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European Ombudsman

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**Report of the European Ombudsman following his visit to Europol
(OI/9/2012/OV)**

Dear Mr Bunyan,

By letter of 10 December 2012, I informed you that, in the interest of procedural economy, I decided to include the issues you raised in your complaint 2166/2012/BEH in my ongoing own-initiative inquiry OI/9/2012/OV, and to therefore close my inquiry into your complaint 2166/2012/BEH.

I also informed you that, as agreed, I would keep you informed of the further steps in my ongoing own-initiative inquiry as regards these issues and give you an opportunity to submit observations on any reply received from Europol.

Following my visit to Europol on 4 June 2012, I have now established a report which I have sent to the Director of Europol, with an invitation to submit comments by 30 April 2013. Please find enclosed a copy of my report. When I receive Europol's comments, I will send them to you with an invitation to submit observations as regards the issues you raised in your complaint 2166/2012/BEH within one month.

Yours sincerely,

P. Nikiforos Diamandouros

Enclosure: Report of the European Ombudsman following his visit to Europol



Report

of the European Ombudsman following his visit to the European Police Office (Europol) - OI/9/2012/OV

The background to the visit

1. In May 2011, the European Ombudsman launched a programme of visits to the EU agencies with the aim of identifying and spreading best practices in their relations with citizens. Initially, the Ombudsman carried out three 'pilot' visits to the EU agencies in the United Kingdom, namely, the European Banking Authority, the European Medicines Agency and the European Police College. In October 2011, the Ombudsman visited the European Environment Agency in Copenhagen and, in November 2011, the European Monitoring Centre for Drugs and Drug Addiction and the European Maritime Safety Agency in Lisbon. In February 2012, the Ombudsman visited the European Centre for the Development of Vocational Training in Thessaloniki and, in May 2012, the European Foundation for the Improvement of Living and Working Conditions in Dublin¹.

2. By letter of 16 May 2012, the Ombudsman informed the European Police Office ('Europol') that, in the framework of his programme of visits to agencies, he intended to visit it on 4 June 2012.

3. The legal basis for Europol is Council Decision 2009/371/JHA of 6 April 2009², which replaced the previous Europol Convention³. The new legal framework came into force on 1 January 2010 when Europol became an EU Agency. Europol is the law enforcement agency of the European Union. According to Article 3 of the Europol Decision, the objective of Europol is to support and strengthen action by the competent authorities of the Member States and their mutual cooperation in preventing and combating organised crime, terrorism and other forms of serious crime affecting two or more Member States. More specifically, Europol supports the law enforcement activities of the Member

¹ Information on previous and later visits to the EU agencies is available on the following page of the Ombudsman's website: www.ombudsman.europa.eu/activities/visits.faces

² Council Decision 2009/371/JHA of 6 April 2009 establishing the European Police Office (Europol), OJ 2009 L 121, p. 37.

³ The Europol Drugs Unit (EDU) started operating already in 1994. The Convention establishing Europol under Article K3 of the Maastricht Treaty ('the Europol Convention') was agreed in 1995 and, after ratification by the Member States, came into force on 1 October 1998. Europol became fully operational on 1 July 1999, after the finalisation of a number of legal acts relating to the Convention.



States mainly against illicit drug trafficking, illicit immigration networks, terrorism, forgery of money (counterfeiting of the euro) and other means of payment, trafficking in human beings (including child pornography), illicit vehicle trafficking and money laundering. In addition, other main priorities for Europol include combating crimes against persons, financial crime and cybercrime.

4. The Ombudsman opened 13 inquiries in relation to Europol between 1999 and 2012. This number of inquiries is relatively small compared to similar EU bodies⁴. The Ombudsman's inquiries thus far have not revealed any possible instance of systemic maladministration. Rather, they have revealed a willingness on the part of Europol to cooperate with the Ombudsman (including by correcting mistakes, apologising and showing readiness to reconsider problematic issues).

5. The Ombudsman sent Europol a draft agenda with the specific issues he wished to discuss. In addition, the Ombudsman informed Europol that, in response to a commitment he had undertaken following a request by the Assembly of Agency Staff Committees ('AASC'), he also intended to meet Europol's Staff Committee during his visit.

The visit

6. The meeting took place at Europol's premises in The Hague on 4 June 2012. The Ombudsman was accompanied by Mr Olivier Verheecke, Principal Legal Adviser. Europol was represented by Mr Rob Wainwright, the Europol Director, as well as by Mr Oldřich Martinů, Deputy Director in charge of the Governance Department, Mr Eugenio Orlandi, Deputy Director in charge of the Capabilities Department, as well as various representatives from across Europol which were of relevance to the agenda points of the visit (e.g. corporate communications, human resources, procurement, internal auditor etc.).

