

# Cover note University Council

Document number: bl-0027201

Case number:

Details		
Topic		Revised “Regulations governing the use of Internet and ICT facilities by employees/students”
To be discussed before		8-12-2020
Author / Section		Jaap Cornelese / IT
Handled by (to be invited to the committee)		Jaap Cornelese (Policy Advisor IT)
Date		19-5-2021

Context / Reason
<p>In its letter to the University Council from December 3th 2019 the Executive Board promised a review of the Regulations governing the use of Internet and ICT facilities by employees/students”. In particular changes to better address the confidential nature of some roles and to better ensure that additional barriers are in place before an investigation can be conducted into people that have such a role were to be addressed.</p> <p>Also, since the current ICT regulations stem from 2015, a revision was necessary to ensure the regulations are a good fit to the current state of technical development, relevant laws and regulations and societal views.</p> <p>The promised review and revision of the ICT regulations resulted in the ICT regulations, version 2020, which were presented to and discussed with the UC December 1th 2020. With the inclusion of some changes made as a result of the consultation with the UC the revised ICT regulations were put before EUROPA for their consent.</p> <p>EUROPA on March 8<sup>th</sup> 2021 and later in May 2021 posed additional remarks and questions leading to the 2021 versions of the ICT regulations now proposed to the UC and to EUROPA.</p>

Jurisdiction UC / Question to the UC
<p>Though formally, based on ‘het Reglement voor de Universiteitsraad van de EUR’, the right of consent for the ICT regulations for employees lies with EUROPA and for the ICT regulations for students the UC has the right of advice, both ICT regulations are put to the UC for its consent. Right of consent had been given to the UC for the 2015-versions of the regulations. Extending this to the 2021 versions seems logical.</p>

Short Summary
<p>During the last meeting with EUROPA (March 8<sup>th</sup> 2021) on the revised ICT Regulations two further modifications to the proposal were requested:</p> <ol style="list-style-type: none"><li>1. To investigate if a separate and stand-alone regulation/regulatory text on Targeted Investigations into a functionaries of students files/mail/etc. could be drafted so as to create a ruling that can more straightforwardly be referred to from any other ruling at the University that would require such an investigation. If, for example, a person communicates his/her dislike of (part of/people at) the University then this could in some cases be regarded as an offence against the rules of conduct of the University. As a result the Board might want to investigate into that person’s electronic correspondence. For that</li></ol>

it is required that rules are in place that state when and how such a targeted investigation can take place. At the moment only the ICT Regulations provide any rulings on Targeted investigations . So in case of an offence against one set of rules (code of conduct) a completely different and mostly unrelated set of rules (ICT Regulations) has to be invoked in order to be able to execute the required investigations.

2. To further elaborate on procedures to be followed if/when a person in a Confidential position is subject of a Targeted investigation. Specifically the requested additional assessment by the Ombudsperson of the University.

An expert group consisting of legal experts from Legal, HR, CIO and also including the Ombudsperson of the EUR has worked out the answers.

**Outcome:**

Ad 1 Creation of a separate and stand-alone regulation for Targeted investigations would require at least a year or more. To be meaningful it would have to incorporate topics that are not now included in Article 7 of the ICT Regulations. Next to looking into a person's email and electronic files it would probably also have to regulate opening someone's physical mail, opening a closed drawer in a desk, camera surveillance and more.

Since the proposed update/upgrade of the articles on Targeted investigations in the revised ICT Regulations are in line with requests by the Board, the University Council and EUROPA and since they are clear improvements on the current (2015) articles it is desired that the newly revised ICT Regulations are made to be come into effect sooner than a year from now or longer. Even more so since the revised ICT Regulations are an improvement over the current regulations in other areas as well.

Therefor the proposal is to now approve the currently proposed Revised ICT Regulations, including its articles on Targeted investigations, and to ask Legal to prepare a separate and stand-alone regulation/regulatory text on Targeted Investigations for future discussion and approval. If, in future, such a separate regulation were to be implemented then the ICT Regulations could be adjusted in the sense that they can then refer to that separate regulation in case a Targeted investigation is required.

Ad 2 During the expert group's discussions on how to best formulate the required (additional) assessments it became clear that the Ombudsperson, after all, thought she would not be the best functionary to take on the role of independent assessor.

The group came to agree on the current proposal that "If the subject of the intended Targeted investigation is a person in a Confidential position then prior to ordering an investigation the Board will ask an independent expert third party to make an additional assessment in view of proportionality and subsidiarity and the rights and interests of the subject"

During the last couple of weeks a text proposal along the lines sketched above has been informally circulated by the ombudsperson, Edith Weijnen, to EUROPA, the Council and the Board.

This resulted in the next four additional questions (not translated into English) by Roel Pieterman of EUROPA. Answers are provided in Italics.

- A. Zijn leden van het CvB (en van de RvT) ook Functionarissen? Zo ja: wat betekent dit voor de belangenafweging? Zo nee: hoe worden de doelen van het Reglement nagestreefd en gehandhaafd als verdenkingen jegens deze leden ontstaan?

- a) *Yes, members of the board are also 'Jobholders'. The new Art. 7.2.5 sees to the situation that a member of the Board himself becomes object of enquiry in a*

*Targeted investigation: in such a case, where the ICT Regulations state ‘the Board’ that must be substituted by ‘the Supervisory Board’.*

- B. Begrijp ik goed uit de formulering van artikel 7.2.2 dat een proportionaliteits- en subsidiariteitstoets onderdeel uitmaakt van de belangenafweging in 7.2.1? En als dit zo is, is het dan niet toch verstandig dit in 7.2.1 expliciet op te nemen?
- a) *Agreed to, proportionality and subsidiarity are now also mentioned in Art 7.2.1*
- C. Als het advies achteraf, zoals bedoeld in 7.2.3 negatief is, welke gevolgen zal/moet dit dan hebben? Moet dit in het Reglement geregeld worden?
- a) *Such a situation can happen, but the expert could not find a single ‘one-fits-all’ solution. It could be that in hindsight the independent third party advises negatively regarding the by then executed Targeted investigation and that during the investigation no incriminating evidence was found. In that case the least the Board could do is say sorry. On the other hand, it is also possible that incriminating evidence was found. Maybe then it is a matter of degree: is a hack or attack of EUR systems has been prevented by the investigation in this case then perhaps ‘sorry’ is not the right reaction. The expert group advises the judge the situation case by case of it should happen.*
- D. Welke mogelijkheden hebben Functionarissen als zij willen opkomen tegen een voorgenomen of uitgevoerd gericht onderzoek? En welke als ze het niet eens zijn met de opgelegde maatregel(en)? Moet dit in het Reglement geregeld worden?
- a) *In both cases the expert group wants to refer to the existing complaints regulations for employees and for students. This referral will be part of a yet to be written Art 7.5. Due to holidays the exact referral to the exact rulings could not yet be drawn-up. It is expected that this additional article will be available by the end of May (2021). We hope that the absence of this article at the time of sending you this email will not prohibit affirmation of the proposed revised ICT Regulations by your councils.*

### Follow-up process

Both EUROPA and the UC are asked to approve the revised ICT-Regulations 2021.

The text of a new Article 7.5 referring employees/students to the applicable complaints regulations/mechanisms still needs to be provided. This will be sent to EUROPA and the UC before the end of May 2021.

### Specifics

Are there specific circumstances the UC must take into account? For instance a confidential treatment of this topic, or specific previous cases that are related?

### Documents to be attached

Regulations governing the use of Internet and ICT facilities by employees – 2021  
Regulations governing the use of Internet and ICT facilities by students - 2021