

(Acts adopted under Title VI of the Treaty on European Union)

ACT OF THE JOINT SUPERVISORY BODY OF EUROJUST

of 2 March 2004

laying down its rules of procedure

(2004/C 86/01)

THE JOINT SUPERVISORY BODY

Having regard to the Council Decision of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime (hereinafter referred to as 'the Eurojust Decision')⁽¹⁾, last amended on 18 June 2003⁽²⁾, and in particular Article 23(9) thereof,

Whereas the persons appointed by the Member States in accordance with Article 23(1) of the Eurojust Decision shall adopt the rules of procedure of the Joint Supervisory Body which,

HAS ADOPTED THESE RULES OF PROCEDURE:

TITLE I

TASKS AND POWERS OF THE JOINT SUPERVISORY BODY

Article 1

Tasks

The Joint Supervisory Body shall have the tasks as set out in Articles 17(4)(b), 19(8), 23(1) and (7) of the Eurojust Decision.

Article 2

Powers

1. The Joint Supervisory Body shall, for the discharge of its tasks, have the powers provided for in the Eurojust Decision.

2. In particular, the Joint Supervisory Body shall be authorised to obtain information from Eurojust, to be given full access to all Eurojust documents whether on paper or stored electronically, and to be granted free access to all Eurojust premises at any time. This includes information on and access to hardware and software, whenever this is necessary for the performance of the tasks of the Joint Supervisory Body. Details may be stipulated in arrangements between the Joint Supervisory Body and the College of Eurojust.

⁽¹⁾ OJ L 63, 6.3.2002, p. 1.

⁽²⁾ OJ L 245, 29.9.2003, p. 44.

TITLE II

RULES OF PROCEDURE FOR THE JOINT SUPERVISORY BODY

Article 3

Composition

1. The Joint Supervisory Body shall be composed in accordance with Article 23, paragraphs 1, 2, 3, 4 and 5 of the Eurojust Decision.

2. The members of the Joint Supervisory Body shall be independent, not bound by instructions in the exercise of their duties and subject only to the law. In particular, they must not at the same time be members of another body set up under the Eurojust Decision or staff members of Eurojust.

3. A member of the Joint Supervisory Body who, in exceptional circumstances, is unable to attend a meeting may designate an alternate who fulfils the requirements of Article 23(1) of the Eurojust Decision. The rights and obligations conferred upon members by virtue of these rules of procedure shall be fully applicable to alternates.

4. Where a conflict of interest arises, the person concerned shall declare that interest and withdraw from taking part in the discussion and the decision on the matter. He or she may, where necessary, be excluded by unanimous vote cast in a secret ballot by the members attending the meeting. The person concerned shall be heard before any exclusion, but shall not take part in the decision. If a person withdraws or is excluded, he or she shall be replaced by his or her alternate.

Article 4

Chair

1. The Joint Supervisory Body shall be chaired in accordance with Article 23(3) of the Eurojust Decision.

2. The chairman shall represent the Joint Supervisory Body and chair its meetings. He or she shall monitor the smooth functioning of its work. He or she shall convene the meetings of the Joint Supervisory Body and determine the venue, date and time of such meetings. He or she shall open and close the meetings. He or she shall prepare the provisional agenda and ensure the execution of the decisions of the Joint Supervisory Body.

3. In the absence of the chairman, the member appointed by the member state which is next in line to hold the presidency of the Council, shall act as chairman, in accordance with Article 23(3) of the Eurojust Decision.

4. In order to prepare the work of the Joint Supervisory Body with regard to a particular issue, it may appoint from among its members, on a proposal from the chairman, a rapporteur. If the matter is urgent, such an appointment may be made by the chairman by virtue of his or her office. In this case he or she shall inform the members of the Joint Supervisory Body without delay.

5. The College of Eurojust, members of the staff of Eurojust or other persons may be invited to attend meetings of the JSB.

