

## **Recommendation of the European Ombudsman in case 195/2017/JAP on the European Commission's refusal to grant access to legal opinions on the proposal for a Regulation on the establishment of the European Public Prosecutor's Office**

Recommendation

**Case** 195/2017/JAP - **Opened on** 03/03/2017 - **Recommendation on** 13/02/2019 - **Decision on** 04/09/2019 - **Institution concerned** European Commission ( Maladministration found ) |

The case concerned the refusal of the European Commission to grant public access to “legal opinions” on the legislative proposal for a Regulation on the establishment of the European Public Prosecutor's Office (EPPO).

The Ombudsman found that the Commission should have granted public access to some parts of the documents which it had withheld. She therefore recommends specific further disclosures. In addition, the Ombudsman encourages the Commission to reconsider, in the light of subsequent developments, the need to continue to deny public access to other parts of the documents which it continues to withhold.

Made in accordance with Article 3(6) of the Statute of the European Ombudsman [1]

### **The background to the complaint**

1. The complainant, a researcher at a Finnish university, asked the Commission to give him public access to the opinions issued by the Commission's Legal Service on the Commission's legislative file relating to the creation of a European Public Prosecutor's Office. Initially, the Commission told him that there were no written documents relevant to his request. After forming a better understanding of the complainant's request, it then identified ten documents. The ten documents were described as follows:

1) Note of the Legal Service to the Director General of DG JUST of 18 April 2013: *European Public Prosecutor's Office (EPPO). Article 86 TFEU - Counterfeiting of the Euro and the scope of Article 86 TFEU* ,

2) Note of the Legal Service to the Director General of DG JUST of 29 May 2013: *European Public Prosecutor's Office (EPPO). Article 86 TFEU* ,

3) Commission non-paper of 8 September 2014 on judicial review to the Working Party on



cooperation in criminal matters (COPEN): *Proposal for a Regulation on the establishment of the European Public Prosecutor's Office* ,

4) Note of the Legal Service to the Director General of OLAF [2] of 25 July 2016: *Transfert d'une partie du personnel de l'OLAF vers le Parquet européen* ,

5) Reply of the Legal Service of 20 November 2013 to the fast-track consultation of DG JUST on Draft Communication from the Commission to the National Parliaments, the European Parliament and the Council on the review of the Commission Proposal for a Council Regulation on the establishment of the European Public Prosecutor's Office, with regard to the principle of subsidiarity, in accordance with Protocol No 2,

6) Legal Service opinion on *Consequences of the approach of the LIBE committee to the judicial review by Union courts of the decisions of the Permanent Chambers of the EPPO* ,

7) Commission non-paper on *The EPPO and non-participating Member States* ,

8) Commission non-paper on the status of European Delegated Prosecutors in the draft Regulation establishing the European Public Prosecutor's Office,

9) Commission non-paper on *The Data Protection Regime of the EPPO* , and

10) Legal Service document of 19 November 2015 on *EPPO - Judicial review – Speaking notes for COPEN* .

2. The Commission granted full access to document 3, which had already been published by the Council. It granted very wide access to documents 1 and 5 (from which it redacted only the names of officials on the basis that the release of the names would breach data protection rules). It granted partial access to document 10. It argued that disclosing the documents 2, 4, 6, 7, 8 and 9 would (i) undermine the protection of legal advice and would (ii) seriously undermine the Commission's decision-making process. [3] It noted that the negotiations on the subject were still ongoing.

3. The complainant contested the refusal to disclose documents 2, 4 and 6-10. He argued that the Commission's arguments did not comply with the requirements of the Access to Documents Regulation (Regulation 1049/2001 referred to in footnote number 3) as interpreted in the case law of the Court of Justice of the European Union. [4] Specifically, he argued that there was an overriding public interest in disclosure because the matter of the European Public Prosecutor was so relevant to the public. He therefore asked the Commission to grant him full access to the documents, other than any redactions needed to protect personal data.

4. In response, the Commission granted further partial access to four of the documents (namely, documents 2, 4, 6, and 8) and to one additional document, which was drafted after the Commission's initial reply to the complainant, namely:



11) The non-paper dated 14 November 2016, entitled: *The draft Regulation establishing the European Public Prosecutor's Office and the fundamental right of access to documents*.

However, the Commission continued to refuse to give any access to the other documents.

