



The Hague, 13 December 2016

EDOC # 850502v11

DECISION OF THE MANAGEMENT BOARD OF EUROPOL laying down the rules for applying Regulation 1049/2001 with regard to Europol documents

THE MANAGEMENT BOARD OF EUROPOL,

Having regard to the Treaty on the Functioning of the European Union, in particular Article 15(3) thereof,

Having regard to Regulation (EU) 2016/794 of the European Parliament and the Council of 11 May 2016 on the European Union Agency for Law Enforcement Cooperation (EUROPOL) and replacing and repealing Council Decisions 2009/371/JHA, 2009/934/JHA, 2009/935/JHA, 2009/936/JHA and 2009/968/JHA (hereinafter "the Europol Regulation")¹ and in particular Articles 65 and 72 thereof,

Whereas:

(1) Article 65(1) of the Europol Regulation foresees that Regulation (EC) No 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (hereinafter referred to as "Regulation 1049/2001")² shall apply to documents held by Europol.

(2) Article 65(2) of the Europol Regulation states that by 14 December 2016, the Management Board shall adopt the detailed rules for applying Regulation 1049/2001 with regard to Europol documents.

(3) In principle, all documents should be accessible to the public. However, public and private interests should be protected by way of exceptions in order to safeguard Europol's ability to carry out its tasks.

(4) These rules are without prejudice to Article 36 of the Europol Regulation on the right of access of the data subject to information on whether personal data relating to him or her are processed by Europol.

(5) These rules are without prejudice to Article 19(2) of the Europol Regulation on the respect for the ownership of the data, the right of Member States, Union bodies, third countries and international organisations to indicate, at the moment of providing information to Europol, any restriction on access thereto or the use to be made thereof, and the requirement for Europol to comply with such restrictions.

⁽¹⁾ OJ L 135, 24.05.2016, p.53.

⁽²⁾ OJ L 145, 31.05.2001, p.43.

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Article 1

Definitions

For the purpose of these rules:

- (a) "Europol document" or "document" shall mean any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to Europol's activities, policies and decisions, and held by Europol;
- (b) "Third parties" means the authorities of third countries and international organisations as referred to in Article 23(1) of the Europol Regulation;
- (c) "Union bodies" means institutions, bodies, missions, offices and agencies set up by, or on the basis of, the Treaty on European Union and the Treaty on the Functioning of the European Union, as referred to in Article 2(d) of the Europol Regulation;
- (d) "Private parties or private persons" shall mean the entities referred to in Article 2(f) and (g) of the Europol Regulation;
- (e) "Europol classified document" means any document containing information or material designated by a Europol security classification³, the unauthorised disclosure of which could cause varying degrees of prejudice to the interests of Europol, the European Union or one or more of the Member States.

Article 2

Beneficiaries

1. Citizens of the Union and natural or legal persons residing or having their registered office in a Member State shall exercise their right of access to Europol documents under Regulation (EC) No 1049/2001 in accordance with these detailed rules. This right of access concerns documents held by Europol, that is to say, documents drawn up or received by it and in its possession.
2. Pursuant to Article 2(2) of Regulation (EC) No 1049/2001, citizens of third countries not residing in a Member State and legal persons not having their registered offices in one of the Member States shall enjoy the right of access to Europol documents on the same terms.
3. Individuals specifically requesting personal data only related to them shall not be covered by these rules. In such cases individuals shall be referred to the procedure mentioned in Article 36 of the Europol Regulation.

³ RESTREINT EU/EU RESTRICTED; CONFIDENTIEL UE/EU CONFIDENTIAL, SECRET UE/EU SECRET and TRES SECRET UE/EU TOP SECRET with additional marking ("EUROPOL") under the classification marking to indicate that it originates in Europol.

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Article 3

Access applications

1. All applications for access to a document shall be sent by mail, fax or e-mail to Europol. The address to which applications are to be sent shall be published in the practical guide referred to in Article 9(3) of these Rules.
2. Europol shall answer initial and confirmatory access applications within fifteen working days from the date of registration of the application. In the event of a complex application or an application relating to a very long document or to a very large number of documents, the deadline may be extended by fifteen working days. Reasons shall be given for any extension of the deadline and it shall be notified to the applicant beforehand.
3. If an application is imprecise, as referred to in Article 6(2) of Regulation (EC) No 1049/2001, Europol shall invite the applicant to provide additional information making it possible to identify the documents requested; the deadline for reply shall run only from the time when Europol has this information.
4. Notwithstanding paragraph 2 of this Article, in the event of a complex application or an application relating to a very long document or to a very large number of documents, Europol may confer with the applicant, with a view to finding a fair solution.
5. Any decision which is even partly negative shall state the reason for the refusal based on one of the exceptions listed in Article 4 of these Rules in a manner which does not harm the interests protected in Article 4 and shall inform the applicant of the remedies available to him.