Article 5

Working methods

1. The Joint Supervisory Body shall meet as provided in Article 23(1) second paragraph of the Eurojust Decision. The President of Eurojust, the College, the Administrative Director or the Data Protection Officer shall be entitled to propose items for inclusion on the agenda.

2. With the exception of cases which the chairman deems to be urgent, the notice convening the meeting shall be transmitted in time to arrive at least two weeks before the meeting. The notice shall include the provisional agenda and the documents needed for the meeting, unless the nature of these documents does not allow so. The final agenda shall be adopted at the beginning of each meeting.

3. A meeting of the Joint Supervisory Body shall only be effective if at least two of the permanent members attend. Decisions shall be taken in accordance with Article 23(6) of the Eurojust Decision.

4. In accordance with 23(11) of the Eurojust Decision, the meetings of the Joint Supervisory Body shall not be public.

5. The Joint Supervisory Body shall meet on the basis of documents and draft papers drawn up in an official language of its members. However, a member shall have the right to request a translation in his or her own language.

6. The Joint Supervisory Body will liaise with the Data Protection Officer of Eurojust where appropriate.

7. Decisions of the Joint Supervisory Body may be taken by written procedure insofar as all members have approved this procedure. In urgent cases the chairman shall be entitled to initiate the written procedure. In both cases the chairman shall transmit a draft decision to the members of the Joint Supervisory Body. If the members do not object to the draft decision, within a period specified by the chairman of at least 14 days after receipt, the proposal shall be deemed to be adopted. If a member, within five working days after receipt of the draft decision, requests that it be orally discussed by the Joint Supervisory Body, the written procedure shall be discontinued.

Article 6

Checks on location and experts

1. In the framework of its powers in accordance with Article 23(1) of the Eurojust Decision, the Joint Supervisory Body may carry out data protection checks at Eurojust.

2. The Joint Supervisory Body may appoint one or more members for carrying out these checks. Such members may be assisted by experts as deemed appropriate by the Joint Supervisory Body. Experts may come from within national supervisory bodies or government agencies, unless such experts are not available. All experts must meet the security requirements applying under their national law and the respective rules of Eurojust.

3. Where the chairman deems a case to be urgent, he or she may appoint such members and experts by virtue of his or her office. In this case he or she shall inform the members of the Joint Supervisory Body without delay.

4. The members of the Joint Supervisory Body entrusted with carrying out a check shall report to the Joint Supervisory Body on the results of their work.

Article 7

Procedure in the event of violations

If the Joint Supervisory Body notes violations of the provisions of the Eurojust Decision with regard to the storage, processing or utilisation of personal data, it shall inform Eurojust accordingly and shall request a reply within a given period. Failure to comply with a decision of the Joint Supervisory Body taken in accordance with these Rules of Procedure shall be regarded as a violation of the Eurojust Decision. Decisions of the Joint Supervisory Body shall then be final and binding on Eurojust.

Article 8

Minutes

Minutes shall be made of all meetings of the Joint Supervisory Body. The draft minutes shall be prepared by the Secretariat under the direction of the chairman and submitted to the Joint Supervisory Body for adoption at its next meeting. Each participant shall have the right to suggest amendments to the draft minutes.

Article 9

Activity report

1. The Joint Supervisory Body shall submit an annual activity report to the Council in accordance with Article 23(12) of the Eurojust Decision. This report shall be drawn up during the first half of each year for the preceding year.

At least one month before the activity report is forwarded to the Council, Eurojust shall have the opportunity to deliver an opinion, which shall be attached to the report.

2. The Joint Supervisory Body shall decide whether or not to publish its activity report, and, if it decides to do so, determine how it should be published.

