



Letter from the European Ombudsman to the Innovation and Networks Executive Agency on its refusal to grant public access to a cost-benefit analysis concerning the Brenner tunnel project

Correspondence - 19/02/2021

Case 311/2021/TE - Opened on 19/02/2021 - Decision on 02/06/2021 - Institution concerned Innovation and Networks Executive Agency (Solution achieved) |

Innovation and Networks Executive Agency

Mr Ignacio Ramallo García-Pérez

Head of the Legal Team

Strasbourg, 19/02/2021

Complaint 311/2021/TE

Subject of case: The Innovation and Networks Executive Agency's refusal to grant public access to a cost-benefit analysis concerning the Brenner tunnel project

Dear Mr Ramallo García-Pérez,

The Ombudsman has received a complaint from Mr X against the Innovation and Networks Executive Agency (INEA). She has asked me to deal with the case on her behalf.

The complainant asked INEA for access to a document entitled "*Auftrag Kosten-Nutzen-Analyse ID3553_Archivierung.pdf*" in relation to the Brenner tunnel project.

INEA refused public access, arguing that the disclosure of the requested document would harm the commercial interests of the legal person concerned and that the complainant had not demonstrated an overriding public interest in the document's disclosure. INEA also argued that the document in question contains personal data and that the complainant had not demonstrated the necessity to transfer that personal data. Finally, INEA mentioned that it had consulted the Member States from which the document in question originated, in line with Article 4(5) of Regulation 1049/2001. The Member States objected to the document's



disclosure, based on the protection of commercial interests.

We have decided to open an inquiry into the complaint against INEA's decision to refuse access under Regulation 1049/2001.

Regulation 1049/2001 states that applications for access should be handled promptly. It is in line with this principle that the Ombudsman also seeks to deal with cases such as this as quickly as possible.

As a first step, we consider it necessary to review the document at issue in the complainant's request. We would therefore be grateful if INEA could provide us with a copy of the cost-benefit analysis, along with any documentation relating to the consultation of Member States (conducted in line with Article 4(5) of Regulation 1049/2001), preferably in electronic format (through encrypted e-mail [1]), by Friday, **26 February 2021** .

The document subject to the public access request will be treated confidentially, along with any other material INEA chooses to share with us that it marks confidential. Documents of this kind will be handled and stored in line with this confidential status and will be deleted from the European Ombudsman's files shortly after the inquiry has ended.

INEA's position has been set out in its confirmatory reply of 1 February 2021. However, should INEA wish to provide additional views, to be taken into account by the European Ombudsman during this inquiry, we would be grateful if they could be provided to us within fifteen working days from the receipt of this letter, that is, **12 March 2021** .

Please note that the case handler responsible for this inquiry is Ms Tanja Ehnert.

Yours sincerely,

Rosita Hickey Director of Inquiries

[1] Encrypted emails can be sent to Mr Gaël Lambert, Information Technology Officer at the European Ombudsman (gael.lambert@ombudsman.europa.eu).