

RULES FOR ACCESS TO EUROPOL DOCUMENTS

(2007/C 72/17)

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to the Europol Convention, and in particular Article 32a thereof,

Having regard to the proposal by the Director of Europol

Whereas:

(1) According to Article 32a of the Europol Convention, on the basis of a proposal by the Director of Europol, the Management Board, acting by a majority of two thirds of its members, shall adopt rules for access to Europol documents for any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, taking account of the principles and limits stated in the regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents adopted on the basis of Article 255 of the Treaty establishing the European Community.

(2) The second subparagraph of Article 1 of the Treaty on European Union (hereinafter referred to as 'the EU Treaty') enshrines the concept of openness, stating that the Treaty marks a new stage in the process of creating an ever closer union among the peoples of Europe, in which decisions are taken as openly as possible and as closely as possible to the citizen.

(3) Openness guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system. Openness contributes to strengthening the principles of democracy and respect for fundamental rights as laid down in Article 6 of the EU Treaty, in Article 255 of the Treaty establishing the European Community (hereinafter referred to as 'the EC Treaty') and in Article 42 of the Charter of Fundamental Rights of the European Union.

(4) In accordance with Article 41(1) of the EU Treaty, the right of access also applies to documents relating to police and judicial cooperation in criminal matters.

(5) Regulation (EC) No 1049/2001 of 30 May 2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents⁽¹⁾ (hereinafter referred to as 'Regulation 1049/2001') lays down the general principles and limits governing the right of access to European Parliament, Council and Commission documents. Article 32a of the Europol Convention refers to the principles and limits stated in this Regulation.

(6) In principle, all documents should be accessible to the public. However, public and private interests should be protected by way of exceptions. Europol should be entitled where necessary to safeguard its ability to carry out its tasks.

(7) In order to ensure that the right of access is fully respected, a two-stage administrative procedure should apply, with the additional possibility of complaints to the Ombudsman.

(8) These rules are without prejudice to Article 19 of the Europol Convention on the right of access.

HAS ADOPTED THESE RULES:

Article 1

Definitions

For the purpose of these rules:

- (a) 'Europol document' or 'document' shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to Europol's activities, policies and decisions.
- (b) 'third party' shall mean any natural or legal person, or any entity outside Europol including the Member States, other institutions, bodies and agencies of the European Union, international organizations and third countries;
- (c) 'Europol classified documents' shall mean documents which contain information requiring additional security measures and which are marked with one of the classification levels 'Europol RESTRICTED', 'Europol CONFIDENTIAL', 'Europol SECRET' or 'Europol TOP SECRET' in accordance with the Rules on the confidentiality of Europol information.

Article 2

Purpose

The purpose of these rules is:

- (a) to define the principles, conditions and limits on grounds of public or private interest governing the right of access to Europol documents in such a way as to ensure the widest possible access to documents;

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

- (b) to establish rules ensuring the easiest possible exercise of this right; and
- (c) to promote good administrative practice on access to documents.

Article 3

Beneficiaries and scope

1. Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of Europol, subject to the principles, conditions and limits defined in these rules.
2. Europol may, subject to the same principles, conditions and limits, grant access to documents to any natural or legal person not residing or not having its registered office in a Member State.
3. These rules shall apply to all documents held by Europol, that is to say, documents drawn up or received by it and in its possession, in all areas of activity of Europol.
4. Individuals specifically requesting data only related to them shall not be covered by these Rules. In such cases individuals shall be referred to the procedure mentioned in Article 19 of the Europol Convention.
5. Without prejudice to Article 4, documents shall be made accessible to the public either following a written application or directly in electronic form in accordance with Article 11.

Article 4

Exceptions

1. Europol shall refuse access to a document where disclosure would undermine the protection of:
 - (a) the public interest as regards:
 - public security
 - the proper fulfilment of Europol's tasks,
 - investigations and operational activities of third parties,
 - defence and military matters,
 - international relations,
 - the financial, monetary or economic policy of the Community or a Member State,
 - (b) the privacy and integrity of the individual.
2. Europol 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, other than those mentioned under paragraph 1 (a),

unless there is an overriding public interest in disclosure.

3. 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, shall be refused if disclosure of the document would undermine Europol's 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 Europol shall be refused even after the decision has been taken if disclosure of the document would undermine Europol's decision-making process, unless there is an overriding public interest in disclosure.

4. As regards documents originating in whole or in part from third parties, Europol shall consult the third party with a view to assessing whether paragraphs 1, 2 or 3 are applicable. If the third party document originates from a Member State or a third country or organisation with which Europol has concluded a cooperation agreement, Europol will not disclose the document without their written consent.