5. The complainant was not satisfied with this reply and therefore complained to the Ombudsman.

#### **The inquiry**

6. The Ombudsman opened an inquiry into the following aspects of the complaint:

1) The Commission wrongly refused access to legal service opinions on the EPPO legislative file.

2) The Commission's document management system is inadequate for dealing with requests for access to documents.

7. The Ombudsman's inquiry team carried out an inspection of the Commission's file. The Ombudsman's recommendation takes into account the results of that inspection, as well as the arguments and views put forward by the parties.

#### **The refusal of access to the documents**

## **Arguments presented to the Ombudsman**

8. The **complainant** argued that the Commission had not given sufficient reasons for its decision not to grant access to the documents. In relation to the exception for the protection of legal advice, he said it had made "*mere assertions*" to the effect that disclosure of the documents would undermine the protection of legal advice, without going into any detail as to how that might happen. This was despite the fact that the Court of Justice had found that the Commission must grant access to legal opinions on legislative files as a matter of principle, unless the opinions were "*of a particularly sensitive nature*" or had a "*particularly wide scope*". The Commission had not, the complainant argued, demonstrated that this was the case.

9. The complainant considered the Commission's argument that it could not grant access while negotiations were still ongoing, in order to protect these negotiations, "*archaic and fundamentally at odds*" with Regulation 1049/2001. The Court had stated that allowing citizens access to "*all information which forms the basis of a legislative act*" contributed to strengthening democracy. The complainant argued that the Commission had to prove that there was a real risk of the decision-making process being seriously undermined in order to refuse access to a document. Reference to a "fear" that negotiations might be more difficult was not enough, he said. The Court had stated that the institutions had to address any external pressure, rather than use the fear of it to block access to documents. The Commission had not made any "*real arguments*" beyond the very general arguments which had been "*soundly rejected*" in a number of Court cases.

10. The **Commission** had responded to the complainant's review request by granting partial



access to five more documents. However, it refused access to three documents in their entirety. It explained that negotiations on its proposal for the EPPO were “*fully ongoing*” and many issues were still “*under discussion*”. The Commission stated that it facilitates the negotiations, which, it said, require a delicate balance to be struck between the institutions. The opinions expressed in the documents to which the complainant had sought access were, it stated, still relevant to those negotiations, and the conclusions in them were “*not necessarily shared*” by the other institutions. The Commission argued that disclosure could thus undermine the Commission’s position in the negotiations and with it the institutional balance, which it stated is particularly relevant in legislative files which require unanimous decisions. Moreover, the EPPO’s future tasks and the fact that this was a matter of judicial cooperation meant that the issue did indeed have a “*highly sensitive character*” and thus satisfied the requirements set out in the Court ruling *Turco* (referred to in footnote number 4) justifying the refusal.

**11.** The Commission said this was even more the case as some of the advice was also relevant to other legislative proposals in this area and was thus “*particularly wide in scope*”, the other justification for non-disclosure which the Court accepted in *Turco*. Finally, the Commission argued that a reference to the importance of the legislative file was not enough to establish an overriding public interest. The case law required proof that transparency was “*in some sense especially pressing*”. [5] The complainant had not shown this. Rather, the Commission considered that it had satisfied the principle of transparency by granting partial access.

**12.** The Commission explained that document 2 considered possible legal consequences of certain Member States deciding not to participate in the EPPO, and how the rules on “*enhanced cooperation*” [6] would apply in such a case, while document 4 clarified various staff-related aspects linked to the creation of the EPPO. Documents 6 to 9 and 11 related to the status of non-participating Member States, the status of Delegated Prosecutors, the data protection regime of the future EPPO and the rules on access to its documents.

**13.** The Commission concluded that full access to the documents would seriously undermine the decision-making process. This was because it would “*reveal preliminary legal assessments relating to the policy options which are currently under consideration in the framework of the ongoing inter-institutional discussions*” and because the undisclosed parts of the documents contained “*legal advice which goes beyond the context of the legislative process*” in question.

**14.** During the inspection meeting, the Commission’s representatives referred to the novel nature of the procedure - which by then had passed to an enhanced cooperation, following a Council meeting which registered the absence of unanimity on the proposal - to argue that the legal advice relating to relevant procedural matters had to be protected.