7. At the beginning of the meeting, the Ombudsman provided information on the purpose and context of his visit to Europol. He clarified that he carries out his visits to agencies of the EU on the basis of his competence to conduct own-initiative inquiries. An own-initiative inquiry implies, among others, that the usual procedural guarantees concerning such inquiries apply. These include the Agency's right to request the Ombudsman to treat information and documents on a confidential basis, in accordance with Articles 5.1, 5.2 and 14.2 of the Ombudsman's Implementing Provisions⁵.

8. Following the Ombudsman's introductory remarks, the Director of Europol underlined that a culture of service is fundamental to Europol's activities and that he very much welcomed the Ombudsman's offer to further help develop good administration. He also mentioned that he would oversee the development and implementation of a Europol Regulation, a new legal framework which will further modernize the Agency and improve its capabilities. He stated that the timing of the Ombudsman's visit was very appropriate. Then, a presentation on the key issues of *Governance at Europol* was

⁴ As explained below, the latest inquiry to be opened, in case 2166/2012/BEH, was closed on 10 December 2012 because it is more efficient and effective to deal with the matters raised in that complaint within the framework of the present inquiry.

⁵ www.ombudsman.europa.eu/resources/provisions.faces



given, in which it was underlined, among other things, that key performance indicators (KPIs) are measured and reviewed at regular intervals throughout the year. It was also mentioned that a staff survey had shown that the staff was very aware of the role and values of Europol.

9. After the presentation on *Governance at Europol*, the Europol Deputy Directors and the concerned experts presented Europol's position on the various subjects identified by the Ombudsman in his letter of 16 May 2012. The five subjects were addressed through a question and answer session. At the end of the meeting, Europol also provided a copy of the relevant documents.

10. The following issues constituted the object of discussion between the Ombudsman and Europol's management:

- A. Europol's initial contacts with the public;
- B. Transparency, dialogue and accountability;
- C. Selection and recruitment;
- D. Tenders and contracts;
- E. Conflicts of interest.

11. After the meeting with Europol's management, the Ombudsman and Mr Verheecke met with the Chairperson of the Staff Committee of Europol, and other representatives.

The Ombudsman's findings and suggestions

12. As a preliminary point, the Ombudsman underlined that, during the visit, the Europol Director and Europol's management demonstrated a high level of commitment to a culture of service and to ethical standards within the organisation, a wish to adhere to the values and principles promoted by the Ombudsman, and a genuine readiness to further improve existing administrative practices and procedures.

(1) Europol's initial contacts with the public

13. In his letter of 16 May 2012, the Ombudsman informed Europol that all the EU agencies agreed to adopt the European Code of Good Administrative Behaviour ('the ECGAB') at a meeting of the heads of the agencies held in Lisbon in October 2008. However, Europol's website contained no link to the Code. The Ombudsman was also not aware of how Europol had implemented the Code, and how it ensured that its staff complies with the principles laid down in it.

14. Europol explained that it became an EU agency only in 2010, namely after the heads of agencies (of which Europol was not part in 2008) had agreed to adopt the ECGAB. Europol however stated that it had its own Code of Conduct which would be updated to explicitly refer to and promote the principles of the ECGAB. It also stated that Europol already follows the principles of the ECGAB in ensuring that the right of EU citizens to good administration is respected and that these principles are also reflected in its governance structure. Europol



confirmed that it was ready to make a reference to the ECGAB on its website. The Ombudsman indeed suggests that Europol could make its commitment to the principles set out in the ECGAB more visible to EU citizens by providing a link to the Code on its website.

15. In his letter to Europol, the Ombudsman pointed out that Europol's website, including its home page, was available only in English and therefore asked whether Europol intended to make its website available in all the 23 official languages. The Ombudsman noted that the home page contains, on the top, a language selection option, but that - for the moment at least - only English is available.

16. Europol explained that its working language is English and that most requests to it are submitted in English. It also pointed out that past experience had shown good results with the website being available only in English. Europol further argued that one also needed to consider the question of financial resources, in particular in the current times of financial austerity. Europol stated however that key publications, such as the Europol Facts Sheet and the Annual Reviews are published in all 23 official languages.

17. The Ombudsman considers that a balanced approach to the issue would consist in making *basic* information concerning Europol's mandate and tasks available in all official languages. The Ombudsman therefore suggests that Europol envisage making the home page of its website, including basic information concerning its mandate and tasks, available in all languages, as well as mentioning, also on the website, that a translation of other information or documents may be requested.

18. Aside from the fact that it is only available in English, the Ombudsman finds Europol's website very user-friendly. It contains a lot of information and thus informs the public in detail about Europol's activities. The website has a section "*About Europol*" which contains, among other things, the following subsections: "History", "Management & Control", "Our people", "Employment", "Procurement" and "Contact us". The website also contains an extensive "Media Corner" (with a publications section) and also a "Legal texts" section under "Protecting Europe". A further positive feature of the website is that every page can be printed as a PDF which is very user-friendly.

