

STATEWATCH COMPLAINT AGAINST EUROJUST

Background

1. Eurojust was set up in 2002 by a Council Decision of 28 February 2002 (Council Decision 2002/187/JHA and in OJ, L63, 6.3.2002)

Article 45 states that:

“On the basis of a proposal by the Administrative Director, the College shall adopt rules for access to Eurojust documents, taking into account the principles and limits stated in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents.”

This Decision was amended in 2003 and 2009. The Consolidated text (in Council document no: 5347/3/09 and in Article 39) contains the same section as above.

2. On 13 July 2004 the College of Eurojust adopted a “Decision to adopt rules regarding public access to Eurojust documents”.

Despite the terminology in Article 45 (2002) and Article 39 (2009) that Rules should be adopted “taking into account the principles and limits” of Regulation 1049/2001 the Rules adopted deviate substantially from the “principles” of Regulation 1049/2001. These deviations include:

- Article 4.3 concerning disclosure of a document where a decision has not been taken access may be refused where this would “undermine Eurojust’s decision-making process”. This is a much lesser test than “seriously undermine” in Regulation 1049/2001.
- The time-limits for initial and confirmatory applications is 30 days, not 15 days as in 1049/2001.
- Where access is refused at the confirmatory stage Article 8 says: “Eurojust will inform the applicant of the remedies open to him or her”. This does not follow the principle of 1049/2001 that

applicants have to the right take their case to the ECJ or to the European Ombudsman

- Most crucially, the Rules do not include a commitment to provide a public register of documents which is required under Article 11 of 1049/2001.

- Nor is there any reference to Article 17 of 1049/2001 regarding the publication of an Annual Report, the number of cases where access is refused and the reasons for refusal and the number of sensitive documents not recorded in the register.

3. Eurojust's Annual Report for 2011 does include a section on "Public access to Eurojust documents which does give the total number of applications as 11 and does state the reasons why all were refused. However, it does give the number of sensitive documents not recorded on its not-existent public register.

4. 5. In general it is held that under the Lisbon Treaty it is stated in that the legal base for public access to documents is now Article 15(3) of the consolidated version of the Treaty on the Functioning of the European Union. This new provision extends the public right of access to documents to all the Union institutions, bodies, offices and agencies.¹

The Lisbon Treaty provision, which came into force in December 2009, means that Eurojust is now subject to Regulation 1049/2001. In the alternative, Eurojust is in any event obliged to "take account" of the "principles and limits" in that Regulation. Under either interpretation, Eurojust is committing maladministration as regards access to documents.

Substance of the complaints

Complaint no 1: The Rules adopted by Eurojust on public access to its documents do not follow the "principles" of 1049/2001 with regard to time limits, remedies and Article 17 of the Regulation.

¹ In March 2011 the Commission put forward a proposal to effect this commitment, however, the European Parliament decided that this provision should be incorporated into its 1st Reading position (adopted in December 2011) on the Commission's 2008 proposals to amend 1049/2001 and not treated this matter separately.

Complaint no 2: Eurojust does not maintain a public register of documents.

Making available a public register of documents ensures that citizens and civil society can follow and understand what is being discussed and decided. And further by making available documents concerning implementation it ensures that the activities of Eurojust are subject to public and parliamentary accountability. Access to documents is the life-blood of a democratic system and a public register of documents is crucial to this process.

These are both cases of maladministration.

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