## The Ombudsman's assessment leading to a recommendation

**15.** Regulation 1049/2001 creates the right of citizens to have access to documents held by the institutions unless one of the exceptions set out in that Regulation applies. The presumption of



public access carries even greater weight in relation to **legislative documents** [7] , based on the principle that the legislative process should be as close to citizens as possible, which requires a high degree of transparency. This means that when an institution argues that the disclosure of a legislative document would cause harm to a protected interest, it has to meet a stricter test as to the existence of that harm than it otherwise would. In considering this complaint, the Ombudsman has therefore applied the appropriate high standard.

## **The exception for the protection of legal advice as it applies to “legislative documents”**

**16.** The Commission can refuse access to documents which contain legal advice if it can demonstrate that its ability to receive “ *frank, objective and comprehensive advice* ” [8] is at real risk of being undermined. Where the legal opinion was given in the context of a legislative process the Court has required the Commission to show that the document to which access is sought is “ *of a particularly sensitive nature* ” or has “ *a particularly wide scope that goes beyond the context of the legislative process in question* ”.

**17.** The Commission seems to understand that documents of “ *a particularly wide scope that [go] beyond the context of the legislative process in question* ” are documents that are relevant not just to the specific legislative process in question, but potentially to other legislative processes. The Ombudsman does not agree. As is clear from what has been said above, the Court considers that legal advice on legislative matters must be more transparent than that on administrative matters. Taking this into account, the idea that legal advice that relates to more than one piece of legislation should be subject to less transparency than if it related to only one specific piece of legislation makes very little sense. If the content of the documents at issue were so generic and broad in scope as to be relevant to many legislative procedures, surely the conclusion should be that there is any even greater need to disclose the documents in question. The qualification thus only makes sense if it is understood to relate to situations where the scope of the legal advice is so broad that it encompasses also issues which are **not** legislative in nature, such as for example issues relating to the day-to-day functioning of the EPPO.

## **The exception for the protection of the decision-making process as it applies to “legislative documents”**

**18.** The rules on public access to documents allow for access to be refused if a document relates to a matter on which a decision is still pending, where disclosure could seriously undermine the decision-making process in question. As with the other exceptions to the right of public access to documents, this exception must be interpreted and applied strictly. [9] The aim of protecting the decision-making process from external pressure may constitute a legitimate ground for restricting access. However, it must be **reasonably foreseeable** that there will be external pressure resulting from the release of the documents and that this pressure is of such a nature and intensity that it risks seriously undermining the decision-making process. [10] The mere fact that a procedure is still ongoing does not establish that disclosure of the documents



would give rise to such undue pressure as to seriously undermine that process. [11]

19. Even if the existence of such external pressure were reasonably foreseeable, the institution holding the documents would still have to release them if there was an overriding public interest in their disclosure.

20. The Commission told the complainant that it could not grant further access to the documents because to do so would *“reveal preliminary legal assessments relating to the policy options which are currently under consideration in the framework of the ongoing inter-institutional discussions”* and because they contained *“legal advice which goes beyond the context of the legislative process.”*

21. Having assessed the application of the exceptions to the withheld parts of the requested documents, the Ombudsman’s conclusions are as follows.

## **Document 2 - Legal Service Note on the EPPO and Article 86 TFEU**

22. The Commission granted the complainant partial access to this document by redacting all content from the mid-second page onwards. The redacted part of the document (the remaining five pages) deals with the possibility of opting for the procedure for adopting the proposal through the mechanism of “enhanced cooperation”.

23. This document contains legal advice in relation to a legislative process. It addresses general questions of procedure that might arise in the (then still future) negotiations in the Council on the proposal, and in relation to (then hypothetical) negotiations for an “enhanced cooperation” between Member States in case no unanimity could be reached in the Council on this specific proposal.

24. The Ombudsman agrees that this legal advice is particularly sensitive. She accepts the Commission’s redactions which were made to protect the Legal Service’s advice relevant to the Commission’s strategy in the legislative procedure. Disclosure, at that time, would have risked undermining the institutional balance in such a procedure by limiting the Commission’s room for manoeuvre on the issue of whether and how to use “enhanced cooperation” .

25. The Ombudsman considers that the Commission’s refusal to grant further partial access to this document was justified.