19. After the discussion of the above points, Europol made a presentation about its website and its initial contacts with the public. Europol referred to the various inquiry forms (including media, publication, academic, recruitment inquiries and requests for visits), which are available under the "*Contact Us*" section of its website. It pointed out that, in 2011, it made 55 press releases, which were circulated to around 1500 contacts and that, in the period of 21 June 2011 to 31 May 2012, it received 133 requests for visits. Europol further explained its social media strategy (including Facebook, Twitter and Youtube) which should be ready in the autumn of 2012.

20. The Ombudsman applauds the high quality of Europol's website and expresses his satisfaction with Europol's outreach activities and the initiatives undertaken to enhance Europol's visibility.



(2) Transparency, dialogue and accountability⁶

21. The Ombudsman notes that Europol is making considerable efforts in terms of transparency, dialogue and accountability. For instance, it is very positive that Europol has, under the "*Management and control*" section of its website, published detailed data concerning its budget (from the years 2002 to 2012). Another positive feature is that the website contains, not only Europol's organisation chart, but also statistics as regards Europol's staff numbers, including statistics according to nationality. Similarly, the "Procurement" section of the website contains the list of contractors with which Europol concluded contracts in 2010 and 2011, including the value of the contract. The Ombudsman further takes note of the fact that Europol's website mentions, under "*Mission, vision and values*", that "[i]n line with our mission and vision, we attach importance to the following five values which best characterise the culture of Europol and the work of its people: Integrity, Accountability, Initiative, Teamwork, Effectiveness". All the above elements demonstrate that Europol is committed to a culture of service.

22. The EU legislation on public access to documents expressly mentions the Ombudsman as a review body. In his letter of 16 May 2012, the Ombudsman asked Europol to provide additional information and to answer the following questions:

- a) How does Europol deal in practice with requests for public access to documents? What are its guidelines and/or practical arrangements for handling such requests? Please provide examples, such as the main correspondence in Europol's handling of the last three requests for public access to documents dealt with under the Europol Management Board (MB) Decision of 8 July 2009⁷ (which refers to Regulation 1049/2001⁸). (The *substance* of Europol's decisions in these examples will not be examined, as this is not the purpose of this visit.)
- b) Does Europol produce an annual report (internal or external) on its handling of public access to documents?
- c) Does Europol operate, or intend to operate, a public register in the sense of Article 11 of Regulation 1049/2001?⁹

⁶ On 26 October 2012, the Ombudsman received a complaint (2166/2012/BEH) from the NGO Statewatch, which concerned the Europol MB Decision of 8 July 2009. On 19 November 2012, the Ombudsman opened an inquiry into the complainant's two allegations and claims and asked Europol to submit an opinion by 28 February 2013. The Ombudsman, however, has now concluded that, since complaint 2166/2012/BEH concerns Europol's general policy on public access to documents, and not the treatment of individual requests for access, it is more appropriate to deal with the issues raised by the complainant in complaint 2166/2012/BEH in the framework of the present own initiative inquiry OI/9/2012/OV. By letter of 10 December 2012, the Ombudsman therefore informed Europol and Statewatch that he decided to terminate his inquiry into complaint 2166/2012/BEH and to incorporate the issues subject of that inquiry into the present own initiative inquiry. The Ombudsman will send to Statewatch a copy of Europol's reply to the present report, with an invitation to submit observations. Statewatch has indicated that it will put its original complaint and all the correspondence concerning the present inquiry on its website.

⁷ Decision of the Management Board (MB) of Europol laying down the rules concerning access to Europol documents, Europol file no; 3550-95r3 [360875v9], 8 July 2009, published on www.europol.europa.eu, under the section "Legal Texts".

⁸ 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, OJ 2001 L 145, p. 43.

⁹ The Europol Decision of 8 July 2009 mentions that "*Europol shall provide access to a register of publicly accessible documents and shall as far as possible make documents directly accessible in electronic form*" (emphasis added)



d) Europol handles a vast amount of information and data. Its website is user-friendly and contains a large volume of data, publications and information relating to Europol's main activities, more particularly under "Publications". Regulation 1049/2001 strictly speaking only applies to 'documents'. How does Europol deal with requests for information? Please provide us with information concerning the feedback Europol's services receive from users and stakeholders regarding access to information.

23. In reply to the questions raised during the visit, Europol explained that its public access policy is laid down in the decision of the Management Board (MB) of Europol of 8 July 2009, which takes into account the principles of Regulation 1049/2001 (the Ombudsman notes that the Decision also refers to Article 1 of the Treaty on European Union, to Article 15 of the Treaty on the Functioning of the European Union (TFEU, ex-Article 255 TEC) and to Article 42 the Charter of Fundamental Rights). The administrative implementation of this Decision is governed by the Internal Decision of the Director of Europol of 25 January 2011¹⁰ which covers, among other things, the registration of applications, the identification of documents, the processing of different types of applications, the time limits and the notification.

