Evropský veřejný ochránce práv

Rozhodnutí o způsobu, jakým Evropská komise řešila žádost o přístup veřejnosti k dokumentům týkajícím se jednání o veřejných zakázkách na nákup vakcín proti covidu-19 (případ 2206/2021/MIG)

Rozhodnutí
Případ 2206/2021/MIG - **Otevřeno dne** 26/01/2022 - **Rozhodnutí ze dne** 18/07/2022 - **Dotčený orgán** Evropská komise (Další šetření není důvodné) |

Případ se týkal žádosti o přístup veřejnosti k dokumentům o jednání Evropské komise s farmaceutickými společnostmi o veřejných zakázkách na nákup vakcín proti covidu-19. V návaznosti na předchozí šetření veřejné ochránkyně práv zahájila Komise přezkum dalších dokumentů, na které se žádost vztahovala, a část přezkoumaných dokumentů zpřístupnila. Přislíbila, že se bude nadále snažit vyřídit žádost včas.

Podle stěžovatele Komise svému slibu nedostála. Veřejná ochránkyně práv zahájila šetření a požádala Komisi, aby vysvětlila, jak s ohledem na předchozí šetření řešila žádost stěžovatele. V průběhu šetření vydala Komise rozhodnutí o zbývajících dokumentech, k nimž stěžovatel požadoval přístup. Znovu také posoudila dokumenty (předběžné dohody o nákupu), které dříve částečně zveřejnila, a poskytla k nim širší přístup, mimo jiné na svých internetových stránkách.

Veřejná ochránkyně práv tudíž konstatovala, že žádná další šetření nejsou v této fázi opodstatněná, a případ uzavřela, přičemž vyzvala Komisi, aby nadále usilovala o větší transparentnost jednání o vakcínách.

Background to the complaint

1. In September 2020, the complainant, a civil society organisation, made a request [1] for public access to the European Commission, for all meeting reports and correspondence related to the negotiations of Advance Purchase Agreements with pharmaceutical companies, including a list of these documents.

2. In November 2020, the complainant made a request for review (‘confirmatory application’) after the Commission had tacitly refused to give public access.

3. When the Commission failed to reply to the complainant’s confirmatory application, the

complainant turned to the European Ombudsman who opened an inquiry in January 2021 [2] .

4. In the course of that inquiry, the Commission acknowledged the strong need for transparency in relation to the vaccine negotiations and made efforts towards disclosing a considerable amount of information. In particular, the Commission published redacted versions of the six advance purchase agreements it had concluded at the time [3] . In addition, the Commission provided the complainant with a list of 365 additional documents it had identified as falling within the scope of the complainant's request. It **promised** that it would disclose these documents, to the greatest extent possible, once it had finalised assessing each document or category of documents [4] , and that it would, over time, proactively re-assess documents that it considers cannot be disclosed in full and that it would remove redactions, once they were no longer deemed necessary.

5. In the Ombudsman's view, this clearly illustrated that the Commission was taking steps towards greater transparency around the vaccine negotiations. She was thus satisfied that the Commission would continue these efforts to address the complainant's access request promptly and to make swiftly available as many documents as it deems possible, including on its website. Against that background, the Ombudsman closed her inquiry in May 2021. [5]

6. In June 2021, the Commission adopted a decision on a first batch of 80 documents, providing the complainant with full access to 25 documents and partial access to 55 documents. The Commission also said that it would issue a decision on the remaining documents *"in the coming weeks"* .

7. A few weeks later, the Commission informed the complainant that it was conducting internal consultations and that the complainant would receive a reply *"in the course of the following weeks."* The Commission also apologised for the delay.

8. In December 2021, having not received another substantive reply from the Commission despite two reminders, the complainant turned again to the Ombudsman. The complainant considered that the Commission had not complied with the promises it had made.

9. Shortly thereafter, the Commission informed the complainant that its access request had been re-assigned to a new department [6] . That department proposed that the complainant narrow down the scope of its access request, which the complainant declined.

The inquiry

10. The Ombudsman opened an inquiry into whether the Commission complied with the promises it had made to the complainant.

11. In the course of the inquiry, the Ombudsman received the reply of the Commission on the complaint and, subsequently, the comments of the complainant in response to the Commission's reply.

Arguments presented to the Ombudsman

12. The complainant argued that the Commission was failing to fulfil the promises it had made in the context of the previous Ombudsman inquiry [7] in terms of transparency of the vaccine negotiations, noting the considerable time the Commission has been taking to assess its access request.

13. The complainant added that the need for transparency of the vaccine negotiations prevails, given that the EU was still negotiating new agreements and that vaccines were still not widely available globally.

