

## **Decision in case 1543/2019/FP on the European Commission's refusal to grant access to a document from its investigation into a compensation scheme for bank 'mis-selling' in Italy**

Decision

**Case 1543/2019/FP - Opened on 16/09/2019 - Decision on 13/12/2019 - Institution concerned** European Commission ( Settled by the institution ) |

The case concerned a refusal by the European Commission to make public a document concerning its investigation of an Italian shareholder compensation scheme linked to mis-selling by Italian banks. The Commission refused access to the document, arguing that the document was covered by a 'general presumption' of non-disclosure, aimed at protecting the purpose of an on-going investigation.

In the course of the inquiry, the Commission informed the Ombudsman that the investigation into the compensation scheme was no longer ongoing and that the service letter could therefore be disclosed to the complainant. The complainant made a new request for public access and the document was finally disclosed. The Ombudsman therefore found that the Commission had settled the complaint and closed the inquiry.

### **Background to the complaint**

1. On 9 April 2019, the international and national press reported that on 8 April the Italian government announced that it intended to introduce a scheme to compensate the shareholders and bondholders of six small banks that had gone bankrupt over the last four years. [1] The press reports stated that the scheme still required a formal authorisation from the European Commission. A Commission spokesman was reported as stating, on 9 April, that the Commission was "in constructive contact with the Italian authorities on the proposed measures."

2. On 9 April 2019, the complainant, an Italian citizen, requested the European Commission to give him public access under Regulation 1049/2001 [2] to a letter sent to the Italian Government, relating to the Italian banking sector. The Commission identified a letter sent to the Italian Ministry of Economy and Finance on 29 January 2019, concerning alleged State aid to the Italian banking sector and compliance with financial-sector regulations.



3. On 20 May 2019, the Commission refused to disclose the letter. It argued that its disclosure would undermine the purpose of investigations [3] and the need to protect an ongoing decision-making process. [4] It pointed out that the investigation in question was on-going and referred to case-law of the European Court of Justice establishing a 'general presumption' of non-disclosure for documents from on-going State aid investigations [5] and infringement investigations. [6] It argued there was no overriding public interest in disclosing the document.

4. On 13 June 2019, the complainant filed a confirmatory application.

5. On 6 August 2019, the Commission confirmed its initial refusal to disclose the requested document.

6. Not satisfied with the Commission's decision, the complainant turned to the Ombudsman on 9 August 2019.

## **The inquiry**

7. The Ombudsman opened an inquiry into the complaint that the Commission had wrongly refused public access to the document in question.

## **The Ombudsman's assessment**

8. In the course of the inquiry, the Ombudsman contacted the Commission and asked for copies of the document. It also asked the Commission for clarification as to whether the Commission's fact-finding process concerning Italy's compliance with EU law in the field of financial sector regulation and/or State aid rules was still on-going.

9. On 14 October 2019, the Commission sent the requested documents to the Ombudsman. On 25 October 2019, the Commission informed the European Ombudsman that "the investigation into the compensation scheme was no longer to be considered as ongoing" and that the service letter could therefore be disclosed to the complainant. The Commission added that the complainant could, in this context, make a new request for access to the document.

10. The Ombudsman informed the complainant of the new developments in the case. On 30 October 2019, the complainant submitted a new request for access to the document to the Commission.

11. On 13 November 2019, the Commission sent the document in question to the complainant.

12. The Ombudsman considers that the complaint has now been settled by the Commission.

## **Conclusion**



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

**The Ombudsman closes the case as settled by the European Commission.**

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

Emily O'Reilly

European Ombudsman

Strasbourg, 13/12/2019

[1] Under the plan, investors would be compensated, using public money, for up to 30 percent of the purchase value of their shares, while holders of bonds could get back 95 percent of their investment.

[2] Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents

[<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049>].

[3] Article 4(2) third intent of Regulation 1049/2001.

[4] Article 4(3) of Regulation 1049/2001.

[5] Judgment of the General Court of 13 November 2015, *ClientEarth v Commission* , T-424/14 T-425/14, paragraph 64.

[6] Judgment of the Court of Justice of 29 June 2010 in *European Commission v Technische Glaswerke Ilmenau GmbH* , C-139/07 P, paragraphs 54 and 55.