TITLE III

ADDITIONAL RULES OF PROCEDURE REGARDING APPEALS

Article 10

Tasks of the Joint Supervisory Body

1. The Joint Supervisory Body shall examine the appeals as foreseen in Article 23(7) of the Eurojust Decision

2. The Joint Supervisory Body shall take decisions in respect of the matters referred to in paragraph 1.

Article 11

Ad hoc members

1. If no member of the Member State from which the personal data that form the object of the appeal originate is represented in the Joint Supervisory Body, the person appointed by this Member State in accordance with Article 23(1)(3) of the Eurojust Decision shall act as ad-hoc judge in the Joint Supervisory Body for the duration of the examination of this appeal.

2. The rights and obligations conferred upon members by virtue of these rules of procedure shall be fully applicable to ad hoc members.

Article 12

Representation

The applicant may be assisted or represented by a lawyer or another adviser. A lawyer or an adviser may be excluded from the proceedings by the Joint Supervisory Body in cases of serious misconduct. If a lawyer or an adviser is excluded, the chairman shall stipulate a deadline for the party concerned to enable him or her to appoint another lawyer or adviser; the proceedings shall be suspended until the expiration of this deadline. A lawyer or an adviser shall produce proper authorisation from the applicant, if so requested by the Joint Supervisory Body.

Article 13

Languages

1. The procedure shall be conducted in one of the official languages of the Institutions of the European Union. The

applicant shall choose the official language in which the procedure shall be conducted. The language of the procedure shall be used in the oral statements and in the written documentation of the parties and in the minutes and decisions of the Joint Supervisory Body.

2. Documents in a language other than the procedural language shall be accompanied by a translation into the procedural language. Where documents are lengthy, the translation submitted may be restricted to excerpts or summaries. The Joint Supervisory Body may, by virtue of its office or upon application from a party, require a full translation at any time.

3. Where necessary, interpretation services and translations shall be provided for each member of the Joint Supervisory Body and for the parties. The decisions of the Joint Supervisory Body shall be translated into all official languages of the institutions of the European Union.

4. In cases where none of the official languages of the institutions of the European Union is accessible to the applicant, the complaint may be lodged in another language. The applicant is obliged to submit a summary in one of the official languages. The chairman or rapporteur shall have the complaint translated into the chosen language.

Article 14

Institution of the procedure

1. The appeal shall be lodged by submission of a written complaint at the Secretariat of the Joint Supervisory Body within thirty days of receiving Eurojust's decision as far as requests for correction or deletion of personal data are concerned and within three months after receiving Eurojust's decision in case of requests for access to personal data.

2. The applicant shall outline the basis of the complaint. It must be clear who is complaining, what he or she is complaining about and on what grounds. The complaint shall be accompanied by any supporting documentation available. The applicant may withdraw his or her appeal at any time.

3. The Secretariat shall acknowledge the receipt of the complaint within four weeks and give general information on the course of the procedure.

4. If the complaint does not meet the requirements, the Secretariat shall invite the applicant to rectify any omissions within four weeks.

5. Appeals which do not meet the requirements shall be refused by the Joint Supervisory Body on the proposal of the chairman or of the rapporteur.

*Article 15***Preliminary consideration**

1. If the complaint meets the requirements, it shall be considered by the Joint Supervisory Body.
2. A copy of the complaint shall be forwarded to Eurojust for its observations, which shall be submitted within four weeks, extension for two further weeks being possible.
3. The Joint Supervisory Body may request the College of Eurojust to nominate a representative for the appeal. The applicant shall be informed of this decision. The relevant national Members shall be sent a copy of the observations from the applicant in order to enable them to submit their own observations, to be submitted within four weeks, extension for two further weeks being possible.
4. After the observations have been received or the deadlines have expired, the complaint shall be dealt with by the Joint Supervisory Body within the ensuing three months.

*Article 16***Additional information**

1. The Joint Supervisory Body may ask the applicant, Eurojust, or any other body to provide information, evidence or comments to the Joint Supervisory Body. The parties are entitled to make suggestions to the Joint Supervisory Body regarding the taking of evidence or to call for the admission of evidence. The Joint Supervisory Body shall follow up these suggestions and decide on admission to the extent necessary for the examination of the case.
2. The Joint Supervisory Body may also decide to investigate on location at Eurojust. Article 6 applies likewise. In this case, the applicant or his or her adviser shall be informed of the result of the investigation.