24. Europol provided a table with detailed statistics on requests for public access received in the period 2011-2012¹¹ and stated that, because of its specific mission, it receives very few requests for public access from the public, and that most requests come from the General Secretariat of the Council (GSC). The table supplied by Europol to the Ombudsman showed that, of the 13 requests received, 12 came from the GSC and only one from an NGO. It also appears that Europol deals promptly with the requests received, within one or two weeks, and that, in 80 % of the cases, full access was granted. In several cases, partial access was granted. The table showed only one case (a GSC case) where access was refused.

25. The Ombudsman understands Europol's reference to the GSC as "Requester" to mean requests that are addressed by members of the public to the GSC, and which the latter forwards to Europol to be dealt with. Should this understanding be incorrect, the Ombudsman would be grateful if Europol would clarify what is meant by the GSC as "Requester".

26. The Ombudsman very much welcomes the fact that, in practice, Europol deals promptly with requests for public access, in general within one or two weeks, namely 10 working days. The Ombudsman, however, notes that, whereas Regulation 1049/2001 foresees in a time limit of 15 working days for processing initial and confirmatory applications for access, Europol's MB Decision of 8 July 2009 foresees in Articles 7 and 8 in a time-limit of 30 working days.

27. The Ombudsman considers that it is within the prerogatives of Europol to establish specific procedural rules governing how it deals with requests for public access to documents provided it complies with the rules set out in Article 15 (3) TFEU, which reads as follows:

".....

¹⁰ Decision of the Director of 25 January 2011 on implementing the Decision of the Management Board of Europol laying down the rules governing access to Europol documents.

¹¹ The table mentioned the date of the request, the identity of the requester, the document(s) requested, the date of reply and the outcome (full access/partial access/no access).



3. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, shall have a right of access to documents of the Union's institutions, bodies, offices and agencies, whatever their medium, subject to the principles and the conditions to be defined in accordance with this paragraph.

General principles and limits on grounds of public or private interest governing this right of access to documents shall be determined by the European Parliament and the Council, by means of regulations, acting in accordance with the ordinary legislative procedure.

Each institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents, in accordance with the regulations referred to in the second subparagraph.

The Court of Justice of the European Union, the European Central Bank and the European Investment Bank shall be subject to this paragraph only when exercising their administrative tasks.

The European Parliament and the Council shall ensure publication of the documents relating to the legislative procedures under the terms laid down by the regulations referred to in the second subparagraph."

28. Thus, in light of the third subparagraph of Article 15(3) TFEU, Europol has a legal basis to elaborate its own Rules of Procedure regarding public access to documents. Such Rules of Procedure must, however, respect the general principles and limits on grounds of public or private interest governing the right of access to documents. Nevertheless, even if it is clear that Article 15(3) TFEU allows a certain margin of discretion as regards the establishment of specific procedural rules, such as the precise time periods for dealing with requests for public access to documents, this margin of discretion should be exercised in a manner which bears in mind the need for Europol to be as transparent as possible. This implies that while it is indeed possible that Europol could choose to apply time periods for dealing with requests for public access which are longer than those applying to other EU institutions and agencies, it would be good administration for Europol to justify expressly the concrete reason why it considers that such extended time periods are necessary, by referring to the particular circumstances applying to requests for public access directed to it.

29. The Ombudsman further notes that Article 8 of the Europol MB Decision does not, in contrast to Article 8(1) of Regulation 1049/2001, refer to the possibility for the applicant to institute court proceedings or to complain to the European Ombudsman in case of a partial or total refusal of access. The absence of such a specific declaration in the Europol MB Decision does not imply that such rights do not exist - all persons who are refused full public access to a document can institute court proceedings or complain to the European Ombudsman. However, the Ombudsman considers that it is in the interests of transparency that Europol expressly indicate the possibility of appeal in any reply to a confirmatory application in which it refuses access or gives only partial access. In addition, Europol could consider modifying Europol's MB Decision to draw attention to the right of applicants to institute court proceedings or complain to the European Ombudsman

30. The Ombudsman also underlined that a pro-active attitude in the field of public access is not to wait until a request for access is made, but to anticipate



and, already at the stage of drafting a document, to consider the information which is confidential and which could thus be confined to an annex to the document. Such an approach would make dealing with eventual requests for public access easier and quicker. It would thus benefit those persons seeking public access.

