

Decision in case 630/2019/MOM on the European Network and Information Security Agency's handling and refusal of a request for public access to its updated seat agreement concluded with the Hellenic authorities in 2018

Decision

Case 630/2019/MOM - Opened on 16/04/2019 - Decision on 18/12/2019 - Institution concerned European Union Agency for Cybersecurity (Settled by the institution) |

The case concerned how the European Network and Information Security Agency's (ENISA) dealt with a request for public access to documents concerning its relations with the Hellenic authorities and its refusal to provide public access to these documents.

The Ombudsman found that there was no valid justification for ENISA to withhold one of the documents. She therefore proposed that ENISA grant public access to that document. In addition, the Ombudsman found that ENISA had not handled the request for public access to documents in accordance with applicable rules.

ENISA accepted the proposal and granted public access to the document and informed the Ombudsman that it is taking active steps to improve its internal procedure for processing requests for public access to documents.

The Ombudsman closed the case as settled and welcomed ENISA's efforts to enhance its practices on public access requests.

Background to the complaint

1. The complainant, a Greek national, asked the European Network and Information Security Agency (ENISA) to give him public access to the following documents:

(i) a) The initial seat agreement (2005) and b) the renewed/updated (2018) seat agreement concluded between ENISA and the Hellenic authorities;

(ii) The documents on the procedure of issue and cancellation of ENISA staff members' special identity cards by the Hellenic Ministry of Foreign Affairs;



(iii) The documents on the procedure for the VAT exemption regime applicable to ENISA staff members; and

(iv) The documents on the procedure for the import and export of ENISA staff members' cars, the acquisition of the relevant clearances by the competent host Member States authorities (including e.g. registration papers and number plates).

2. ENISA granted access to the initial seat agreement (point (i)a). It refused to provide access to the updated seat agreement (point (i)b), stating that the agreement had not been yet approved by the Hellenic Parliament, it had not been published in the official journal, and thus it was not yet in force. It also refused access to documents under points (ii)-(iv) above, on the basis that those documents contained personal data of ENISA staff members. It added that the VAT exemption regime applicable to ENISA staff members was explained in the disclosed seat agreement.

3. The complainant submitted a request for review of ENISA's position (a so-called '*confirmatory application*'). ENISA replied to the complainant's request for review and confirmed its initial position to refuse access to the requested documents.

4. The Ombudsman opened an inquiry into ENISA's handling and refusal for public access to the documents requested but not disclosed. In the course of the inquiry, the Ombudsman received ENISA's additional views on the complaint. ENISA also provided additional documents and information in an effort to satisfy the complainant's request. The Ombudsman's inquiry team reviewed the renewed/updated (2018) seat agreement concluded between ENISA and the Hellenic authorities, to which public access had been denied.

The issue of refusal of access to the documents

The Ombudsman's proposal for a solution

5. ENISA shared some documentation related to points (ii)-(iv) and expressed its willingness to have a dialogue with the complainant with a view to considering whether disclosure of additional documents would be possible. The Ombudsman welcomed ENISA's steps towards accommodating the complainant, such as disclosing administrative forms or a summary of the procedure.

6. However, having assessed the renewed/updated seat agreement of 2018, the Ombudsman found no justification for ENISA to withhold the document as it was already finalised and signed. Although the document was not formally ratified, disclosure would not interfere with the decision-making process as it had already been concluded.

7. She therefore proposed that ENISA grant public access to the renewed/updated (2018) seat



agreement concluded between ENISA and the Hellenic authorities.

The Ombudsman's assessment after the proposal for a solution

8. ENISA accepted the Ombudsman's proposal and provided the complainant with public access to the document at issue.

9. The Ombudsman welcomes the fact that ENISA has accepted her proposal and she therefore considers the issue as settled.

ENISA's handling of the complainant's applications

10. In her proposal for a solution, the Ombudsman regretted that ENISA's handling of the request for public access to documents was not in line with Regulation 1049/2001 [1] and the agency's internal rules applicable at the time. Nonetheless, the Ombudsman was satisfied that ENISA is taking active steps to improve its internal procedure for processing requests for public access to documents, and she welcomed its new policy on public access requests.

Conclusion

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

The issue has been settled by the Institution.

The complainant and the ENISA will be informed of this decision .

Emily O'Reilly

European Ombudsman Strasbourg, 18/12/2019

[1] 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.