## **Document 4 - Legal Service note on the transfer of OLAF staff to the EPPO**

26. The inspection of the document reveals that this document, while it is related to the establishment of the EPPO, cannot properly be described as a “legislative document”. It clearly



deals with a purely administrative question, the transfer of staff brought about by legislative developments. Consequently, this document does not have to be analysed against the particularly high standard that applies to the public disclosure “legislative documents”.

27. This does not mean that it can automatically be considered as exempt from the principle of transparency.

28. The matter to which this legal advice relates - the question of whether and, if so, on what conditions some OLAF staff might transfer to the new body - is clearly a very sensitive, particularly for the staff concerned. Taking this into account, the Ombudsman considers that the Commission was justified in redacting paragraphs 10 to 13 of the document.

29. However, the Ombudsman does not consider paragraphs 3 to 9 to be particularly sensitive. These simply provide an overview of the relevant factual and legal background and should be released.

## **Document 6 - Legal Service opinion on Consequences of the approach of the LIBE committee to the judicial review by Union courts of the decisions of the Permanent Chambers of the EPPO**

30. The Commission granted access only to the first three introductory paragraphs of this document which, as the title indicates, considers the consequences of the LIBE committee’s view that all decisions taken by the permanent chambers of the EPPO should be subject to judicial review by the European Courts in Luxembourg. The rest of the document contains legal considerations as to whether and how such a situation might undermine the effectiveness of the day-to-day operation of the EPPO.

31. First, the document can clearly be classified as a “legislative document” insofar as the issues dealt with therein are relevant to the drafting of the legislation.

32. That said, the document deals with a sensitive and contentious operational issue impacting on the EPPO’s day-to-day operation. It goes beyond the scope of the legislative file. As such, the higher standard of transparency that applies to a purely legislative document does not apply.

33. The Ombudsman considers that it is reasonably foreseeable that releasing the non-disclosed content could undermine the EPPO’s day-to-day operation.

34. Taking this into account, the Ombudsman considers that the Commission was justified in refusing to disclose the legal advice contained in the remainder of the document.

## **Document 7 - Commission non-paper on the EPPO and**





## **non-participating Member States**

35. The Commission refused access to this document in its entirety.

36. The Ombudsman considers that this document does concern the legislative process as it weighs up the advantages and disadvantages of certain legislative options.

37. Having examined the document carefully, the Ombudsman considers that the Commission was wrong to refuse access to the **first page** of this three page document. The first page merely sets out different issues arising from the fact that some Member States will participate in the EPPO and some will not.

38. From the second page onwards the text concerns legal advice which weighs up the advantages and disadvantages of certain options. As with document 2 (see above), the Ombudsman accepts the Commission's redactions which were made to protect the Legal Service's advice. The advice in question was "particularly sensitive" as it related to a matter which, at that time, was subject to delicate negotiations. The disclosure of the redacted parts, at that time, would have risked undermining the institutional balance in such a procedure by limiting the Commission's room for manoeuvre.

39. The Ombudsman therefore recommends that the Commission release the first page of the document.

## **Document 8 - Commission non-paper on the status of European Delegated Prosecutors**

40. This document is a note on the status of European Delegated Prosecutors in the framework of the EU staff regulations. Specifically, it concerns how the European Delegated Prosecutors will have the independence necessary to carry out their functions properly. As the legal advice concerns the content of the legislation, it does relate to the legislative process.

41. However, the Ombudsman does not consider that the document meets the high standard of "particular sensitivity" required to justify non-disclosure. It merely sets out the applicable law, without giving advice or considering options. It should therefore be released.

## **Document 9 - Commission non-paper on The Data Protection Regime of the EPPO**

42. No access was given to this two-page note. It contains legal advice on various alternatives under discussion, with reference to legal risks and policy implications.

43. The Ombudsman considers that there was some justification for regarding it as "particularly sensitive" at the time of the request. The refusal to grant public access was therefore not





unreasonable at the time, although subsequent developments, with the finalising of the revised EU data protection rules [12] , may well mean that this document no longer needs to be considered sensitive. The Ombudsman therefore encourages the Commission to consider its release.

## **Document 10 - COPEN Speaking notes on Judicial Review**

**44.** This document contains background information and the opinion of the Legal Service on the judicial review of EPPO procedural decisions. Public access to it was refused.

**45.** The Ombudsman notes that, according to a footnote in that document, it was distributed as a “non-paper” [13] , presumably to the members of COPEN, that is, the Council Working Party on cooperation in criminal matters. This means that it was shared at least with the Member State experts that make up the Working Party. The Commission’s argument that disclosure of the documents would undermine the institutional balance therefore does not apply to this document.

