

Recommendation of the European Ombudsman in case 1651/2018/THH on the European Parliament's refusal to grant public access to documents related to the revision of the list of expenses that may be covered by the General Expenditure Allowance granted to Members of the European Parliament

Recommendation

Case 1651/2018/FP - **Opened on** 01/10/2018 - **Recommendation on** 29/04/2019 - **Decision on** 16/09/2019 - **Institution concerned** European Parliament (No further inquiries justified) |

The case concerned the decision by the European Parliament's administration not to grant public access to documents related to the revision of the list of expenses which may be covered by the General Expenditure Allowance granted to Members of the European Parliament. The complainant had requested public access to a proposal from a Parliament ad hoc Working Group (including the options listed in that proposal), a letter accompanying the proposal and other documents relating to the discussion of the allowance at a specific meeting within Parliament.

The Parliament's administration identified the first two requested documents, but did not grant access to them in order to protect Parliament's decision-making process. It also identified a further document (a list of expenses) which it sent to the complainant, on the grounds that the document was already publicly available.

The Ombudsman inquired into the issue, inspected the documents in question and found that the public interest overrides the need to protect the Parliament's decision-making process. Therefore, the Ombudsman made a recommendation that Parliament should grant public access to the relevant letter and proposal.

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

Background to the complaint

1. The General Expenditure Allowance (GEA) is a " *flat-rate allowance* " that is " *intended to cover costs incurred which are directly related to the exercise of the Member's parliamentary mandate* ", " *such as office rent and management costs, telephone and subscriptions,*



representation activities, computers and telephones, the organisation of conferences and exhibitions". [2]

2. On 12 June 2017, the Bureau [3] of the European Parliament set up an ad-hoc Working Group " *with the aim of drawing up a revised list of expenses which may be defrayed under the GEA and of making recommendations for the future* ". [4] The Working Group made a proposal on the list of expenses which may be covered by the GEA and on the rules governing them. On three points, it did not reach a consensus. Instead, it prepared options on which the Bureau voted in order to take a final decision.

3. On 2 July 2018, the Bureau heard the Working Group's proposal. It took note of the letter accompanying the proposal from the Member of the European Parliament (MEP) who acted as the Working Group's chair, concerning the revision of the list of expenses which may be covered by the GEA. The Bureau proceeded to make a decision on the list of expenses which may be covered by the GEA. [5]

4. On 4 July 2018, the complainant, a journalist, requested access to the following documents: 1) the letter from the Working Group's chair referred to above; [6] 2) the proposal from the ad hoc Working Group on the revision of the list of expenses which may be covered by the GEA, including the several options which were put forward; and 3) other documents relating to the GEA discussion at the Bureau meeting of 2 July 2018.

5. Parliament replied to the complainant on 25 July 2018. It identified the letter and the proposal requested by the complainant. Additionally, it identified the non-exhaustive list of expenses which may be defrayed from the GEA as established by the Bureau decision of 13 December 2010. Parliament explained that the list of expenses was already publicly available, referred the complainant to the relevant website, [7] and provided a copy of the document to the complainant. However, Parliament refused public access to the requested letter and proposal, relying on the protection of Parliament's decision-making process, in accordance with Article 4(3) of Regulation 1049/2001. [8]

6. On 31 July 2018, the complainant submitted a request for review of Parliament's decision, a so-called " *confirmatory application* ".

7. Parliament confirmed its refusal to grant public access to the requested documents on 12 September 2018.

8. Unsatisfied with Parliament's response, the complainant filed a complaint with the Ombudsman on 21 September 2018.

9. The Ombudsman opened an inquiry and, in the course of the inquiry, her inquiry team held two meetings with Parliament's representatives, during one of which the requested documents were examined.



Issue of the protection of the Parliament's decision-making process

Arguments presented to the Ombudsman

Parliament's arguments

10. Parliament argued that the requested documents were drafted to assist the Bureau in the adoption of a list of expenses which may be covered by the GEA. It noted that the documents “*contain opinions for internal use as a part of deliberations and preliminary consultations within Parliament*”. Parliament also stated that the letter from the Work Group Chair was submitted to the Bureau in order to “*assist it in the performance of its tasks*”. According to Parliament, this letter discussed “*the rules on the expenses which may be defrayed from the GEA*”.