31. Europol further explained that, because of the small number of requests, it has not produced an annual report on public access, but that it was ready to consider it. The Ombudsman notes that, whereas Article 17 of Regulation 1049/2001 contains an obligation to prepare an annual report on access to documents (with the number of cases in which access was refused, the reasons for such refusals and the number of sensitive documents not recorded in the register), Europol's MB Decision of 8 July 2009 does not contain a similar provision. The Ombudsman understands that the small number of requests for access received does probably not justify the publication of a separate annual report on access to documents. However, and in the same way as Eurojust does, Europol could include a section in its general annual report with the information mentioned in Article 17 of Regulation 1049/2001. The Ombudsman thus suggests that Europol could consider reporting annually (possibly in a section of its general annual report) on its handling of public access to documents requests containing the information mentioned in Article 17(1) of Regulation 1049/2001.

32. As regards a public register of documents, Article 11 of the Europol MB Decision of 8 July 2009 provides that "*Europol shall provide access to a register of publicly accessible documents and shall as far as possible make documents directly accessible in electronic form*" (emphasis added). The Ombudsman notes that the Europol MB Decision of 8 July 2009 refers only to a register of "*publicly accessible documents*", whereas Regulation 1049/2001 in Article 11(1) imposes an obligation to provide public access to a "register of documents". The wording of the Europol MB Decision would seem to suggest that its public register would not include those documents that are in Europol's possession but which it has not yet decided should be publicly accessible. .

33. The Ombudsman underlines that the purpose of a public register is to make it easier for citizens to exercise their rights of public access. If a citizen is unaware of the existence of a document, it will be difficult, if not impossible, for the citizen to exercise his or her fundamental rights to make a request for public access thereto.

34. The inclusion of a reference to a document in a public register does not pre-determine the issue of whether a request for public access should be granted; the institution or agency may indeed put forward, in its decision relating to a request for public access, duly substantiated reasons why public access should be denied. In this context, it should be underlined that reference to a document in a register should be made in a manner which does not undermine the public and private interests protected by the exceptions to public access. As regards Europol, the manner in which a document is identified on the public register should not contain any information which would fall within one of the exceptions set out in Article 4 of the Europol MB Decision of 8 July 2009.

35. This would be particularly the case as regards "sensitive documents". "Sensitive documents" are documents originating from the institutions or the agencies, from Member States, third countries or International Organisations, classified as 'TRÈS SECRET/TOP SECRET', 'SECRET' or 'CONFIDENTIEL' in accordance with the rules of the institution concerned, which protect essential



interests of the European Union or of one or more of its Member States, notably public security, defence and military matters.

36. The Ombudsman understands that Europol does deal with documents which are subject to Article 9 "*Europol classified documents*" of the Europol MB Decision of 8 July 2009 (similar to Article 9 "*Treatment of sensitive documents*" of Regulation 1049/2001). The Ombudsman considers that Europol could include a reference to the existence of these documents on a public register, in a manner which would not identify their content (by, for example, using only a reference number¹²).

37. Europol explained to the Ombudsman that it has already on its website a publications section which contains a large amount of documents. It however stated that it was currently considering enhancing the availability of documents through a public register, but that this required taking into consideration the sensitive nature of the information it is dealing with. The Ombudsman very much welcomed Europol's attitude. The Ombudsman referred to the public register which his own office intends to launch and pointed out that the Registry of his Office was available for any assistance Europol might wish in developing a public register.

38. With regard to the exceptions to disclosure mentioned in Article 4 of the Europol MB Decision of 8 July 2009, the Ombudsman notes that both paragraphs of Article 4(3) of the Decision provide that access to a document, drawn up for internal use or received by Europol, which relates to a matter where the decision has not been taken by Europol (or access to a document containing opinions for internal use as part of deliberations and preliminary consultations within Europol, after the decision has been taken), shall be refused if disclosure of the document would "*undermine Europol's decision-making process*", whereas the corresponding paragraphs of Article 4(3) of Regulation 1049/2001 provide that access shall be refused if disclosure would "*seriously undermine the institution's decision-making process*" (emphasis added). The Ombudsman already pointed out above that he considers that it is within the prerogatives of Europol to establish specific procedural rules governing how it deals with requests for public access to documents, provided it complies with the rules set out in Article 15 TFEU. It would thus be good administration for Europol to either i) bring Article 4(3) of the Europol MB Decision in line with Article 4(3) of Regulation 1049/2001 or ii) justify expressly the concrete reason why it considers that disclosure should be refused under Article 4(3) when that disclosure would undermine rather than *seriously* undermine Europol's decision making-process.