**46.** Although it does contain some legal advice the Ombudsman does not consider the entire document to be particularly sensitive. She accepts that paragraphs 15 to 22, which discuss, in some detail, the different types of EPPO decisions which may be amenable to judicial review, were appropriately redacted, for the same reasons as applied to the undisclosed part of document 6.

## **Document 11 - Commission non-paper on access to EPPO documents**

**47.** The Commission granted partial access to this document, redacting only paragraphs 6 to 8 (the section on the legal basis for an access to documents regime), as well as paragraphs 12 and 13 and one of the accompanying footnotes, which continue a discussion, in the preceding disclosed paragraphs, on the likely availability of a general presumption of non-disclosure.

**48.** The Ombudsman does not accept that the discussion of the appropriate legal basis for an access to documents regime is particularly sensitive. As to paragraphs 12 and 13, while she accepts that the legal advice there is more speculative, she does not consider that the threshold for the refusal of public access is met.

## **Overriding public interest**

**49.** There is always a strong public interest in obtaining access to documents relating to the adoption of legislative acts, especially in relation to novel and complex matters. However, when dealing with an access to documents case, the Ombudsman needs to take into account all of the considerations put forwards by the parties. She also needs to weigh whether the public



interest in disclosure may override the interests that the institution seeks to protect.

50. Based on her inquiry into this particular case, the Ombudsman considers that the public interest in the full disclosure of documents 2 and 6 as well as paras. 10 -13 of document 4, paras. 5 - 13 of document 7, document 9 and paras. 15 - 22 of document 10 did not, at the time of the request, override the protection of interests sought by the Commission.

## Conclusion

51. Based on the above analysis and detailed consideration of the content of the documents, the Ombudsman concludes that the Commission was thus wrong to deny access to large parts of the documents, which it has continued to withhold.

52. The Ombudsman finds that **the Commission has wrongly refused access to: paras. 3 to 9 of document 4, the first page of document 7, the entirety of document 8, paras. 1 to 14 and para. 23 of document 10, and the entirety of document 11 .**

53. She therefore makes a corresponding recommendation below, in accordance with Article 3(6) of the Statute of the European Ombudsman. She also encourages the Commission to review the necessity of and justification for continuing to withhold the remainder of the requested documents, in particular document 9. The Ombudsman notes that the EPPO Regulation (2017/1939) [14] has been made and is now in force, although the office is not yet fully operational,

### **The identification of the relevant documents**

## Arguments presented to the Ombudsman

54. The complainant referred to the history of his access request where he was told initially that there were no relevant documents and then that there were ten. Finally, the Commission's Secretariat-General identified a further relevant document. He asked the Ombudsman to investigate the record-keeping of the Commission.

55. During the inspection meeting, the Commission staff explained how the Commission handled the request.

56. The complainant had made a first request on 9 June 2016. However, the Legal Service found it too vague to be able to reply to in a satisfactory manner. It therefore contacted him to clarify the scope of his request, but the complainant did not reply. The initial request was therefore closed on 27 July 2016, but the Commission invited the complainant to submit a new request if he so wished.

57. He did so on 29 August 2016, but this time he directed his request to DG JUST, rather than the Commission's Legal Service. However, DG JUST involved the Legal Service in the handling of the access request.



**58.** In that request, the complainant asked for access to Legal Service “opinions” in relation to a legislative proposal. He identified the “opinions” by way of a link to an entry in the European Parliament’s Legislative Observatory (OEIL). The Commission’s representative explained to the Ombudsman’s inquiry team that, using that link, she identified a relevant written procedure and inter-service consultation. However, there had not been any Legal Service “opinions” in that file. There was merely a report on a meeting.

**59.** This was her reason for telling the complainant, informally, on 19 September 2016, that there had only been a meeting between the responsible services and there was no written Legal Service “opinion” on the EPPO legislative file.

**60.** However, she then took the initiative of contacting a colleague within the Legal Service who was dealing with the EPPO file. He explained that there were in fact two documents which related to the matter of the EPPO and which were formally identified as Legal Service opinions. Moreover, the Commission’s Legal Service is often asked, informally, for legal advice in the course of the discussions of a Commission proposal. The resulting documents are not “Legal Service opinions” in the strict sense of the word, but they do contain legal advice and the official therefore felt that they could be of interest to the applicant. He noted, however, that documents that fall within this wide and citizen-friendly definition are not always readily identifiable in the system as legal opinions. He also noted that it took him two days to draw up the list of documents mentioned in the reply to the initial application.