11. Parliament claimed that the Working Group had the sensitive task of “*clarifying and strengthening the existing rules and good practises*”, which required mutual trust between the Working Group and the Bureau. It argued that, in order to take the decision on the modification of the list of expenses which may be covered by the GEA, open and frank discussions needed to be held. Because of this, and in the light of the fact that decisions concerning MEPs' financial allowances (and especially those concerning the use of the GEA) are subjected to public debate, the Bureau established that the meetings of the Working Group should be held in private, so that its members can deliberate and advise the Bureau freely and without reservations, presenting all possible alternatives. Parliament therefore considered that the confidentiality of the Working Group's deliberations also applies to the requested documents, which are an “*integral part*” of those deliberations.

12. Parliament stressed that, if the requested documents were publicly disclosed, the ability of similar future working groups to discuss issues concerning the GEA thoroughly would be put at risk. The working groups “*would refrain from proposing innovative alternatives and the information submitted to the Bureau would not be as comprehensive as in the present case*”. As a result, Parliament's decision-making process would be significantly undermined, since the Bureau would be unable to rely “*on the best possible advice from working groups*”. Thus, it would not “*reach the best possible decision*”. On this basis, Parliament concluded that public disclosure of the requested documents would seriously undermine Parliament's decision-making process.

13. Parliament further stressed that the disclosure of the requested documents would allow the public to compare the final decision with the views expressed in the documents. According to Parliament, a high risk exists that the comparison would be used in order to challenge the final decision, which would lead to that decision being undermined.

14. In addition, Parliament noted that when deciding on the list of MEPs' expenses which may be covered by the GEA, Parliament acts in its administrative capacity. Parliament argued that



less extensive access to documents is required in the context of Parliament's administrative work compared with Parliament's legislative work. [9]

15. Parliament recognised the public interest in the control of financial allowances received by MEPs. However, it considered the complainant's arguments did not demonstrate that, in the present case, the principle of transparency was of especially pressing concern. Furthermore, his arguments did not override the interest in the protection of Parliament's decision-making process. Therefore, Parliament concluded that public access to the requested documents must be refused to protect Parliament's decision-making process, in accordance with the EU law in this area, namely Article 4(3) of Regulation 1049/2001.

The complainant's arguments

16. The complainant challenged Parliament's argument that members of the Working Group would "*refrain from proposing innovative alternatives*" in the event of public disclosure of the kind of documents requested in this case. He noted that those members are directly elected MEPs who, every day, express publicly their views and proposals concerning EU legislation, including in "*controversial areas*". The complainant therefore considered unfounded Parliament's concern that the members of the Working Group may be discouraged from expressing their views freely.

17. The complainant stressed that the fact that MEPs themselves decide on the GEA argues in favour of public scrutiny of Parliament's decision-making process regarding the GEA. In such a situation, the public interest is even more pressing since it concerns the expenditure of taxes paid by citizens. As such, the complainant argued that there was an overriding public interest in obtaining an insight into how the Bureau made its decision on the GEA.

18. Moreover, the complainant argued that the Bureau should not have provided any such guarantee to the Working Group that its deliberations would be treated as confidential. This was especially the case given the context that a majority of MEPs had, on 28 April 2016, already adopted a Resolution calling on Parliament itself "*to make available the agendas and feedback notes of the meetings of Committee coordinators, the Bureau and the Conference of Presidents, as well as, in principle, all documents referred to in these agendas, in accordance with the provisions of Regulation (EC) No 1049/2001, by publishing them on the Parliament's website*".

[10] The complainant also noted that in Parliament's Resolution of 14 September 2017, Parliament recalled this call from 28 April 2016. [11]

The Ombudsman's assessment

19. The Ombudsman established that the Working Group revised the list of expenses covered by the GEA and made its proposal on the rules governing the use of the GEA. This proposal contains several options for the revision of the list of expenses covered and is accompanied by an explanatory letter of the Working Group Chair. The Ombudsman recognises the sensitivity



both of the requested documents and the Working Group's deliberations. However, she stresses that, under Article 4(3) of Regulation 1049/2001, public access to documents for internal use as part of deliberations and preliminary consultations shall be granted when an *overriding public interest* in disclosure of those documents exists.

