

Europol's Management Board Response to European Ombudsman's Proposal regarding Case 1948/2024/PVV

Background

1. The European Ombudsman opened an inquiry into Europol's (*i.e.* the Management Board's) decision under Regulation 1049/2001 to give only partial access to documents requested by a citizen on 9 April 2024.
2. The minutes of the two Management Board (MB) meetings of 10-11 October 2023 and 12-13 December 2023 were identified by Europol as falling within the scope of the request that covered the period between 1 September 2023 and the date of the access request.
3. While in the initial reply the access to the concerned documents was refused, following the confirmatory application Europol provided the complainant with partial access to the requested files by invoking exceptions under the Regulation 1049/2001 and the related MB Decision of 13 December 2016¹.
4. Dissatisfied with the outcome and the scope of the redactions, the applicant turned to the Ombudsman in October 2024.

European Ombudsman's assessment and proposal

5. Following the inspection of the two meeting minutes, the Ombudsman provided her assessment of the issue at hand². In spite of the acknowledgement that Europol's mandate involves handling highly sensitive information, the conclusion reached was that Europol should have granted wider access to the documents in question³.
6. It was considered, amongst others, that Europol applied exceptions too broadly⁴, and – in selected instances – resorted to redacting information of a generic nature⁵ and/or without sufficiently substantiating its reliance on the exceptions⁶.
7. In the context of her assessment, the Ombudsman noted that, in order "to satisfy the public interest", and in light of the "rather limited in content" meeting summaries, "it is (...) all the more important that Europol grants the widest possible access to the detailed minutes, if requested"⁷.
8. Concluding, the Ombudsman proposed:

¹ EDOC#850502v11.

² European Ombudsman, *Proposal for a solution on how the European Union Agency for Law Enforcement Cooperation (Europol) dealt with a request for public access to meeting minutes of its Management Board* (23 April 2025).

³ Ibid §16-17.

⁴ Ibid §28.

⁵ Ibid §20.

⁶ Ibid §25.

⁷ Ibid §29.

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“(…) that Europol reconsiders its position on the public access request, with a view to granting wider access to the requested documents, taking into account [the Ombudsman’s] observations. If Europol maintains redactions, it should provide further reasoning for them”⁸.

9. In addition, the Ombudsman invited the Agency to “clarify whether the detailed minutes of the meetings of 26 January 2024 and 19-20 March 2024 would also fall within the scope of the access request”⁹.

General considerations

10. Although Regulation 1049/2001, by which Europol is bound¹⁰, states that “in principle, all documents of the institutions should be accessible to the public”, such access is not absolute and may be refused by virtue of exceptions, “interpreted and applied strictly”¹¹, pursuant to Article 4 of the referred Regulation.
11. For instance, Article 4(3) of Regulation 1049/2001 allows to refuse access to “a document drawn up by an institution for internal use (...) which relates to a matter where the decision has not been taken by the institution” or to “a document containing opinions for internal use as part of deliberations and preliminary consultations (...) even after the decision has been taken” – “if disclosure (...) would *seriously* undermine the institution’s decision-making process, unless there is an overriding public interest in disclosure”.
12. As such, this exception seeks “to protect the process by which decisions are taken within an EU institution”, whereby “any deliberative process, aimed at allowing an EU institution to take a position on a given matter constitutes decision-making”¹².
13. In this context, naturally, the *legislative* decision-making “requires *particularly* wide access to documents”¹³.
14. By their nature, the minutes of the meetings of the MB – importantly, a *non-legislative* body *sensu stricto* – are drafted for internal use and reflect, as a whole and indivisibly, opinions as part of deliberations and/or preliminary consultations.
15. Such minutes reflect, in a detailed, faithful and comprehensive manner, especially if compared to similar documents of other agencies or EU institutions, Board discussions that are inherently embedded in the highly sensitive environment in which Europol operates, and that are by-design covered by the obligation of secrecy and confidentiality.
16. The legislator acknowledged the *sui generis* character of the minutes of the MB meetings by foreseeing a specific instrument, namely the “summaries of the

⁸ Ibid §30.

