



P. Nikiforos Diamandouros
European Ombudsman

Mr Rob Wainwright
Director
Europol
P.O. Box 908 50
NL - 2509 LW The Hague
PAYS - BAS

Strasbourg, **16 -05- 2012**

Agency visit OI/9/2012/OV - Visit to Europol

Dear Mr Wainwright,

In May 2011, I launched a programme of visits to EU agencies, with the aim of identifying and spreading best practices among the agencies. I initially carried out three "pilot" visits to the EU agencies in the United Kingdom, namely, the European Banking Authority, the European Medicines Agency and the European Police College. Subsequently, on 1 June 2011, I met with the heads of all EU agencies in Brussels and had occasion to familiarise them with this initiative in more detail. In October and November 2011, I visited, respectively, the European Environment Agency in Copenhagen and the European Monitoring Centre for Drugs and Drug Addition and the European Maritime Safety Agency in Lisbon. In February 2012, I visited the European Centre for the Development of Vocational Training (Europol) and in May I visited the European Foundation for the Improvement of Living and Working Conditions in Dublin. Information on my previous visits to the EU agencies is available on the following page of my website:

www.ombudsman.europa.eu/activities/visits.faces

I will be in The Hague and Utrecht from 4 to 9 June 2012 for a meeting with the Dutch National Ombudsman and to deliver a lecture at the Second Transatlantic Transparency Conference. I would be happy to meet you and relevant members of your team. Following informal contacts between our offices, the date of Monday 4 June 2012 (10:30 - 13:30 h) has been agreed. Please find in annex to this letter a draft programme for our meeting, as well as some additional information concerning the procedural aspects of this type of visits. For your information, I shall also visit Eurojust during the same week.

During my visit to Europol, I will be accompanied by Mr Olivier Verheecke, Principal Legal Adviser in my Office, who will act as contact person for the organisational aspects of our meeting. His contact details are: olivier.verheecke@ombudsman.europa.eu, tel: + 32 2 284 20 03. From the informal contacts between our offices, I understood that Mrs Fabiana Scarazatto from the Corporate Communications Unit will be the contact person in Europol



who will liaise with him for all the necessary preparations.

Please note that, following the visit and our meeting covering the substantive points outlined in the note in annex, I would also like to meet with Europol's Staff Committee. My wish to meet the Staff Committee follows a request by the Assembly of Agency Staff Committees (AASC) that I systematically meet with the staff committees of the agencies that are the objects of my own initiative visits.

I would like to thank you again for agreeing to organise this visit, and look forward to what I am certain will prove to be fruitful exchanges on the various themes identified in the note in annex to this letter. I would further like to thank in advance Europol's management for organising the practical aspects of my meeting with Europol's Staff Committee, which should take place on the same day, Monday 4 June, also in the morning, after the conclusion of our meeting with the management.

Yours sincerely,

P. Nikiforos Diamandouros

Attachment: 1



ANNEX:

Procedural aspects and draft agenda of the visit.

Concerning the procedural aspects

The European Ombudsman's visits are formally carried out on the basis of his competence to conduct own initiative inquiries. The correspondence relating to this visit will therefore carry a registration reference number for such own-initiative inquiries (OI/9/2012/OV). The Ombudsman would be grateful if Europol could quote this reference number in its correspondence concerning the visit.

An own initiative inquiry implies, among others, that the usual procedural guarantees concerning such inquiries apply. These include the agency's right to request the European Ombudsman to treat information and documents on a confidential basis - see Articles 5.1, 5.2 and 14.2 of the Ombudsman's Implementing Provisions:
www.ombudsman.europa.eu/resources/provisions.faces

As well as informing the agency to be visited of the issues that he intends to raise, the Ombudsman can also ask it to provide in advance certain relevant information and/or documents.

Following each visit, the Ombudsman will inform the agency in writing of his findings. If he makes any specific suggestions, he will normally ask the agency to inform him of any follow-up action it proposes to undertake. Depending on the agency's response, the Ombudsman will either consider closing the inquiry or taking further steps, for instance, by issuing formal recommendations.

Please note that the preparatory letter for this visit, as well as this annex will be published on the European Ombudsman's website. If the Ombudsman decides to make suggestions to the Agency following his visit, the communication containing such suggestions will also be published on that page, as will the Agency's response, any further correspondence, and the Ombudsman's final written conclusions. These exchanges will appear on the following page of the Ombudsman's website:
<http://www.ombudsman.europa.eu/activities/visits.faces>

Concerning the issues on the agenda

With regard to the content of the 4 June 2012 visit, the European Ombudsman would like to discuss the following themes:

- Europol's initial contacts with the public
- Transparency, dialogue and accountability
- Recruitment
- Tenders and contracts
- Conflicts of interest



The specific issues that the Ombudsman would like to look at under each theme are as follows:

1. Initial contacts with the public

One of the Ombudsman's fundamental tasks is to ensure that the EU administration is open, service-minded and efficient in handling contacts with citizens. The relevant basic principles are laid down in the European Code of Good Administrative Behaviour (CGAB). The issue remains significant in our daily work, suggesting that the EU administration still faces some challenges in this area. When appropriate, the European Ombudsman tries to find a rapid solution to complaints that concern grievances about a citizen's initial contacts with the administration. Usually this involves my services' contacting the relevant person by telephone.

I understand that all the EU agencies agreed to adopt the European Code of Good Administrative Behaviour at a meeting of the heads of the agencies held in Lisbon in October 2008. However, I have not found on Europol's website a link to the European Code of Good Administrative Behaviour. I am also not aware of how Europol has implemented the Code, and how it goes about ensuring that its staff complies with the principles laid down in the Code. I have not been able to find references to this matter on Europol's website and would therefore be grateful for a presentation on this subject.