20. The Ombudsman underlines the importance of the context of this case: this is a situation in which MEPs, as members of the Bureau, decide on the coverage of expenses from the GEA. At the same time, those MEPs receive repayment of those expenses under the GEA. Given this situation, in which MEPs act as decision-makers whilst also being the receivers of the expenses, the Ombudsman finds that there *is* an overriding public interest in scrutiny of the Bureau's decision-making process. Such a public interest also exists in ensuring that the rules governing the use of the GEA are assessed objectively and set sensibly.

21. As a result, the Ombudsman considers that the public *should* have an insight into how the administrative decision was made in this case and which options were proposed and discussed. She notes that public scrutiny of Parliament's administrative decision in this matter is of importance for public trust in the responsible use of public funds by their elected representatives.

22. Furthermore, the Ombudsman is of the view that public disclosure of the requested documents is unlikely to discourage future working groups from discussing the use of the GEA freely and openly. She considers that the public would recognise that different options were considered carefully and that the Working Group fulfilled its mandate diligently.

23. In light of the above, the Ombudsman considers that there is an overriding public interest in disclosure of the requested documents. The Ombudsman finds that Parliament's refusal to grant public access to the documents in this case constitutes maladministration. She therefore makes a corresponding recommendation below, in accordance with Article 3(6) of the Statute of the European Ombudsman.

Recommendation

On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendation to the European Parliament:

The European Parliament should grant public access to the proposal of the ad hoc Working Group on the revision of the list of expenses which may be defrayed from the General Expenditure Allowance from the agenda of the Bureau meeting of 2 July 2018 and the related letter from its chair.

The European Parliament and the complainant will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the Parliament shall send a detailed opinion by 30 July 2019.



Emily O'Reilly

European Ombudsman

Strasbourg, 29/04/2019

[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] Annex of the European Parliament Bureau minutes of the meeting of 2 July 2018 - *List of expenses which may be defrayed from the General Expenditure Allowance (GEA)* , Bureau Decision of 2 July 2018, page 60 and following, available at:

[http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2018/07-02/BUR_PV\(2018\)07-02_EN.pdf](http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2018/07-02/BUR_PV(2018)07-02_EN.pdf) [Link]; and European Parliament, Summary of allowances, available at: <http://www.europarl.europa.eu/news/en/faq/14/summary-of-allowances> [Link]

[3] The Bureau of the European Parliament is the body that lays down the Parliament's rules, draws up the preliminary draft budget and decides all administrative, personnel and organisational matters. It is composed of the European Parliament's President, fourteen vice-Presidents and five quaestors (who are responsible for administrative and financial matters of direct concern to Members of the European Parliament). See, for example,

<http://www.europarl.europa.eu/news/en/headlines/eu-affairs/20140702STO51229/the-bureau-meet-the-people-in-ch> [Link]

[4] European Parliament Bureau minutes of the meeting of 12 June 2017, pages 12-13, available at:

[http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2017/06-12/BUR_PV\(2017\)06-12_EN.pdf](http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2017/06-12/BUR_PV(2017)06-12_EN.pdf) [Link]

[5] European Parliament Bureau minutes of the meeting of 2 July 2018, pages 19-20; List of expenses which may be defrayed from the General Expenditure Allowance (GEA), Bureau Decision of 2 July 2018, Annex of the minutes, pages 60-63, available at:

[http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2018/07-02/BUR_PV\(2018\)07-02_EN.pdf](http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2018/07-02/BUR_PV(2018)07-02_EN.pdf) [Link]

[6] Reference to this letter had been made in the draft agenda of the Bureau meeting of 2 July 2018



[7] List of expenses which may be defrayed from the General Expenditure Allowance

(GEA), available at:

[http://www.europarl.europa.eu/RegData/publications/notes/2010/438665/EP-PE_NT\(2010\)438665_XL.pdf](http://www.europarl.europa.eu/RegData/publications/notes/2010/438665/EP-PE_NT(2010)438665_XL.pdf)
[Link]

[8] Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&rid=1> [Link].

[9] Parliament referred to the judgment of the Court of Justice of 21 July 2011, *Kingdom of Sweden v European Commission and MyTravel Group plc*, Case C-506/08 P, ECLI:EU:C:2011:496, paragraph 87.

[10] European Parliament resolution of 28 April 2016 on public access to documents (Rule 116(7)) for the years 2014-2015 (2015/2287(INI)), available at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0202&language=EN>
[Link].

[11] European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI)), available at:

<http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0358&language=EN&ring=A8-20>
[Link].