39. With respect to requests for information, Europol pointed out that the definition of "*document*" is rather wide in the MB Decision of 8 July 2009 and that, therefore, requests for information are as much as possible treated as requests for public access to documents, for which there are clear rules. Europol also stated that it aims to provide as much information as possible via its website. It provided the following numbers as regards the various requests for information in the period between 21 June 2011 and 31 May 2012: media

¹² Such a limited reference to a document is an exception to the rule that each document on the register should contain a reference number (including, where applicable, the inter-institutional reference), the subject matter and/or a short description of the content of the document and the date on which it was received or drawn up and recorded in the register. The Ombudsman also recognises that if the "*sensitive document*" originates from a third party, that party must give its consent in order for the document to be included on the register.



inquiries (400), publication inquiries (153), press release subscriptions (1533), academic inquiries (188), visit inquiries (133), recruitment inquiries (1863) and internship inquiries (1012). Europol however stated that it had no formal mechanism for feedback on requests for information. However, it had feedback concerning its press releases. According to the detailed information from media monitoring (Europol provided detailed international media resonance charts from Meltwater), Europol's press releases are very well received and covered. Europol also stated that more detailed statistics will be available in 2013 with the implementation of a specific database for contacts monitoring.

(3) Selection and recruitment

40. Following Europol's transformation into an EU agency on 1 January 2010, the EU Staff Regulations and the Conditions of Employment of Other Servants of the European Communities (CEOS) apply to its staff. Europol employs temporary and contract agents and also seconded national experts. Europol does not use the European Personnel Selection Office (EPSO) but conducts its own selection procedures. In his letter of 16 May 2012, the Ombudsman noted that the "Employment, Vacancies" section of Europol's website contains a link to the *Europol Recruitment Guidelines* adopted on 24 May 2011. The Ombudsman asked Europol additional clarification on the following issues:

- a) How does Europol ensure effective communication with candidates to selection procedures concerning the status of their applications and/or the outcome of the selection procedure?
- b) Are the names of selection board members known to candidates? To what extent does Europol provide job candidates with access to the assessments of their applications?
- c) To what extent does Europol seek quicker and less formal means to resolve disputes about selection and recruitment decisions than the ones foreseen in Article 90 of the Staff Regulations?
- d) Does Europol systematically inform candidates that they may complain to the Ombudsman, as provided for in Article 19 of the above-mentioned Code of Good Administrative Behaviour?

41. With regard to communication with candidates, Europol explained that its Recruitment and Selection Group strives to be as accessible as possible via the Europol recruitment website. It stated that relevant contact details, including telephone numbers, are published with the job description. Europol also pointed out that there is a specific inquiry form "*Request for recruitment information*" for potential applicants, which is directly sent to the common mailbox of the Recruitment and Selection Group.

42. Europol further stated that it acknowledges receipt of all applications in writing but that, subsequently, it contacts only short-listed candidates (namely those invited to attend the selection procedure) by telephone or by e-mail. It does so within an approximate time period that is indicated in the letter of acknowledgement of receipt of the application. Therefore, candidates not contacted within this period can conclude that they have not been shortlisted. Europol also stated that candidates are always welcome to contact the Recruitment and Selection Group via telephone or e-mail. The Ombudsman considers that a balance needs to be made between the right of the applicant to



be informed of the outcome of his/her application and the available resources and that it should be possible, for instance, to inform non-shortlisted candidates by e-mail. The Ombudsman suggests that Europol could consider informing also non-shortlisted candidates in selection procedures of the outcome of their application.

43. Europol further explained that, following the completion of the selection procedure, selected candidates are informed by phone and in a letter about the outcome. Unsuccessful candidates and candidates put on a reserve list also receive a letter informing them of the outcome. The Ombudsman notes that the Recruitment Guidelines provide that candidates who attended the selection procedure may request feedback on their performance on the written test and the interview within three months. They also foresee that candidates on the reserve-list are informed by letter of the validity of the reserve list. Europol also stated that an electronic system of communication with candidates was being considered.

44. As regards the communication of the names of selection board members, Europol explained that a distinction has to be made between restricted and non-restricted posts. Restricted posts are positions for law enforcement personnel which are open only to members of the competent national authorities. Candidates for these posts should address the Europol National Unit in their home country in order to obtain the vacancy notice. Also, applications for these posts need to be accompanied by a confirmation from the Europol National Unit. Europol stated that, for these restricted posts, the names of the members of the Selection Committee are, for security reasons, *not* communicated to candidates.

45. For non-restricted posts, candidates who are invited to participate in the selection procedure (i.e. shortlisted candidates) are informed of the names of the members of the Selection Committee on the day of the written test. Europol however stated that it could consider informing also non shortlisted candidates of the names of the members of the Selection Committee.

46. As regards disputes, Europol stated that there are not a lot of follow-on questions concerning recruitment and that it always answers questions from unsuccessful candidates. It referred to the appeal procedure foreseen in the Recruitment Guidelines. The Ombudsman noted that, under point 6 "*Appeal procedure*" of the Recruitment Guidelines, there is no reference to the possibility to lodge a complaint with the European Ombudsman, but only to the possibility to submit an appeal to Europol's Head of the Human Resources Unit. In reply, Europol stated that it was ready to refer to the possibility to appeal to the Ombudsman in the Recruitment Guidelines. The Ombudsman thus suggests that Europol could systematically inform candidates, in the Recruitment Guidelines and in the relevant vacancy notice, that they may complain to the European Ombudsman.