Also, it appears that Europol's website, including its home page, is only available in English, although there is a language search option on the top of the page. Does Europol intend to make its website available in all the 23 official languages?

2. Transparency, dialogue and accountability

The European Ombudsman also places a premium on promoting transparency and increasing accountability in the EU administration. This requirement is, among others, reflected in the EU legislation on public access to documents, which expressly mentions the Ombudsman as a review body. It is also reflected in the Ombudsman's extensive powers of investigation, which enable us thoroughly to clarify the facts and issues raised in our inquiries.

I would therefore be grateful to know more about the following issues:

- a) How does Europol deal in practice with requests for public access to documents? What are its guidelines and/or practical arrangements for handling such requests? Please provide examples, such as the main correspondence in Europol's handling of the last three requests for public access to documents dealt with under the Europol Decision of 8 July 2009 (which refers to Regulation 1049/2001). (The *substance*



of Europol's decision in these examples will not be examined, as this is not the purpose of this visit.)

- b) Does Europol produce an annual report (internal or external) on its handling of public access to documents?
- c) Does Europol operate, or intend to operate, a public register in the sense of Article 11 of Regulation 1049/2001?¹
- d) Europol handles a vast amount of information and data. Its website is user-friendly and contains large volume of data, publications and information relating to Europol's main activities, more particularly under "Publications". Regulation 1049/2001 strictly speaking only applies to 'documents'. How does Europol deal with requests for information? Please provide us with information concerning the feedback Europol's services receive from users and stakeholders regarding access to information.

3. Selection and recruitment

With regard to the substance of selection and recruitment decisions, the Ombudsman takes an approach similar to that of the EU Courts. This means, among others, that he recognises the very wide discretionary powers of the Administration in selecting its staff.

With regard to the procedural aspects of selection and recruitment, the Ombudsman has very actively worked to increase the transparency of EU recruitment. This has, for instance, led to enhanced transparency regarding the names of members of selection boards, and more detailed evaluation sheets that provide candidates with a better insight into how they were assessed.

Europol's website contains, under the section "*Employment, Vacancies*", a link to the *Europol Recruitment Guidelines* adopted on 24 May 2011. I would be grateful to receive additional clarification on the following issues:

- a) How does Europol ensure an effective communication with candidates to selection procedures concerning the status of their applications and/or the outcome of the selection procedure?
- b) Are the names of selection board members known to candidates? To what extent does Europol provide

¹ The Europol Decision of 8 July 2009 mentions that "*Europol shall provide access to a register of publicly accessible documents and shall as far as possible make documents directly accessible in electronic form*" (emphasis added)



job candidates with access to the assessments of their applications?

- c) To what extent does Europol seek quicker and less formal means to resolve disputes about selection and recruitment decisions than the ones foreseen in Article 90 of the Staff Regulations?
- d) Does Europol systematically inform candidates that they may complain to the Ombudsman, as provided for in Article 19 of the above-mentioned Code of Good Administrative Behaviour?

4. Tenders and contracts

At the review level, disputes in relation to tender decisions and contractual relationships are most commonly dealt with by the courts. However, a significant proportion of the Ombudsman's cases has over the years concerned these areas as well. In relation to tenders, the Ombudsman draws inspiration from the Court's approach, which is to recognise the administration's broad discretionary powers in assessing the substantive aspects of tender proposals, while carefully checking whether it gave valid and adequate reasons for its decisions and whether it adequately respected applicable procedures and information rights. In relation to contractual disputes, the Ombudsman does not as such assess whether there is a breach of contract. He does, however, thoroughly examine whether the administration provided good reasons for its position, and also looks into the fairness of the administrative actions or omissions.

I note that Europol's website contains a "Procurement" section that contains a link to the *General Terms and Conditions Applicable to Contracts entered into with Europol* (applicable to contracts for the purchase of low-value services and supply of goods).

Questions:

- a) How does Europol handle disputes in relation to these areas?
- b) Are tenderers and contractors informed that they can complain to the Ombudsman?

5. Conflicts of interest

Conflicts of interest arise when persons who work for the public administration may be perceived to have an inappropriate personal interest in a matter with which they are dealing. Such conflicts need to be appropriately handled in order to ensure objective decision-making, and to enhance the public's trust in the administration. Recent events and cases show that the EU administration does not clearly enjoy the public's full confidence in relation to this issue.



In light of these considerations, I would be interested to know what concrete measures Europol applies in order to avoid conflicts of interest in relation to the following areas:

- a) Recruitment of staff, including senior staff
- b) Current and former staff members, notably regarding external activities during and after their service at Europol (see for instance articles 11, 11a, 12b, and 16 of the Staff Regulations).

BAUER Christophe

From: Euro-Ombudsman
Sent: 16 May 2012 15:43
To: 'fabiana.scarazzato@europol.europa.eu'
Cc: 'alessandra.scimonelli@europol.europa.eu'; 'dietrich.neumann@europol.europa.eu'; 'maureen-anne.griffin-hickey@europol.europa.eu'
Subject: Own initiative inquiry OI/9/2012/OV
Attachments: OI-9-2012-OV-S2012-155383.pdf

Dear Mrs Scarazatto,

In relation to the above mentioned own initiative inquiry, please find enclosed :

- a copy of the European Ombudsman's letter to Mr Rob Wainwright.
- a copy of the annexes mentioned in the letter addressed to Mr Rob Wainwright.

Best Regards,



European Ombudsman

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