to determine whether there has been a failure to comply with the obligations incumbent on Eurojust staff members.
- b) “Staff members” shall include temporary agents<sup>1</sup> and contract agents<sup>2</sup> within the meaning of the CEOS as well as former temporary agents and contract agents.
- c) “Investigator(s)” shall refer to the person(s) designated by the Appointing Authority to carry out the administrative inquiries under the authority of the staff member responsible for the inquiry. Persons external to Eurojust with specific expertise relevant to the case may be appointed as investigator(s).
- d) “Staff member responsible for the inquiry” shall mean the Head of the Legal Service unless deemed inappropriate in the circumstances by the Appointing Authority in which case the Appointing Authority shall then designate another staff member as being the staff member responsible for the inquiry.

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<sup>1</sup> As also defined in Article 3 (Definitions) of the Decision of Eurojust on General Implementing Provisions on the procedure governing the engagement and the use of Temporary Agents at Eurojust of 22 December 2008.

<sup>2</sup> As also defined in Article 1 (Definitions) of the Decision of Eurojust on General Implementing Provisions on the procedure governing the engagement and the use of Contract Agents at Eurojust of 15 October 2008.

Klaus Rackwitz – Administrative Director

Phone: +31 70 412 5500 ♦ E-mail: krackwitz@eurojust.europa.eu ♦ Fax: +31 70 412 5505



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*Article 2*  
*Setting up an investigation*

1. The Appointing Authority may appoint one or more investigators to carry out administrative inquiries. Such appointments may be on an ad-hoc basis.
2. The Appointing Authority may request the staff member responsible for the administrative inquiry to organise other inquiries to ascertain certain facts, in particular under Articles 24, 73 and 90 of the Staff Regulations.
3. Neither the staff member responsible for the inquiry nor the investigator(s) may sit on a Disciplinary Board (hereinafter referred to as “the Board”).
4. Upon request of the Appointing Authority, the investigator(s) shall coordinate preventative measures as regards discipline.

**TITLE II: PROCEDURE**

**Chapter I**  
**Administrative inquiries**

*Article 3*  
*Exercise of powers as regards administrative inquiries*

1. The investigator(s) shall exercise their powers of administrative inquiry independently. In the exercise of those powers, they shall neither seek nor receive instructions other than from the staff member responsible for the inquiry. They shall have the power to obtain documents, summon any person subject to the Staff Regulations to provide information and to carry out on-the-spot investigations.
2. Administrative inquiries shall be carried out thoroughly and include all aggravating and extenuating circumstances; they shall last for a period appropriate in the circumstances of and commensurate with the complexity of the case.
3. The investigator(s) may receive assistance from other persons with specific expertise relevant to the case.
4. The Data Protection Officer (hereinafter referred to as the “DPO”) shall be consulted in advance whenever the investigator(s) or the staff member responsible for the inquiry intends to access electronic or hard copy files or telecommunications data. If the processing of data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs or trade-union membership or the processing of data

Klaus Rackwitz – Administrative Director

Phone: +31 70 412 5500 ♦ E-mail: krackwitz@eurojust.europa.eu ♦ Fax: +31 70 412 5505



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concerning health or sex life are necessary for the purposes of the inquiry, the investigator or staff member responsible for the inquiry shall also consult the DPO in advance. In both instances, the DPO shall ensure that consultation takes place as soon as possible and without any delay that could affect the conduct of the investigation.