⁹ Ibid §31.

¹⁰ Article 65(1) of Europol Regulation.

¹¹ Case T-307/16 *CEE Bankwatch Network v European Commission* [2018] ECLI:EU:T:2018:97, §34.

¹² European Ombudsman, *Guide on the right of public access to EU documents* (27 January 2025), 29-30.

¹³ Case C-726/22P *European Commission v Pollinis France* [2025] ECLI:EU:C:2025:17, §66.

outcome of the meetings of the MB” – noteworthy, not the minutes as such – to be made public pursuant to Article 65(4) of the Europol Regulation.

17. Under this provision, the threshold to temporarily or permanently omitting or restricting the publication of those summaries is significantly lower than the one established under Regulation 1049/2001, by requiring Europol to merely demonstrate that such publication “would risk jeopardising the performance of Europol’s tasks, taking into account obligations of discretion and confidentiality and the operational character of Europol”.
18. In the specific context of Europol and its MB, which acts as the Agency’s main governance body, the balance between the principle of transparency and concept of openness, on the one hand, and the general presumption of confidentiality and sensitiveness of deliberations of Board meetings, on the other, is to be found precisely in the combined reading of Article 4(3) of Regulation 1049/2001 and Article 65(4) of the Europol Regulation.
19. As a result, it could be concluded that the satisfaction of public interest as concerns a suitably transparent access to the deliberations of Europol’s MB is, in principle, to be ensured through richer summaries rather than greater access to minutes that are covered, as such, by the first and second sentence of Article 4(3) of Regulation 1049/2001, further reinforced by Article 65(4) of the Europol Regulation.
20. Faced with a potential disclosure to the public of their preliminary opinions and deliberations, the Board members would not be in a position to freely and frankly exchange views and discharge their decision-making responsibility, while their reflection and negotiating leeway would be limited.
21. In addition, a noticeably growing public interest in Europol’s mission and activities, while commendable as such, all the more to the extent it contributes to an ever-closer participation of the citizens in the decision-making process and reinforces the Agency’s legitimacy and accountability, is already largely and necessarily being fulfilled by the statutory democratic scrutiny carried out by the European Parliament together with national parliaments through the Joint Parliamentary Scrutiny Group (JPSG), in accordance with Article 51(1) of the Europol Regulation.
22. Pursuant to Article 51(2) of the Europol Regulation the JPSG , monitors Europol’s activities in fulfilling its mission, including as regards the impact of those activities on the fundamental rights and freedoms of natural persons, by receiving documentation, by summoning the Chairperson of the MB, the Executive Director or their Deputies and, equally important, by being invited to attend two ordinary Board meetings per year to observe and discuss matters of political interest pursuant to Article 14(4) of the Europol Regulation.
23. Against this background, the potential access to the MB meeting minutes should be assessed not only in light of Regulation 1049/2001 as such, of the holistically sensitive and confidential nature of its activities, and of the by-design, statutory access to public summaries to enhance transparency, but also against the democratic scrutiny exercised by the JPSG, to which Europol is consistently and effectively subjected with the aim to strengthen the principles of democracy and

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respect for fundamental rights enshrined in Article 6 of the Treaty on the European Union and in the Charter of Fundamental Rights of the EU - the two foundational rationales behind Regulation 1049/2001¹⁴.

