



## Decision of the European Ombudsman on complaint 202/2001/OV against Europol

Decision

**Case 202/2001/OV - Opened on 23/02/2001 - Decision on 24/10/2001**

Strasbourg, 24 October 2001

Dear Mr V.,

On 17 January 2001, you made a complaint to the European Ombudsman on behalf of Eurowatch (hereafter "the complainant") concerning the refused access to 37 overviews of 1999 on terrorism distributed to the Member States (mentioned in the Europol 1999 Annual Report).

On 23 February 2001, I forwarded the complaint to the Director of Europol. Europol sent its opinion on 23 May 2001 and I forwarded it to you with an invitation to make observations, if you so wished. No observations appear to have been received from you.

I am writing now to let you know the results of the inquiries that have been made.

### THE COMPLAINT

The complainant is a research office on European justice and interior policy. On 13 October 2000 it made a request to Europol for access to documents, namely 37 overviews of 1999 on terrorism distributed to the Member States (mentioned in the Europol 1999 Annual Report).

On 1 December 2000, Europol refused access because of the protection of public interest (investigations). Europol stated that, regardless of the fact that these documents are based on open sources material, the choice of subjects dealt with in the overviews could provide indications as to Europol's interest in particular areas of terrorist activities. As a result, public knowledge could interfere with the effectiveness of combating these forms of criminality.

On 12 December 2000 the complainant made a confirmatory application, but on 11 January 2001 Europol refused again access to the requested documents, on the basis of the same reasons.

On 17 January 2001 the complainant lodged a complaint with the European Ombudsman. He alleged that Europol's decision to refuse access to the to 37 overviews of 1999 on terrorism was unjustified, because the information requested was open sources material which could not be considered as confidential. The complainant also observed that Europol's argument according to which releasing the documents could give indications on Europol's interest in particular areas of terrorist activities, was not convincing.

### THE INQUIRY **Europol's opinion**



Europol observed that, by a decision of its Management Board of 21 June 2000, as an interim measure it is applying by analogy the Council Decision of 20 December 1993 on public access to Council documents (1) . That is thus the legal basis for assessing the complaint.

The complainant's application of 13 October 2000 concerned 37 overviews on terrorism that were prepared by Europol and distributed to the Member States, as specified in the Annual Report of Europol for 1999. The reviews consist of open-sources material that are selected and edited by the terrorism experts of Europol.

Both the initial application by the complainant and its confirmatory application of 12 December 2000 were prepared for a decision by the Director in the internal Committee for Public Access to Documents. That body consists of representatives of various departments of Europol, including the operational parts of the organisation. In addition, the persons in charge of the documents requested were consulted.

The reasons for the refusal of access on the ground of the protection of public interest in accordance with Article 4 of the Council Decision are the following:

Firstly, the selection of the topics to be included in the compilation reveals the specific areas of terrorist activities which are of interest to Europol. The selection is made by the terrorism experts of Europol, representing the professional expertise gathered in the Member States. Public knowledge of the specific areas of terrorist activities which are of interest to Europol could interfere with the effectiveness of combating crimes related to terrorism.

Secondly, public access to the overviews would harm the confidence of the Member States in the work of Europol, in particular in the area of combating terrorism. The overviews are products of Europol that are specifically tailored to the needs of the Member States. Disclosure of the documents could thus also provide indications on the activities of the Member States in these areas.

In conclusion, the decision by Europol to refuse access was based on the protection of public security and thereby the public interest. In weighing the legitimate interest of the applicant to have access to the documents against the legal obligation of Europol and the Member States of the EU to prevent and combat terrorism, the latter one was deemed to clearly outweigh the first one. Europol therefore believed that its refusal to grant access to the documents was justified, and that the arguments presented to the applicant to reason that decision were convincing.

#### **The complainant's observations**

The complainant submitted no observations on Europol's opinion.

#### **THE DECISION 1 The alleged refusal of access**

1.1 The complainant alleged that Europol's decision to refuse access to 37 overviews of 1999 on terrorism was unjustified, because the information requested was open sources material which could not be considered as confidential. The complainant also observed that Europol's argument according to which releasing the documents could give indications on Europol's interest in particular areas of terrorist activities, was not convincing.



1.2 Europol observed that it refused access on the ground of the protection of public interest in accordance with Article 4 of Council Decision 93/731/EC. It stated that public knowledge of the specific areas of terrorist activities which are of interest to Europol could interfere with the effectiveness of combating crimes related to terrorism. Europol also pointed out that disclosure of the documents could provide indications on the activities of the Member States in these areas.

1.3 The complainant's request for access to the 37 overviews of 1999 on terrorism has to be considered under the Council Decision 93/731/EC which is applicable at Europol as an interim measure on basis of the decision of its Management Board of 21 June 2000 and which is published on Europol's Website. The exceptions on the access to documents are mentioned in Article 4 of the Council Decision. Article 4.1 provides that *"access to a Council document shall not be granted where its disclosure could undermine the protection of the public interest (public security, international relations, monetary stability, court proceedings, inspections and investigations)"*.

1.4 In its judgement in case T-174/95, the Court of First Instance held that *"the objective of Decision 93/731 is to give effect to the principle of the largest possible access for citizens to information with a view to strengthening the democratic character of the institutions and the trust of the public in the administration"* (2). The Ombudsman however notes that the very nature of police work necessarily involves handling information and documents which, in the interests of citizens, must be treated confidentially (3).

1.5 In the present case, the reason invoked by Europol to refuse access to the documents requested by the complainant, namely that the choice of subjects dealt with in the overviews could provide indications on Europol's interest in particular areas of terrorist activities and that public knowledge of these overviews could interfere with the effectiveness of combating these forms of criminality, appears to be justified.

1.6 On basis of the above, the Ombudsman considers that Europol was entitled to refuse access to the documents on basis of the protection of public interest (public security) as specified in Article 4.1 of the Decision 93/731. No instance of maladministration was therefore found by the Ombudsman.

## **2 Conclusion**

On the basis of the Ombudsman's inquiries into this complaint, there appears to have been no maladministration by the Europol. The Ombudsman therefore closes the case.

The director of Europol will also be informed of this decision.

Yours sincerely,

Jacob SÖDERMAN

(1) Council Decision 93/731/EC on public access to Council documents (OJ 1993 L 340/43).



(2) Case T-174/95, Svenska Journalistförbundet v. Council, [1998] ECR II-2289, par. 66.

(3) Annual Report of the Ombudsman 1999, page 257.