14. Concerning the Commission's proposal to reduce the scope of its access request, the complainant expressed irritation, saying that this would be *"a major step back"* from the promises the Commission had made in the context of the previous Ombudsman inquiry.

15. The Commission said that it had overall received a large number of access requests (85) related to the vaccine negotiations (concerning more than 600 documents) when it was starting the negotiations. Its responsible department [8] had thus had to deal with these requests at the same time as negotiating the advance purchase agreements.

16. The Commission also said that many of the documents at issue originated from Member States or other third parties which it had to consult.

17. The Commission explained that the responsibility for dealing with the complainant's access request (and similar access requests) had been re-assigned to a new department in October 2021. This department had re-assessed the complainant's request and, due to the wide scope, explored if the complainant would be willing to narrow down the scope of his request, proposing a 'fair solution' [9] . As the complainant had not agreed to such a solution, the Commission had continued its assessment of all documents at issue.

18. The Commission acknowledged that it had incurred a considerable delay in dealing with the complainant's access request. It said that this had been due to the complexity and sensitivity of the documents at issue, the number of stakeholders and interests involved, and the high workload stemming from the access requests it received in relation to the purchase of COVID-19 vaccines.

19. In the course of the inquiry, the Commission informed the Ombudsman that it had issued decisions on the remaining documents requested by the complainant. It also said that those documents to which it had decided to give access (in full or in part) would also be made available to the public on its website.

20. In addition, the Commission informed the Ombudsman that it had now granted the complainant wider public access to the advance purchase agreements. It promised to make

these less redacted versions of the agreements also available to the public on its website and that it would inform the complainant once they have been added.

21. The complainant was dissatisfied with the access granted and asked the Commission to review its decision concerning some documents.

The Ombudsman's assessment

22. Public authorities should comply with the promises they make to citizens.

23. The Ombudsman regrets very much the time the Commission has taken to reply to the complainant's access request. The EU legislator has clearly set out that such requests should be dealt with swiftly (Regulation 1049/2001). It is particularly unfortunate when a public authority fails to comply with its own promises as to when it will reply to a citizen's request. That does not enhance trust in public authorities.

24. However, the Commission has by now replied to the complainant's access request. It has finalised its assessment and granted the complainant, to the extent it deemed possible, access to the documents at issue. The Commission has also re-assessed the advance purchase agreements previously disclosed in part and provided greater access to them, including on its website. [10] The Commission has thus processed the complainant's access request in full, re-assessing documents over time with a view to giving greater public access. The Commission has recognised that its reply was considerably delayed. The Commission has also recognised the need for transparency concerning vaccine negotiations.

25. Against this background, no further inquiries are justified at this stage. However, the Ombudsman calls on the Commission to continue its efforts towards greater transparency of the vaccine negotiations, including by re-assessing partially disclosed documents over time and removing redactions, where possible. The Ombudsman requests the Commission to report to her on this within six months from this decision.

26. The Ombudsman is aware that the complainant is dissatisfied with the access now granted to it by the Commission and that it is in contact with the Commission in that regard. That matter is outside the scope of this inquiry.

27. The general issue of delays in the Commission's handling of requests for access to documents is the subject of the Ombudsman's own-initiative inquiry (OI/2/2022/MIG [11]).

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

No further inquiries are justified at this stage. However, the Ombudsman calls on the

Commission to continue its efforts towards greater transparency of the vaccine negotiations, including by re-assessing partially disclosed documents over time and removing redactions, where possible. The Ombudsman requests the Commission to report to her on this within six months from this decision.

The complainant and the Commission will be informed of this decision **.**

Emily O'Reilly

European Ombudsman

Strasbourg, 18/07/2022

[1] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049 [Odkaz].

[2] Case 86/2021/MIG.

[3] These were subject to another request for public access by the complainant and to complaint 85/2021/MIG. The inquiry into case 85/2021/MIG was joint with case 86/2021/MIG.

[4] See the Commission's reply in joint inquiry 85/2021/ and 86/2021/MIG: file://epsvlwp095.ep.parl.union.eu%4010000/DavWWWRoot/Archives/2021/incident/202100085/REPLY_20210085

[5] The decision is available at: https://www.ombudsman.europa.eu/en/decision/en/141706 [Odkaz].

[6] The newly created European Health Emergency Preparedness and Response Authority ('DG HERA').

[7] Joint inquiry 85/2021/MIG and 86/2022/MIG.

[8] The Commission's Directorate-General Health and Food Safety (DG SANTE).

[9] In accordance with Article 6(3) of Regulation 1049/2001.

[10] The advance purchase agreements are available at: https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/public-health/eu-vaccines-strategy_en#document

[Odkaz].

[11] https://www.ombudsman.europa.eu/en/opening-summary/en/154404 [Odkaz].