

**14 January 2021**

**Reference: 2272/2019/MIG**

Dear Ms O'Reilly,

Thank you for your letter of 6 January and for the work you and your team have put into addressing the issues raised in our complaint. You will find below our comments on the proposed solution and Europol's response.

### **The proposed solution**

We welcome the Ombudsman's decision to set out certain principles, derived from Regulation 1049/2001, to be applied to the work of justice and home affairs agencies such as Europol. We believe those principles are sound and largely reflect the spirit of the legislation.

At the same time, we wish to emphasise that the law remains the law, until it is changed through the democratic procedure. The establishment of certain principles to be applied by the agencies in relation to their access to documents obligations should not make it possible to sidestep or undermine legal responsibilities.

There is an obligation upon EU institutions, agencies and bodies to include references in their register all documents drawn up or received by them and, where possible, direct access to them, subject to the exceptions laid down in the Regulation – which should be interpreted strictly. Given that, in response to access to documents requests, the agency frequently provides documents that were not previously public and were not listed on its existing register(s), it is fair to say that its practice to date has not met this requirement.

The proposed solution says that in order to meet this requirement, the agency's forthcoming public register should include documents "such as legislative documents and [those] concerning... decisions, strategy, and policy." To ensure the greatest possible degree of openness, transparency and accountability, this should also be taken to require the inclusion of documents concerning the decision-making process leading to the adoption of those decisions, strategies and policies. This should include, *inter alia*, decisions of the Executive Director, the agendas and minutes of internal and inter-agency working groups, committees and units; evaluation and assessment reports of operations and other activities; and documents concerning planning, procurement and projects undertaken by the agency.

### **Europol's response**

We welcome the steps set out by Mr Ebner in his letter and believe that, if implemented thoroughly, the approach proposed by Europol will provide a significant advance in transparency and, subsequently, democratic and public scrutiny and accountability. The commitment to a proactive approach to transparency, with the "initiative asking the different Departments to identify and assess documents related to their functions that can be made

public proactively,” is an approach that should be encouraged across all EU institutions, agencies and bodies.

The only further point we wish to make relates to the comment that documents that have been released to the public “will be systematically uploaded on the public register as appropriate.” It is not a question of what the agency deems “appropriate” for inclusion, but rather what it is obliged to include, in accordance with the letter and spirit of the treaties, relevant legislation and case law.

Thank you again for your work on this complaint and the solution reached.

Your sincerely,

Chris Jones  
Director