(4) Tenders and contracts

47. At the review level, disputes in relation to tender decisions and contractual relationships are most commonly dealt with by the courts. However, a significant proportion of the Ombudsman's cases has over the years concerned these areas as well. In relation to tenders, the Ombudsman draws inspiration from the Court's approach, which is to recognise the administration's broad discretionary powers in assessing the substantive aspects of tender proposals,



while carefully checking whether it gave valid and adequate reasons for its decisions, whether it adequately respected applicable procedures and information rights and whether there was no manifest error. In relation to contractual disputes, the Ombudsman does not as such assess whether there is a breach of contract. He does, however, thoroughly examine whether the administration provided good reasons for its position, and also looks into the fairness of the administrative actions or omissions.

48. The Ombudsman notes that Europol's website contains a "Procurement" section which mentions that "*all Europol procurement procedures are centrally managed by the Europol Procurement Office to ensure consistency and coherence in application of the rules and to guarantee that the principles of transparency, proportionality, equal treatment and non-discrimination are complied with*". The section also contains a link to the *General Terms and Conditions Applicable to Contracts entered into with Europol*. Neither the procurement section, nor these General Terms (under Article 23 "*Applicable Law and Dispute Settlement*") mention the possibility to complain to the Ombudsman with regard to tenders and contracts. In his letter of 16 May 2012 to Europol, the Ombudsman therefore asked a) how Europol handles disputes in relation to these areas and b) whether tenderers and contractors are informed that they can complain to the Ombudsman.

49. Europol replied that its procurement policy is based on a dedicated set of processes setting out in detail the procurement steps, in line with international quality standards. It further stated that it strictly adheres to the Financial Regulation in this field. Europol pointed out that it has a dedicated procurement team and that it is always ready, in addition to the information provided in the first letter to tenderers, to provide further information to non-selected tenderers. It stated that tenderers and contractors can raise inquiries in writing at any time to Europol and that they are dealt with on a case-by-case basis. It also pointed out that only one formal complaint had been brought to court since the beginning of 2011. Europol stated, however, that it was ready to refer to the possibility to complain to the Ombudsman in tender documentation.

50. The Ombudsman clarified that he should not be seen as a "mediator" in contractual and tender disputes, but that the procedural aspects are important. He therefore suggests that Europol could include in the relevant tender and contract documents, as well as in the relevant section of its website, information on the right to complain to the European Ombudsman.

(5) Conflicts of interest

51. Conflicts of interest arise when persons who work for the public administration may be perceived as having an inappropriate personal interest in a matter with which they are dealing. Such conflicts need to be appropriately handled in order to ensure objective decision-making, and to enhance the public's trust in the administration. Recent events and cases showed that the EU administration does not clearly enjoy the public's full confidence in relation to this issue. The Ombudsman asked Europol what concrete measures it applies in order to avoid conflicts of interest in relation to the a) the recruitment of staff, including senior staff and b) current and former staff members, notably regarding external activities during and after their service at Europol (see for instance articles 11, 11a, 12b, and 16 of the Staff Regulations).



52. Europol stated that, in the framework of recruitment procedures, the members of the selection committee sign a document "*Outcome of the short listing exercise*" in which they declare, among other things, that they do not have any personal or financial interest that could impair their independence in relation to the candidates. Europol provided a copy of this form.

53. As regards the situation of current and former staff members, Europol pointed out that, unlike some other EU agencies, and because of its particular mandate and portfolio, it has not many contacts with private companies and businesses. In addition to that, Europol also underlined that many Europol staff members, after having worked at Europol, return to their Member States to take up a job in the same field of activity in the public sector where they can be relevant and useful after having worked at Europol. For the above reasons, Europol stated, there is a low risk of conflicts of interest in relation to the issue of *revolving doors*.

54. With regard to the staff's outside activities, Europol stated that it applies the relevant articles of the EU Staff Regulations and that, more particularly, it follows the same procedure (including the forms) as in the European Commission. It pointed out in this respect that it is currently considering draft implementing rules in analogy with the Commission Decision on outside activities and assignments (C(2004) 1597 of 28.04.2004). It stated however that, in this context, it needed to take into consideration the unique status of staff at Europol, namely the fact that certain posts are restricted to civil servants from law enforcement authorities in the Member States. In analogy with the procedure at the European Commission, Europol staff members have to request the approval of the appointing authority (namely the Director of Europol) by filling in the respective form "*Authorisation to engage in an outside activity, whether gainful or not, or carry out an assignment outside the communities*" (since 1 January 2010, 14 requests have been received of which two were rejected).