## The Ombudsman's assessment

**61.** The Ombudsman is of the view that the specific Commission officials who dealt with this request for access to documents made very commendable efforts to help the complainant to identify the relevant documents, including documents that were not formally identified as “Legal Service opinions”. While this may have taken some time to complete, this can be expected in certain complex files where it may not be simple for an applicant to identify precisely what documents he or she wishes to obtain. Also, the fact that the Commission included in its response to his request for review, document 11, which was drafted after the Commission’s response to the complainant’s initial request clearly met the interests of the applicant and of transparency generally.

**62.** The Ombudsman thus considers that the Commission took the necessary steps to settle this aspect of the complaint.

## Recommendation

The Ombudsman makes the following recommendations to the Commission:

**The Commission should grant broader access to the documents, specifically paras. 3 to**



**9 of document 4, the first page of document 7, the entirety of document 8, paras. 1 to 14 and para. 23 of document 10, and the entirety of document 11.**

The Commission and the complainant will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the Commission shall send a detailed opinion by 13 May 2019. The detailed opinion could consist of the acceptance of the recommendation and a description of how it has been implemented.

Emily O'Reilly

European Ombudsman

Strasbourg, 13/02/2019

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2] OLAF stands for the European Anti-Fraud Office, which investigates fraud against the EU budget, corruption and serious misconduct within the European institutions.

[3] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ (2001) L 145, p. 43, available here:  
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049>.

[4] In relation to the protection of legal advice, the complainant referred to the relevant judgment in C-39/05 P - Sweden and *Turco v Council* ECLI:EU:C:2008:374; in relation to the ongoing decision-making process, the complainant also relied on Case T-395/13 *Miettinen v Council* EU:T:201 5:648 and C-280/11 *Council v Access Info Europe* EU:C:20 13:671.

[5] Judgment of the Court of Justice of 2 October 2014, *Strack v Commission* , Case C-127/13 P, ECLI:EU:C:2014:2250, paragraph 128.

[6] Enhanced cooperation is a procedure where a minimum of nine EU Member States are allowed to establish advanced integration or cooperation in an area within EU structures but without the other Member States being involved. This allows them to move at different speeds and towards different goals than those outside the enhanced cooperation areas. The procedure is designed to overcome paralysis, where a legislative proposal is blocked by an individual state or a small group of states, who do not wish to be part of the initiative. It does not, however, allow for an extension of powers outside those permitted by the EU Treaties.



Authorisation to proceed with the enhanced cooperation is granted by the Council, on a proposal from the Commission and after obtaining the consent of the European Parliament.

[7] This is reflected in recital 6 to the Regulation which states that “wider access should be granted to documents in cases where the institutions are acting in their legislative capacity”, and also forms the basis of the *Turco* judgment cited above, ECLI:EU:C:2008:374.

[8] This is the definition of the protection of legal advice given in the *Turco* case, referred to in footnote 4, ECLI:EU:C:2008:374, paragraph 42.

[9] See, for example, judgment in *Access Info Europe v Council* , T-233/09, ECLI:EU:T:2011:105, para 55; judgment of the Court of Justice of 18 December 2007, *Sweden v Commission* , C-64/05 P, ECLI:EU:C:2007:802, paragraph 66.

[10] Judgment of the General Court of 9 September 2014, *MasterCard and Others v Commission* , T-516/11, ECLI:EU:T:2014:759, paragraph 71.

[11] Judgment of the Court of Justice of 13 July 2017 in *Saint Gobain Glass v Commission* , C-60/15 P, ECLI:EU:C:2017:540, paragraph 82.

[12] Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ 2018 L 295, p. 39, available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725> [Link]

[13] A non-paper is an informal document, usually without explicit attribution or formal position, put forward in negotiations within EU institutions to seek to test the reaction of the parties to possible solutions to contentious issues.

[14] Council Regulation 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor’s Office, OJ L 283 , 31.10.2017, p. 1, available here: <https://eur-lex.europa.eu/eli/reg/2017/1939/oj> [Link]