*Article 17***Access to file of procedure**

1. All parties shall, if they wish, have access to the file of the procedure, and require the Secretariat of the Joint Supervisory Body to provide them with excerpts or photocopies at their own expense. Access shall be refused where one of the grounds mentioned in Article 19(4) of the Eurojust Decision applies or in order to protect the rights and freedoms of third parties.
2. Eurojust may indicate to what extent the information they provide should not be made available to the applicant, stating the reasons for such a restriction. The Joint Supervisory Body may ask for further reasons. To the extent that the Joint Supervisory Body finds such reasons acceptable, the information concerned shall be withheld. The Joint Supervisory

Body may decide otherwise only in the absence of acceptable reasons. In this case, the Joint Supervisory Body may require a summary to be made available to the applicant or require that certain information shall be provided to the applicant.

*Article 18***Hearing**

1. The parties shall be heard by the Joint Supervisory Body should they so request. The Joint Supervisory Body shall duly inform the parties of their right to be heard. This right shall be exercised in writing. The Joint Supervisory Body may decide to hold an oral hearing on request from one of the parties involved in the proceeding to the extent deemed necessary for the examination of the case. The Joint Supervisory Body shall duly inform the parties of their right to request an oral hearing. All parties shall be notified in due time of the oral hearing and have the right to be present.
2. An oral hearing shall be held in public unless the Joint Supervisory Body decides by virtue of its office or on application from one of the parties to exclude the public wholly or partly where the interests of public security, especially on the grounds referred to in Article 19(4) of the Eurojust Decision, or the protection of the privacy of an individual so require, or to the extent strictly necessary in the opinion of the Joint Supervisory Body in special circumstances where publicity would prejudice the proper determination of the appeal. If Eurojust requests that the public be excluded from the proceedings, the Joint Supervisory Body may decide otherwise only on the grounds that no reasons as referred to in the first sentence obtain.
3. The Joint Supervisory Body may decide, at the request of a party or at its own initiative, to hear a party without other parties being present, where this is required in order to ensure the proper functioning of Eurojust, to safeguard the security of a Member State or to protect the interests of the applicant or a third party. The absent parties shall be informed of proceedings taking place in their absence.

*Article 19***Hearing of witnesses and experts**

1. The Joint Supervisory Body may decide, at the request of a party or at its own initiative, to hear witnesses. All parties and the witnesses concerned shall be notified in due course of the hearing. Article 18(2) and (3) shall also apply.
2. Witnesses notified by the Joint Supervisory Body shall be entitled to reimbursement of their travel and accommodation expenses in accordance with the respective rule applying to Eurojust staff, and to compensation for loss of earnings, to the extent the Joint Supervisory Body finds equitable. They may receive the necessary advance payments.

3. The witnesses shall be heard by the Joint Supervisory Body. The members of the Joint Supervisory Body may address questions to the witnesses. With the permission of the chairman, the parties may address questions to the witnesses. Before the hearing begins, the chairman shall remind the witnesses that they should speak the truth. The Witness has the right to refuse to answer questions.

4. The Joint Supervisory Body may appoint an expert and define his or her mandate and entitlement of remuneration. The Joint Supervisory Body may decide to hear the expert. The rules regarding the hearing of witnesses shall also apply.

Article 20

Closing statements

Before reaching a final decision, the Joint Supervisory Body shall invite all parties to submit final comments.

Article 21

Minutes of appeal procedure

1. The Joint Supervisory Body shall keep minutes of the appeal procedure which shall reflect the course of each hearing and the statements made in it. The parties may request that certain documents or statements be included wholly or partly in the minutes. The minutes shall be signed by the chairman, forwarded to the parties and added to the file of the case. In cases referred to in Article 18(2) or Article 19(1), the Joint Supervisory Body shall impose restrictions.