55. Europol also added that, given the special report issued by the European Court of Auditors (ECA) on the conflict of interests in EU agencies¹³, Europol will adopt tailored additional measures by the end of 2012, in line with the recommendations made by the ECA.

56. The Ombudsman has stated on several occasions that EU institutions, bodies, offices and agencies should do their utmost to avoid not only actual, but also *apparent* conflicts of interest, in order to maintain public trust and confidence in their activities and to protect their staff from unjustified suspicion. The Ombudsman welcomes that Europol will adopt tailored implementing rules on conflicts of interest. The Ombudsman suggests that the detailed rules on conflicts of interest should adopt a broad definition of the notion of conflict of interest, including the concept of apparent conflict. Also, Europol should publish the rules on its website.

57. On 19 June 2012, namely two weeks after his visit to Europol, the Ombudsman published Public Service Principles for the EU Civil Service¹⁴. His main aim in publishing the principles is to help build greater trust between citizens and the EU institutions. The principles take account of best practice in the Member States and were established following an extensive period of

¹³ Special Report No 15/2012 "*Management of conflict of interest in selected EU agencies*", available at: <http://eca.europa.eu/portal/pls/portal/docs/1/17186745.PDF>

¹⁴ <http://www.ombudsman.europa.eu/en/resources/publicserviceprinciples.faces>



reflection and public consultation. As the public consultation confirmed, the public service principles are not new, but represent existing expectations of citizens and civil servants. They constitute the fundamental ethical standards that govern the conduct of EU civil servants. Bearing the principles in mind can also help civil servants understand and apply the rules correctly, and guide them towards the right decision in situations where they should exercise judgment. As such, they constitute a vital component of the administrative culture of service to which the EU institutions adhere.

58. As already pointed out above, the Ombudsman notes that Europol is clearly committed to a culture of service and to the five public service principles (1. commitment to the EU and its citizens; 2. integrity; 3. objectivity; 4. respect for others; and 5. transparency). Although the Public Service Principles had not yet been adopted at the time of the visit and were not on the agenda of the visit to Europol of 4 June 2012, the Ombudsman notes that, in the meantime, Europol has duly informed its staff of these principles underlining also that they are very similar to Europol's own values and that, at a time of the EU facing a severe crisis, these principles can help to build greater trust between citizens and the EU institutions. Europol also informed the Ombudsman's Office that it has alerted its staff, by putting a notice at the reception, to the Ombudsman's Guide to complaints. This publication contains, among other things, information on the possibility for members of staff of the EU institutions to turn to the European Ombudsman. The Ombudsman very much welcomes these additional communication steps taken by Europol which enhance a culture of service.

Summary of the Ombudsman's suggestions

59. On the basis of his visit and the information provided to him by Europol, the Ombudsman makes the following suggestions:

a) Europol could make its commitment to the principles set out in the European Code of Good Administrative Behaviour more visible to EU citizens by providing a link to the Code on its website.

b) Europol could make the home page of its website, including basic information concerning its mandate and tasks, available in all languages. It could also mention on the website, that a translation of other information or documents may be requested.

c) Europol could consider (a) producing an annual report (which could be a section of its general annual report) on its handling of public access to documents requests, containing the information mentioned in Article 17(1) of Regulation 1049/2001 and (b) establishing a public register of its documents in conformity with Article 11 of Regulation 1049/2001 and to bring its MB Decision of 8 July 2009 in line with Article 1049/2001.

d) Europol could bring its Decision of the Management Board of 8 July 2009 laying down the rules concerning access to Europol documents in line with the principles contained in Regulation 1049/2001, and namely (a) by either foreseeing the same time-limit of 15 working days for dealing with initial and confirmatory requests for public access, or explaining the rationale why a longer time-limit is indispensable, and (b) by indicating the possibilities of appeal in case of a partial or total refusal of access.



e) Europol could either i) bring Article 4(3) of its Decision of the Management Board of 8 July 2009 in line with Article 4(3) of Regulation 1049/2001 or ii) justify expressly the concrete reason why it considers that disclosure should be refused under Article 4(3) when that disclosure would undermine rather than *seriously* undermine Europol's decision making-process.

f) Europol could consider informing also non-shortlisted candidates in selection procedures of the outcome of their application.

g) Europol could systematically inform candidates, in the Recruitment Guidelines and in the relevant vacancy notice, that they may complain to the European Ombudsman.

h) Europol could include in the relevant tender and contract documents, as well as in the relevant section of its website, information on the right to complain to the European Ombudsman.

i) When adopting detailed rules on conflicts of interest, Europol could adopt a broad definition of the notion of conflict of interest, including the concept of apparent conflict. Also, Europol could publish the rules on its website.

I would appreciate if Europol could report back to me by 30 April 2013 on the follow-up to the suggestions listed above.

P. Nikiforos Diamandouros

Done in Strasbourg on 28-01-2013