



Directorate A
Complaints and Inquiries Unit 2

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Strasbourg, 31-05-2013

Europol's opinion on the European Ombudsman's report following his visit to Europol (OI/9/2012/OV)

Dear Mr Bunyan,

By letter of 28 January 2013, the Ombudsman sent you a copy of his report following his visit to Europol on 4 June 2012.

On 29 May 2013, Europol sent its opinion on the report. Please find enclosed a copy of Europol's comments.

If you wish to make any observations on Europol's opinion, please send them to us before 30 June 2013.

Please note that, if we do not receive any observations from you, the Ombudsman may close his own initiative inquiry with a decision, based on the information you have already provided and Europol's opinion.

Yours sincerely,

Fergal Ó Regan
Head of Complaints and Inquiries Unit 2

Enclosure:

- Europol's opinion on the Ombudsman's visit report



The Hague, 29 May 2013

DIRECTOR

European Ombudsman
Mr P. Nikiforos Diamandouros
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By e-mail: eo@ombudsman.europa.eu

Report of the European Ombudsman – Inquiry into Europol (OI/9/2012/OV)

- Response from Europol
- Letter from the European Ombudsman, file no. OI/9/2012/OV S 2013-168350

Dear Mr Diamandouros,

I would like to thank you for sending Europol your follow-up report regarding your inquiry into Europol which provides a fair and constructive summary of our exchange of ideas on key governance matters.

I am satisfied to read that you could identify evidence of a service culture at Europol, next to a clear commitment to adhere to the principles of transparency, dialogue and accountability. The public service principles promoted by your publication last year are fully shared by Europol and are expressed in Europol's values, as also highlighted on Europol's website. I regard these principles as key to maintaining the trust of EU citizens in the work of the EU institutions.

Overall, the proposals raised in your follow-up report underpin Europol's efforts to continuously grow as a modern, efficient organisation with effective governance arrangements, as specifically expressed in one of the four goals of Europol's Strategy 2010 – 2014.

In attaching the requested overview of response actions from Europol, I would like to express my thanks for the extended time Europol was granted to respond to your inquiry report.

On the way forward, in times of continuing austerity measures across the EU, please let me take this opportunity to reassure you that it will be Europol's objective to keep on striving for efficiency and maintaining high levels of public accountability, while at the same time focussing on core business delivery. Your activities and advice support us in this important endeavour.

Yours sincerely,

Rob Wainwright
Director

File no. 670836v4A

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Europol's response to the European Ombudsman's suggestions (OI/9/2012/OV)

A. European Code of Good Administrative Behaviour (ECGAB) – Reference on Europol's website

Europol's response:

Europol's website section regarding the organisation's vision, mission and values has been amended to make reference to the key principles of the European Ombudsman's ECGAB, while highlighting that Europol is fully committed to the public service principles for the EU civil service, as promoted by the European Ombudsman.

B. Availability of Europol's website in all EU languages, including basic information concerning Europol's mandate and task (offer of translation on Europol's website for other documentation)

Europol's response:

Key information about Europol's mandate and tasks is available in all languages in the following two documents: "Europol Profile" and „The European Investigator – Targeting Criminals Across Borders". These two documents are referred to on Europol's website (path: Europol Homepage/'Media Corner/'Corporate Publications/'Brochures').

However, to fully address the proposal by the European Ombudsman, sections for each EU language are being implemented on Europol's website, at the latest in 2014, when a re-design of Europol's internet portal will be implemented.

C. Annual report on public access requests (as part of the "Europol Review – General Report on Europol activities"), establishment of a public register of concerned documentation, reference to the possibility for the applicant to institute court proceedings or to complain to the European Ombudsman in the respective Europol Management Board (MB) decision governing public access requests.

Europol's response:

To date, Europol has received only a small number of public access requests per year. In order to respond to the recommendation of the European Ombudsman, Europol will, from the 2013 reporting period onwards, include a new section into the "Europol Review – General Report on Europol activities".