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

6. The exceptions as laid down in paragraph 1 to 3 shall only apply to the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to integrity or privacy of individuals or commercial interests and in the case of Europol classified documents, the exceptions may, if necessary, continue to apply after this period.

Article 5

Europol documents in the Member States and third countries or organisations with which Europol has concluded a cooperation agreement

Where a Member State or a third country or organisation with which Europol has concluded a cooperation agreement receives a request for a document in its possession, originating from Europol, Europol shall undertake that these third parties consult with Europol in order to take a decision that does not jeopardise the attainment of the objectives of these Rules. Europol shall also undertake that the third countries or organisations with which Europol has concluded a cooperation agreement do not disclose the document without Europol's written consent. Europol shall ensure that this obligation is reflected in the cooperation agreements concluded between Europol and third countries and organisations.

Member States may, as an alternative, refer the request to Europol.

*Article 6***Applications**

1. Applications for access to a document shall be made in any written form, including electronic form, in one of the languages referred to in Article 33(1) of the Europol Convention and in a sufficiently precise manner to enable Europol to identify the document. The applicant is not obliged to state reasons for the application.
2. If any application is not sufficiently precise, Europol shall invite the applicant to provide additional information making it possible to identify the documents requested; the deadline for reply as established in Article 7 shall begin only from the time when Europol has received this additional information.
3. In the event of an application relating to a very long document or to a very large number of documents, Europol may confer with the applicant, with a view to finding a fair solution.
4. Europol shall provide information and assistance to citizens on how and where applications for access to documents can be made. Guidance shall be set up on the Europol website.

*Article 7***Processing of initial applications**

1. 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, Europol shall either grant access to the document requested and provide access in accordance with Article 10 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 3 of this Article.
2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time-limit provided for in paragraph 1 may be extended by 30 working days, provided that the applicant is notified in advance and that detailed reasons are given.
3. In the event of a total or partial refusal, the applicant may, within 30 working days of receiving Europol's reply, make a confirmatory application asking Europol to reconsider its position.
4. Failure by Europol to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application.

*Article 8***Processing of confirmatory applications**

1. A confirmatory application shall be handled promptly. Within 30 working days from registration of such an applica-

tion, Europol shall either grant access to the document requested and provide access in accordance with Article 10 within that period, or in a written reply, state the reasons for the total or partial refusal.

2. In exceptional cases, for example in the event of an application relating to a very long document or to a very large number of documents, the time limit provided for in paragraph 1 may be extended by 30 working days, provided that the applicant receives reasoned notice in advance.

*Article 9***Europol classified documents**

1. Applications for access to Europol classified documents under the procedures laid down in Articles 7 and 8 shall be handled only by those persons within Europol who have a right to acquaint themselves with those documents in accordance with the provisions of the Europol Security Manual.
2. Europol classified documents shall not automatically be subject to refusal of access. Every classified document shall be examined whether any of the exceptions provided for by Article 4 apply. Classified documents can not be disclosed, unless they have been declassified in accordance with Article 10 of the Rules on confidentiality. Access to classified third party documents shall be subject to the consultation mechanism referred to in Article 4(4).
3. If Europol decides to totally or partially refuse access to a classified document it shall give the reasons for its decision in a manner which does not harm the interests protected in Article 4.

*Article 10***Access following an application**

1. The applicant shall have access to documents by receiving a copy, including where available in electronic form, according to the applicant's preference. Copies of less than 20 A4 pages and direct access in electronic form shall be free of charge. Otherwise, the real cost of producing and sending the copies will be charged to the applicant.
2. If a document has already been released by Europol or the third party concerned and is easily accessible to the applicant, Europol may fulfil its obligation of granting access to documents by informing the applicant how to obtain the requested document.
3. Documents shall be supplied in an existing version and format (including electronically or in an alternative format such as Braille, large print or tape) and in one of the available linguistic versions in accordance with the applicant's preference.

*Article 11***Direct access in electronic form**

1. Europol shall provide access to a register of publicly accessible documents and shall as far as possible make documents directly accessible in electronic form.
2. In particular, legislative documents, that is to say, documents drawn up or received in the course of procedures for the adoption of acts which are legally binding, shall, subject to Article 4, be made directly accessible.

*Article 12***Implementation**

The implementation of these Rules shall be subject to a decision of the Director of Europol, which will in particular outline the involvement of Europol's organs in the handling of public access requests to these documents.

*Article 13***Information**

Europol shall take the requisite measures to inform the public of the rights they enjoy under these rules.

*Article 14***Reproduction of documents**

These rules shall be without prejudice to any existing rules on copyright which may limit a third party's right to reproduce or exploit released documents.

*Article 15***Entry into force**

These Rules shall enter into force on 19 April 2007.

Done at The Hague on 20 March 2007

Hans-Jürgen FÖRSTER
Chairman of the Management Board
