

THE COLLEGE OF EUROJUST

DECISION 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 DECISION (OLAF DECISION)

(adopted on 13 July 2004)

THE COLLEGE OF EUROJUST,

On the proposal of the Administrative Director,

Having regard to 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 (hereinafter referred to as the “Eurojust Decision”) and in particular Article 38 fourth paragraph;

Having regard to Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF)³ and in particular Article 4, first and sixth paragraphs;

Having regard to the Memorandum of Understanding concerning practical cooperation, based on Article 26 of the Eurojust Decision, signed by Eurojust and OLAF on 14 April 2003;

Whereas,

- (1) According to Article 38(4) of the Eurojust Decision, the rules laid down by Regulation (EC) No 1073/1999 of the European Parliament and of the Council concerning investigations conducted by the European Anti-Fraud Office (hereinafter referred to as OLAF) shall apply to Eurojust. The College shall adopt the necessary implementing measures;
- (2) Regulation (EC) No 1073/1999 provides that OLAF shall conduct administrative investigations within the institutions, bodies, offices and agencies established by or on the basis of the EC and the Euratom Treaties for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the European Community and investigating to that end serious matters relating to the discharge of professional duties such as to constitute a dereliction of the obligations of officials and other servants of the Communities 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 members of the staff of institutions, bodies, offices or agencies not subject to the Staff Regulations of officials and the Conditions of employment of other servants of the European Communities.
- (3) This regulation requires the implementation of rules concerning the duties of the members of management, officials and other servants of these institutions, bodies and organisations to inform and cooperate with the officers of OLAF on procedures that need to be observed by

¹ OJ L 63, 06.03.2002, p. 1

² OJ L 245, 29.9.2003, p. 44

³ OJ L 136, 31.05.1999, p. 1

OLAF's employees when conducting an internal investigation, as well as the guarantees of the rights of persons concerned by an internal investigation;

- (4) Such investigations should be conducted in full compliance with the relevant provisions of the Eurojust Decision, the Treaty on European Union, the Treaties establishing the European Communities, the texts implementing them, in particular the Protocol on Privileges and Immunities and the Staff Regulations, and with the Seat Agreement between Eurojust and the Kingdom of the Netherlands (hereinafter referred to as the "Seat Agreement"). In particular, such investigations must not affect the operational work of Eurojust as foreseen in the Eurojust Decision, the responsibility or the administrative autonomy of Eurojust, or diminish in any way the judicial protection of the persons concerned;
- (5) Considering the sensitive work carried out by Eurojust in the context of investigations and prosecutions, the obligation to protect any personal data received or processed in the framework of its tasks, the obligation of confidentiality laid upon National Members and their Assistants, the Administrative Director, officials and other servants of Eurojust, it is necessary, as already stated in recital 5 of the Eurojust Decision, to deny OLAF access to documents, evidence, reports, notes or information, in whatever form, which are held or created in the course of its case-related activities, whether under way or already concluded, and the transmission of such documents, evidence, reports, notes and information to OLAF should be prohibited;
- (6) This decision does not affect the cooperation between Eurojust and OLAF that should take place in accordance with Article 26 paragraph 3 and 4 of the Eurojust Decision and with the Memorandum of Understanding on practical cooperation between Eurojust and OLAF or any other arrangement.

HAS DECIDED AS FOLLOWS:

Article 1

Duty to cooperate with OLAF

(1) The Administrative Director, the services and any official or other servant of Eurojust shall be required to cooperate fully with OLAF's agents and to lend any assistance required to the investigation related to cases of fraud or corruption or to any other illegal activity detrimental to the financial interests of the Communities committed within Eurojust. With that aim in view they shall supply OLAF's agents with all useful information and explanations.

(2) Without prejudice to the relevant provisions of the Eurojust Decision, the Treaties establishing the European Communities, and the texts implementing them, in particular the Protocol on Privileges and Immunities, as well as the Seat Agreement, the National Members and their Assistants shall cooperate fully with OLAF.

(3) When the Director of OLAF opens an investigation within Eurojust, acting on his

own initiative or following a request from the President of the College or the Administrative Director of Eurojust, he shall address the President of the College and the Administrative Director of Eurojust and inform them in writing of the object of the investigation, the conditions of its deployment and the identity of the officials or other servants in charge of carrying out the investigation.

Article 2

Duty to supply information

(1) Any official or other servant of Eurojust 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 financial interests of the Communities committed within Eurojust shall inform, without delay, the Administrative Director of Eurojust; in the case of involvement of the Administrative Director of Eurojust, the President of the College shall be informed.

(2) Officials and other servants must not suffer inequitable or discriminatory treatment

as a result of having communicated the information referred to in the preceding paragraph.

(3) National Members, their Assistants or the Administrative Director of Eurojust, who acquire knowledge of facts as referred to in the first paragraph, shall inform the President of the College; in the case of involvement of the President of the College, the College shall be informed.

(4) The President of the College and the Administrative Director shall inform each other and the College before referring any matter to OLAF, provided that this would not be harmful to the investigation. In case of the involvement of the President of the College, the College shall inform the Administrative Director.

(5) The President of the College and the Administrative Director of Eurojust shall transmit, without delay, to OLAF any evidence of which they are aware and from which the existence of irregularities as referred to in the first paragraph may be presumed.

(6) In cases in which a National Member, an Assistant, the Administrative Director of Eurojust, an official or any other servant of Eurojust has concrete evidence supporting the suspicion of the existence of a case of

fraud, corruption or any other illegal activity detrimental to the financial interests of the Communities committed within Eurojust, and at the same time, has justified reasons to consider that the procedure foreseen in the above paragraphs would prevent in that specific case a proper reporting of such evidence to OLAF, he may report directly to OLAF.

Article 3 **Case-related documents**

Articles 1 and 2 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.

Article 4 **Assistance from the security office**

At the request of the Director of OLAF, addressed to the Administrative Director of Eurojust, the security officers of Eurojust shall assist the officers of OLAF in the practical conduct of investigations.

Article 5 **Informing the interested party**

(1) Where the possible implication of a National Member, an Assistant, the Administrative Director, an official or other servant of Eurojust emerges, the interested party shall be informed as soon as possible, provided that this would not be harmful to the investigation. In any event, the interested party will have the right to express his or her views on all the facts which concern him or her before any conclusions referring by name to a National Member, an Assistant, the Administrative Director, an official or other servant of Eurojust may be drawn once the investigation has been completed. Interested parties have the right to remain silent, to refrain from incriminating themselves and to seek personal legal assistance.

(2) 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 the National Member, Assistant, Administrative Director, official or other servant of Eurojust to give his or her views may be deferred by agreement with the President of the College or the Administrative Director, respectively.

Article 6 **Information on cases giving rise to criminal proceedings**

In view of Article 26(3) of the Eurojust Decision and the Memorandum of Understanding on practical cooperation

between Eurojust and OLAF, the Director of OLAF should inform the College when acting in accordance with Article 10(2) of Regulation (EC) No 1073/1999.

Article 7
Information on the closing of the
investigation without further action taken

If, following an internal investigation, there are not any findings of fraud or other crime against the financial interests of the Communities, the

internal investigation shall be closed, with no further action taken, by decision of the Director of OLAF. He will have to inform in writing the interested party, if any, the President of the College and the Administrative Director.

Article 8
Effective date

The present Decision shall enter into force on 01 August 2004.

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

Michael G Kennedy
President of the College