In addition, Europol initiated a project to establish a register of publicly accessible documents, which also takes into account the advice obtained by the office of the European Ombudsman. The gradual implementation of the project has started and is planned for completion by the end of 2013. In this context, Europol will also make statistics regarding public access requests available on its website, while, at the same time, highlighting that citizens have the possibility to refer to the European Ombudsman regarding the handling of public access requests by Europol. The respective MB decision on public access to Europol documents will be updated to reflect the outcome of the currently ongoing revision of the Regulation 1049/2001 on public access to documents, at the latest when the new legal framework for Europol, i.e. the current Draft Europol Regulation, will enter into force. Article 57 of the Draft Europol Regulation strengthens the aspect of public access accountability, by specifying that:

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- Within six months after the entry into the Europol Regulation, the Europol MB shall adopt the detailed rules for applying Regulation 1049/2001;
- Decisions taken by Europol may be subject to a complaint to the European Ombudsman or an action before the Court of Justice of the European Union

D. Adjustment of the time-limit of 15 working days for dealing with initial and confirmatory requests for public access and possibility of appeal in cases of partial or total refusal of public access

Europol's response

The longer time-limit of 30 days (compared to 15 days as referred to in the Regulation 1049/2001 on public access to documents) was included in the Europol MB decision on public access given that the majority of Europol's documentation is based on information (at least partially) from external cooperation partners. The scrutiny of these documents takes longer as the respective third parties have to be consulted, for Europol to arrive at a decision on partial or full public access. However, Europol aims at dealing with any public access request as expediently as possible. In relation to the time-period for providing an answer to a public access request, Europol will also in future rely on the provision contained in Article 6 of Regulation 1049/2011, with a view to finding a fair solution in cases where a decision on public access presents certain complexities.

Europol, in line with the current Europol MB decision on public access to documents, informs all applicants, in writing, of the possibility to make a confirmatory application regarding a refusal for partial or full public access. Regarding the possibility of submitting an appeal in relation to a decision made by Europol, reference is made to the answer given under section "C" above.

E. Exception reason for public access: Serious undermining of Europol's decision making-process

Europol's response

Article 4 (3) of the Europol MB decision provides 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).

On the way forward, Europol will take the comments of the European Ombudsman into account when applying the concerned exception reason of Article 4 (3) of the Europol MB decision on public access to documents (serious undermining of Europol's decision-making).

The adjustment of the Europol MB decision on public access (as outlined under section "C" above) will fully address the comment by the European Ombudsman.

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F. Recruitment: Information to non-shortlisted candidates about the outcome of the recruitment proceedings

Europol's recruitment guidelines (published on Europol's website) have been updated, to clarify that

- All applications are confirmed by a letter of acknowledgement;
- Only candidates invited to attend the selection procedure are contacted further by Europol in the recruitment process (candidates who are not invited to the selection procedure must consider that their application has been rejected on the date of the selection committee's short-listing meeting, as set out in the table of vacancies' status available on Europol's website; candidates may request feedback on their application after the date of the short-listing meeting);

On the way forward, Europol plans to introduce an "e-recruitment" module which will provide information in an automated manner about the outcome of applications, to both shortlisted and non-shortlisted candidates.

G. Reference to the European Ombudsman for candidates in recruitment procedures

Following the advice by the European Ombudsman, Europol's recruitment guidelines have amended to include a specific section which explains that candidates may refer to the European Ombudsman for a making a complaint about a perceived maladministration. In addition, the recruitment guidelines specify that candidates may file an appeal before the EU Civil Service Tribunal.

The Europol recruitment guidelines form an integral part of each vacancy notice, given that all applicants are requested to read Europol's recruitment guidelines before submitting an application.

H. Reference to the European Ombudsman in Europol procurement procedures

The procurement section on Europol's website has been updated to include a reference to the European Ombudsman regarding the possibility to submit a complaint about maladministration (in relation to a procurement matter). A similar reference has been added to the standard tender documentation.

I. Rules on conflicts of interest, broad definition of the notion of conflict of interest, including the concept of apparent conflict, publication of Europol's conflict of interest rules on Europol's website

Europol's internal policy approach determines that a "conflict of interest is defined as an apparent or potential incompatibility between the responsibilities of a person working at Europol and personal interests which could impair professional independence. Europol's business interest is to identify conflict of interest related risks in a pro-active manner, with a view to finding an appropriate resolution."

Across Europol, the Deputy Director in charge of the Governance Department has been assigned with the responsibility to assess any possible conflict of interest situation, with a view to finding an appropriate resolution. Given that Europol's policy is a document which contains many internal (administrative) aspects, Europol does not consider the publication of the internal policy as conducive to informing the general public. However, a tailored summary of Europol's approach on handling conflict of interests is being made available on Europol's website.