*Article 4*  
*Opening and conduct of administrative inquiries*

1. An administrative inquiry shall be opened by the Appointing Authority either on its own initiative or at the request of a Head of Unit or Head of Service or of the Head of Operational Support.
2. Before opening the inquiry, the Appointing Authority shall consult the European Anti-Fraud Office (hereinafter referred to as "OLAF") to ascertain that OLAF is not undertaking an investigation for its own purposes and does not intend to do so. As long as OLAF is conducting an investigation within the meaning of Regulation 1073/99<sup>3</sup>, as revised, no administrative inquiry under the preceding paragraph shall be opened regarding the same facts.
3. The decision to open an administrative inquiry shall designate the staff member responsible for the inquiry, the investigator(s), define the purpose and scope of the inquiry and require the staff member responsible for it to determine responsibilities on the basis of the particular facts and circumstances, and, if appropriate, the individual responsibility of the staff member(s) concerned.
4. As soon as an administrative inquiry suggests that a staff member may be personally involved in a matter, that staff member shall be informed provided that information does not hinder the inquiry. In any case, conclusions referring to a staff member by name may not be drawn at the end of the inquiry unless that staff member has had the opportunity to express an opinion on all the facts which relate to him or her. The conclusions shall record that opinion.
5. Where absolute secrecy is required by the aims of the inquiry requiring investigative procedures which are the responsibility of a national judicial authority, the obligation to invite the staff member concerned to express an opinion may be deferred by the Appointing Authority in agreement with the staff member responsible for the inquiry. In that eventuality, no disciplinary procedure may be opened until the staff member concerned has been able to express an opinion.

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<sup>3</sup> Regulation of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office, OJ L 136 of 31/05/1999, pp. 1-7



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6. If, following an administrative inquiry, no charge is brought against a staff member against whom allegations have been made; the administrative inquiry concerning that staff member shall be closed with no further action by decision of the Appointing Authority, who shall so inform the staff member concerned in writing. The staff member concerned may request that that decision be placed in his or her personal file.
7. The closure of the administrative inquiry shall not prevent its being reopened if new facts come to light.
8. The staff member responsible for the inquiry shall submit a report on the inquiry to the Appointing Authority, after consulting if appropriate, the Specialised Financial Irregularities Panel pursuant to Commission Decision C(2003)2247 of 9 July 2003. That report shall set out the facts and circumstances in question; it shall establish whether the rules and procedures applicable to the situation were respected and shall determine any individual responsibility, having regard to aggravating or mitigating circumstances. Copies of all the relevant documents and records of interviews shall be attached to the report.
9. The Appointing Authority shall inform the staff member concerned of the outcome of the inquiry together with the conclusions of the inquiry report and, on request, all documents directly linked to the allegations made, subject to the protection of the legitimate interests of third parties.
10. Where Eurojust has received an inquiry report from OLAF, the Appointing Authority may, if appropriate, either ask OLAF to supplement its report or decide to open an administrative inquiry itself or immediately open a disciplinary procedure or indeed close the file without any disciplinary consequences.

## **Chapter II** **Disciplinary procedures**

### *Article 5*

#### *The hearing referred to in Article 3 of Annex IX to the Staff Regulations*

1. A staff member heard pursuant to Article 3 of Annex IX to the Staff Regulations shall sign the record of the hearing or make comments and/or remarks within fifteen (15) calendar days from receipt of the record. Failure to do so within that period shall, except in cases of *force majeure*, result in the record being considered approved.



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2. If the Appointing Authority or a person authorised to that effect has to conduct interviews with certain persons following the hearing referred to in Article 3 of Annex IX to the Staff Regulations, the staff member concerned shall receive a copy of the signed records of those interviews provided that the facts mentioned there have a direct bearing on the preliminary allegations made against him or her.

#### *Article 6*

#### *Representation of the Appointing Authority before the Board*

1. The Appointing Authority shall be represented before the Board, pursuant to Article 16(2) of Annex IX to the Staff Regulations.
2. Where an administrative inquiry has already been held into a case before the Board, the investigator(s) who conducted that inquiry may not represent the Appointing Authority before the Board but may, if appropriate, be called by it as witnesses.

### **Chapter III: The Board**

#### *Article 7*

#### *Establishment and composition*

1. The Board shall be established at Eurojust following the template annexed to this Decision. The Board shall include at least one member, who may be the Chairperson, chosen from outside Eurojust.
2. The provisions of this Chapter regarding the Board shall supplement those set out in Section 2 of Annex IX to the Staff Regulations.

#### *Article 8*

#### *Appointment of the Chairperson and Members*

1. The Chairperson of the Board and his/her alternate shall be appointed for a period of three years, which may be renewed.
2. The members of the Board and their alternates should be appointed for a period of three years which period may be shortened subject to a minimum period of one year. The period of appointment may be renewed.



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3. The Chairperson of the Board may be a staff member or a former staff member of a European institution or Agency. Former staff members shall be remunerated on a daily basis at a level equivalent to 1/22 of the basic salary of an official in grade AD 15, step 1.

