

23 July 2020

Reference: 2272/2019/MIG

Dear Ms O'Reilly,

We are writing to provide our comments on the report of the meeting between the European Ombudsman and the European Agency for Law Enforcement Cooperation on 30 April 2020.

The meeting report provides a very useful description of Europol's document management systems and how the Agency manages the documents it produces and holds. It does not, however, provide any sound reasons as to why Europol should not be complying with its obligations under Regulation 1049/2001.

The report notes that "Europol follows a case-by-case assessment of the nature and content of documents as regards their inclusion in the public register." However, it also says that "the majority of Europol's documents are by definition very sensitive and would fall under one or more of the exceptions of Article 4." It may be because of the phrasing of the meeting report, but from these two comments it would appear that the Agency does not in fact undertake a "case-by-case assessment" of the documents it produces and holds, because there is an assumption that those documents "would fall under one or more of the exceptions of Article 4." This suggests a presumption in favour of secrecy, rather than openness.

As pointed out in the report, much of the information held by Europol is undoubtedly rather sensitive. Indeed, it is precisely because of the sensitive nature of the work undertaken by a pan-European policing agency that the highest possible degree of transparency is of the utmost importance. As we stated in our correspondence with the Agency, of which we have provided copies to you, it remains the case that Europol is failing to meet its legal obligations. As Regulation 1049/2001 and the Europol Management Board Decision make clear, references to all documents produced or held by the agency – bar those that fall within the remit of Article 9(3) of the Regulation – shall be entered into a public register "in a manner which does not undermine the protection of the interests set out in Article 4."

This is evidently not the current practice. For example, while some agendas, reports and other such documents provided to us by the agency following access to documents requests are available on Europol's website,¹ other documents to which we have been granted access following requests are not. The statement in the meeting report that the Agency's

¹ <https://www.europol.europa.eu/publications-documents/redacted-versioncs-argos-overall-conference-hq-141126-28-agenda-edoc775774>, <https://www.europol.europa.eu/publications-documents/redacted-versioncs-argos-overall-conference-hq-141126-28-agenda-edoc775774>, <https://www.europol.europa.eu/publications-documents/publiccs-argos-overall-conference-hq-141126-28-breakdown-of-costs-edoc775771>

public register “includes documents... that have been (partially) released following a request for public access,” is not, therefore, entirely accurate.

By taking a proactive approach to transparency – establishing a complete public register of documents produced or received by the Agency, in accordance with the limitations set out in Regulation 1049/2001 – the Agency would likely eliminate the need for many of the requests it receives, improve public understanding of and engagement with its work, and facilitate citizens’ right to access to documents.

We look forward to you raising these points with the Agency and engaging further with your investigation.

Yours sincerely,

Chris Jones
Project Director