2. Article 8 shall also apply to all meetings of the Joint Supervisory Body which are not attended by the Parties.

Article 22

Decisions and confidentiality

1. Decisions shall be taken by a simple majority of the members attending the meeting, unless provided otherwise in these rules. In case of a tied vote, the chairman shall have a casting vote. All persons taking part in the final decision must have attended an oral hearing, if one took place.

2. The deliberations shall remain confidential.

3. The final decision of the Joint Supervisory Body may contain the names of the parties and their representatives, the names of the members of the Joint Supervisory Body taking part in the decision, the date on which the decision is announced, the operative part of the decision, a brief presentation of the facts of the case and the reasons for the decision. It shall be conveyed to the parties and made public.

Article 23

Notifications

Notifications and other communications to parties, witnesses and experts shall be made by means that reasonably ensure

that they are duly informed and can be verified when necessary.

Article 24

Costs

1. The Joint Supervisory Body shall decide on the costs of the procedure in its final decision. The procedure before the Joint Supervisory Body shall be free of charge. If the appeal is upheld, wholly or partially, the necessary costs incurred by the applicant for lodging and processing the complaint shall be borne by Eurojust to the extent that the Joint Supervisory Body considers this equitable.

2. If an applicant is unable to bear all or part of the costs of the procedure, he or she may at any time on request be granted assistance for the costs. When he or she submits the application, he or she shall enclose documentation demonstrating that he or she is in need. The Joint Supervisory Body may withdraw the assistance at any time if the preconditions under which it was granted change in the course of the proceedings. If assistance is approved, the costs will be disbursed from the budget line of the Joint Supervisory Body. Where this is fair, the final decision may require a party to reimburse to the budget of Eurojust the advance payments granted. In submitting his or her application, the applicant shall declare his or her agreement to reimburse the costs if required by the final decision.

Article 25

Due process

In cases not provided for in these rules, the Joint Supervisory Body shall conduct its procedures in accordance with the general principles of due process.

TITLE IV

FINAL PROVISIONS

Article 26

Secretariat

1. The Joint Supervisory Body shall have a Secretariat, based at the headquarters of Eurojust, to assist it in the performance of its tasks. The Secretariat shall be a permanent body and its members recruited only on the basis of competence. The members of the Secretariat shall act solely in the best interests of the Joint Supervisory Body, shall be fully independent from Eurojust and shall not accept instructions from any other authority in the course of Joint Supervisory Body duties. Assignment to the Secretariat shall take place on a proposal from the Joint Supervisory Body. Staff members of the Secretariat shall not undertake other work without permission of the chairman of the Joint Supervisory Body.

2. The Secretariat shall operate under the direction of the chairman of the Joint Supervisory Body in accordance with the rules established by the Joint Supervisory Body. The Secretariat shall keep a register of appeals and all other documents.

3. The Secretariat shall ensure that the obligations under Article 25 of the Eurojust Decision shall also be respected in the work of the Joint Supervisory Body.

Article 27

Confidentiality

1. Members of the Joint Supervisory Body, experts and members of the Secretariat shall be obliged to treat in a confidential manner the circumstances which come to their knowledge in the context of their activity, unless the proper discharge of their task requires otherwise. This obligation shall continue to apply also when they cease to be active in that capacity.

2. Upon appointment, members of the Joint Supervisory Body, experts and members of the Secretariat shall declare their acceptance of these obligations.

3. In the case of a breach of confidentiality, a member of the Joint Supervisory Body may be suspended by unanimous vote cast in a secret ballot by the members attending a meeting of the Joint Supervisory Body. The person concerned shall be heard before, but shall not take part in the decision.

Article 28

Budget and costs

1. The Secretariat shall prepare proposals for an annual budget for the secretariat of the Joint Supervisory Body, which on approval shall be forwarded to the College.

2. The Joint Supervisory Body shall decide on the disbursement of the budget allocated to it which shall be administered by the Secretariat, in accordance with the Financial Regulation of Eurojust.