*Article 9*  
*Training*

Members of the Board should receive specific introductory training as soon as possible after their appointment if considered appropriate.

**TITLE III: FINAL PROVISIONS**

**Chapter I**  
**Prevention and publicity**

*Article 10*  
*Guidance*

Guidance setting out the rights and obligations of staff members, the rules of conduct which they are required to follow and the consequences which violations of those obligations may engender shall be regularly updated and made accessible to all members of staff by the Human Resources Unit in collaboration with the Legal Service.

*Article 11*  
*Publication of the results of disciplinary procedures*

The decisions on disciplinary matters taken by the Appointing Authority or a summary of those decisions shall be published on the intranet once a year. The names of the staff members and any other information which could identify them shall be omitted.



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## **Chapter VI** **Final provision**

### *Article 12* *Entry into force*

This decision shall enter into force on the date following its adoption.

Done at The Hague on 23 September 2013

For Eurojust

The Administrative Director,

Klaus Rackwitz

Annex: Template Administrative Director Decision setting up a Disciplinary Board





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**AD 2013-XX**

**THE ADMINISTRATIVE DIRECTOR  
DECISION TO ESTABLISH A DISCIPLINARY BOARD AT EUROJUST**

The Administrative Director of Eurojust,

Having regard to Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA of 18 June 2003 and by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust and in particular Article 30 thereof,

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 Communities (hereinafter referred to as the "CEOS") laid down by Council Regulation (EEC, EURATOM, ECSC) No 259/68 and the amendments thereto; and in particular to Article 86 of the Staff Regulations and to Section 2 of Annex IX to the Staff Regulations,

After consultation of the Staff Committee,

**WHEREAS:**

1. Any failure to comply with the obligations under the Staff Regulations shall render staff members at Eurojust liable to disciplinary action;
2. Article 5 of Annex IX to the Staff Regulations requires that a Disciplinary Board (hereinafter referred to as "the Board") be established at Eurojust;
3. The Appointing Authority is required by virtue of Article 11 of Annex IX to the Staff Regulations, to consult the Board prior to the imposition of any disciplinary penalty other than a written warning or a reprimand;
4. In cases involving a staff member in a grade up to and including AD 13, two additional members in the same function group and grade as the staff member subject to disciplinary proceedings shall be appointed in accordance with Article 5(2) of Annex IX to the Staff Regulations;



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HAS DECIDED AS FOLLOWS:

*Article 1*

A Board is hereby established at Eurojust.

*Article 2*

1. The composition of the Board shall be published on the intranet.
2. Where the case involves a staff member in a grade up to AD 13, the Board shall be enlarged for the specific case in accordance with the procedure set out in Article 6(4) of Annex IX of the Staff Regulations.

*Article 3*

1. In the event that any of the Board members referred to in Article 2 above would be unavailable to serve as Board members, the persons indicated in the most updated version of the list of "Disciplinary Board Nominees" provided by the inter-agencies coordination structure may be appointed as Board members. That updated version may be published on the intranet. The current version of that list is annexed to this Decision.
2. Where the most updated version of the list referred to in Article 3(1) does not contain a sufficient number of available persons to overcome any possible shortfall in the composition of the Board referred to in Article 3(1), officials or temporary agents of European Union institutions and Agencies whose names are not indicated in the most updated version of that list may also be appointed as Board members.

*Article 4*

The duration of the appointment of the Chairperson of the Board shall be three years. The duration of the appointment of the members and alternates may be for a shorter period subject to a minimum of one year.



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*Article 5*

1. The Chairperson and members of the Board shall be completely independent in the performance of their duties.
2. The deliberations and proceedings of the Board shall be secret.

*Article 6*

The present Decision shall have effect as of the date of signature.

Done at The Hague on [date]

The Administrative Director,

Klaus Rackwitz

Annex – Inter Agencies List of Disciplinary Board Nominees

Klaus Rackwitz – Administrative Director  
Phone: +31 70 412 5500 ♦ E-mail: [krackwitz@eurojust.europa.eu](mailto:krackwitz@eurojust.europa.eu) ♦ Fax: +31 70 412 5505