Article 4

Exceptions

1. Europol shall refuse access to a document where disclosure would undermine the protection of:
 - (a) the public interest as regards:
 - public security, such as the safety of natural and legal persons, the proper fulfilment of Europol's tasks, investigations and operational activities of Member States, third parties or Union bodies,
 - defence and military matters,
 - international relations, in particular the relations between Europol and its partners as regulated in Chapter V of the Europol Regulation,
 - the financial, monetary or economic policy of the Union or a Member State,
 - (b) the privacy and integrity of the individual.
2. Europol shall refuse access to a document where disclosure would undermine the protection of:
 - commercial interests of a natural or legal person, including intellectual property,

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- court, arbitration and dispute settlement proceedings and legal advice,
- the purpose of inspections, investigations and audits, other than those mentioned under paragraph 1 (a),

unless there is an overriding public interest in disclosure.

3. 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, shall be refused if disclosure of the document would seriously undermine Europol's decision-making process, unless there is an overriding public interest in disclosure.

Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within Europol shall be refused, even after the decision has been taken, if disclosure of the document would undermine Europol's decision-making process, unless there is an overriding public interest in disclosure.

4. As regards documents originating in whole or in part from Member States, third parties, Union bodies, private parties or private persons, Europol shall consult them with a view to assessing whether any of the exceptions laid down in this Article are applicable, unless it is clear that the document shall or shall not be disclosed. They shall provide their assessment taking into account the deadline referred to in Article 3 of these Rules. If the document originates from a Member State, third party or Union body, Europol shall take into account Article 19(2) of the Europol Regulation when assessing whether or not to disclose the document.
5. If only parts of the requested document are covered by any of the exceptions, the remaining parts of the document shall be released.
6. The exceptions as laid down in this Article shall only apply to the period during which protection is justified on the basis of the content of the document. The exceptions may apply for a maximum period of 30 years. In the case of documents covered by the exceptions relating to integrity or privacy of individuals or commercial interests and in the case of Europol classified documents, the exceptions may, if necessary, continue to apply after this period.

Article 5

Processing of initial applications

1. As soon as the application is registered, an acknowledgement of receipt shall be sent to the applicant, unless the answer can be sent immediately.
2. The acknowledgement of receipt and the answer shall be sent in writing, where appropriate, by electronic means.
3. The applicant shall be informed of the response to his/her application either by the Deputy Executive Director - of the department concerned, or by the Chairperson of the Europol Management Board where the application concerns Europol documents originating from the Management Board, via the dedicated unit within Europol.
4. Any answer, which is even partly negative, shall inform the applicant of his/her right to submit, within fifteen working days from receipt of the answer, a confirmatory application to the Executive Director of Europol or to the Europol Management Board

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where the application concerns Europol documents originating from the Management Board.

Article 6

Processing of confirmatory applications

1. The applicant shall be informed of the answer to his/her confirmatory application either by the Executive Director of Europol or by the Europol Management Board where the application concerns Europol documents originating from the Management Board, via the dedicated unit within Europol.
2. The decision shall be notified to the applicant in writing, where appropriate by electronic means, and in the event of a partial or total refusal inform of their right to bring an action before the Court of First Instance or to lodge a complaint with the European Ombudsman.

Article 7

Treatment of applications for access to classified documents

1. Where an application for access concerns a Europol classified document, it shall be handled by officials entitled to acquaint themselves with the document.
2. Reasons shall be given on the basis of the exceptions listed in Article 4 of these Rules for any decision refusing access to all or part of a classified document in a manner which does not harm the interests protected in Article 4 of these Rules. If it proves that access to the requested document cannot be refused on the basis of these exceptions, the official handling the application shall ensure that the document is declassified before sending it to the applicant.
3. Applications shall be handled in accordance with the Rules established by Europol on the protection of EU classified information referred to in Article 67(2) of the Europol Regulation.

Article 8

Exercise of the access

1. Documents shall be sent by mail, fax or, if available, by e-mail, depending on the application.
2. If the document has been published, the answer shall consist of the publication references and/or the place where the document is available and where appropriate of its web address.
3. If the volume of the documents requested exceeds twenty pages, the applicant may be charged a fee of EUR 0,10 per page plus carriage costs. The charges for other media shall be decided case by case but shall not exceed a reasonable amount.

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Article 9

Measures facilitating access to the documents

1. A public register of documents shall be established by the Executive Director to allow citizens to exercise their rights under Regulation (EC) No 1049/2001. References to those documents shall be made in a manner which does not undermine the protection of the interests set out in Article 4.
2. The register shall contain the title of the document (in the languages in which it is available), its document number, other useful references and the date of its creation or adoption.
3. Europol shall draw up a practical guide to inform the public of their rights under Regulation (EC) No 1049/2001. The guide shall be made available on Europol's website.

Article 10

Documents directly accessible to the public

Europol shall as far as possible make documents directly accessible in electronic form on its website.

Article 11

Internal organisation

The Executive Director of Europol shall adopt a decision outlining the internal procedure for the handling of public access requests.

Article 12

Entry into force

These rules shall enter into force on the same day as the date of application of the Europol Regulation.

Done at The Hague on 13 December 2016

For the Management Board



Arie IJzerman
Chairperson