3. The costs of the Joint Supervisory Body, including the expenses for the members, which are necessary for the proper exercise of their duties, shall be borne by the budget line of the Joint Supervisory Body.

Article 29

Amendment of the rules of procedure

Amendments to these rules of procedure shall be adopted in accordance with the procedure laid down in Article 23(9) of the Eurojust Decision.

Article 30

Public access to documents

1. Any natural or legal person has a right of access to documents of the Joint Supervisory Body, subject to the principles, conditions and limits defined in this Article.

2. This Article shall apply to all documents held by the Joint Supervisory Body, that is to say, documents drawn up or received by it and in its possession.

3. Without prejudice to Paragraph 4 and 5 of this Article, documents shall be made accessible to the public either following a written application or directly in electronic form.

4. The Joint Supervisory Body shall refuse access to a document where disclosure would undermine the protection of:

a) the public interest as regards:

— public security and criminal investigations,

— defense and military matters,

— international relations,

— the financial, monetary or economic policy of the Community or a Member State,

— the fulfillment of Eurojust's tasks in reinforcing the fight against serious crime,

— national investigations in which Eurojust is assisting.

b) privacy and the integrity of the individual, in particular in accordance with the rules regarding the protection of personal data.

5. The Joint Supervisory Body 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.

6. Access to a document, drawn up by the Joint Supervisory Body for internal use or received, which relates to a matter where the decision has not been taken by the Joint Supervisory Body, shall be refused if disclosure of the document would seriously undermine the decision-making process, 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 the Joint Supervisory Body shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the Joint Supervisory Body decision-making process, unless there is an overriding public interest in disclosure.

7. As regards third-party documents, the Joint Supervisory Body shall consult the third party with a view to assessing whether an exception in paragraph 4 or 5 is applicable, unless it is clear that the document shall or shall not be disclosed. A member state may request the Joint Supervisory Body not to disclose a document from that member state without prior agreement.

8. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.

9. Applications for access to a document shall be made in any written form, including electronic form, in one of the official languages and in a sufficiently precise manner to enable the Joint Supervisory Body to identify the document. The applicant is not obliged to state reasons for the application.

10. If an application is not sufficiently precise, the Joint Supervisory Body shall ask the applicant to clarify the application and shall assist the applicant in doing so.

11. In the event of an application relating to a very long document or to a very large number of documents, the Joint Supervisory Body may confer with the applicant informally, with a view to finding a fair solution.

12. The Joint Supervisory Body shall provide information and assistance to citizens on how and where applications for access to documents can be made.

13. An application for access to a document shall be handled promptly. An acknowledgement of receipt shall be sent to the applicant. Within 30 working days from registration of the application, the chairman of the Joint Supervisory Body shall either grant access to the document requested and provide access in accordance with paragraph

15 of this Article 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 14 of this Article.

14. In the event of a total or partial refusal, the applicant may, within 30 working days of receiving the reply of the Joint Supervisory Body, make a confirmatory application asking the Joint Supervisory Body to reconsider its position.

15. 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 applicant's preference. The cost of producing and sending copies may be charged to the applicant. This charge shall not exceed the real cost of producing and sending the copies. Consultation on the spot, copies less than 20 A4 pages and direct access in electronic form shall be free of charge.

16. If a document has already been released by the Joint Supervisory Body, Eurojust or other institutions and is easily accessible to the applicant, the Joint Supervisory Body may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.

17. Documents shall be supplied in an existing version and format with full regard to the applicant's preference.

Article 31

Evaluation

These rules of procedure shall be evaluated by the Joint Supervisory Body between one and three years after their entry into force, and in the light of experience.

Article 32

Entry into force of the rules of procedure

These rules of procedure shall enter into force on the day following that of their adoption in accordance with Article 23(9) of the Eurojust Decision.

Done at The Hague, 2 March 2004.

For the Joint Supervisory Body

The Chairman

Joe MEADE