The file at issue

24. Having due regard to the above, with an unwavering commitment to uphold the concept of openness and the basic premise of granting public access to documents “as wide as possible”¹⁵, the Europol MB wishes to inform the Ombudsman of the action it intends to take in relation to the file at issue.
25. Referring to §29 of the Ombudsman Proposal, the Board acknowledges that, in light of a continuously growing interest of the public to be informed of Europol’s activities, the current form of the published summaries of the outcome of the meetings of the MB is indeed “rather limited in content” to the extent they are no longer sufficiently well-equipped to fully satisfy the public interest.
26. **Therefore, the MB endeavours to refine its approach to such summaries by complementing the information currently made available therein with a more granular record of the Board proceedings to enhance the by-design visibility of its discussions, according to the broadest possible implementation of Article 65(4) of the Europol Regulation and its core objective.**
27. For the reasons set out in §25, the Board, following the confirmatory application, engaged in an individual examination of each and every document falling within the scope of the request in question with an understanding that partial access to the meeting minutes was warranted in order to supplement the limited information thus far available in the public summaries and to *ad hoc* satisfy the public interest.
28. The fact that in this specific instance the assessment of the request at the confirmatory stage considered more than one ground for refusal set out in Article 4 of Regulation 1049/2001¹⁶ does not alter the overarching premise, resulting from the reading of Article 4(3) of Regulation 1049/2001 in conjunction with Article 65(4) of the Europol Regulation, that, specifically, the meeting minutes of the Europol MB benefit from a general presumption of confidentiality due to the considerations outlined in §10 to §23, offering the Agency the possibility not to “examine specifically and individually each of the documents requested”¹⁷.
29. While it is “open to [an] institution to rely, [for the purpose of refusing to grant access to a document], on general presumptions which apply to certain categories of documents”¹⁸, the recognition of such presumption “presupposes that it has first been shown that it is reasonably foreseeable that disclosure of the type of document (...) would be liable actually to undermine the interest protected by the

¹⁴ Recital 2 of Regulation 1049/2001.

¹⁵ Case C-39/05P and C-52/05P, *Sweden and Turco v Council* [2008] I-4749, §33.

¹⁶ Case C-404/10P, *European Commission v Editions Odile Jacob* [2012] ECLI:EU:C:2012:393, §113.

¹⁷ Case C-175/18P, *PTC Therapeutics International v EMA* [2020] ECLI:EU:C:2020:23, §9.

¹⁸ Case C-57/16P, *ClientEarth v European Commission* [2018] ECLI:EU:C:2018:660, §79.

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exception in question", such as Article 4(3) of Regulation 1049/2001, "interpreted and applied strictly"¹⁹.

30. It is apparent from the above that a disclosure of detailed and comprehensive meeting minutes of the deliberations of the Europol MB, which are intrinsically rooted in the sensitive strategic and operational context of law enforcement cooperation, would constrain the delegates' (*i.e.* the representatives of Member States, in particular) space for deliberation, seriously undermining the very rationale of such meetings and posing a foreseeable and not hypothetical obstacle to the quality, impartiality and 'diversity of thought' that are instrumental to the decision-making in the sensitive environment of Europol, the European Union Agency for Law Enforcement Cooperation .
31. **Therefore, the MB decides to maintain the partial access to the requested documents. In this context, acknowledging that reasons must be stated²⁰, the Board welcomes the Ombudsman's initiative to share this reply with the complainant, trusting that the additional clarifications provided herein will find the complainant's satisfaction, in particular in the perspective of the refined, broader approach for the future.**
32. Further, concerning §31 of the Ombudsman Proposal, it is to be noted that no detailed meeting minutes of 26 January 2024 were produced.
33. The minutes of the 19-20 March 2024 meeting, however, did not fall within the scope of the access request at issue, covering the period of up to 9 April 2024, since the related document was adopted by the MB only on 18 June 2024 and, thus, after the date of the initial reply to the complainant.
34. **In this context, however, the MB notes that the referred minutes were in the meantime partially released to the public and are henceforth available on Europol's website.**
35. Recognising the importance of the file at hand, and committed to ensuring the widest possible access to Europol documents while, in parallel, safeguarding the discretion and confidentiality of the Board's deliberations in line with the will of the legislator, the Management Board of Europol is grateful for the guidance provided by the Ombudsman and trusts that its commitment to publishing richer summaries of its meetings will satisfy the public interest in its activities.

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Chairperson of the Management Board

¹⁹ Ibid §80.

²⁰ Ibid (n 17) §48; Ibid (n2) §30.