

Letter from the European Ombudsman to the Council of the EU on its refusal to provide full public access to documents related to trilogue negotiations on motor vehicle emissions

Correspondence - 26/02/2021

Case 360/2021/TE - Opened on 26/02/2021 - Decision on 11/10/2021 - Institution concerned Council of the European Union (No further inquiries justified) |

Ms Thérèse Blanchet

Director-General of the Legal Service

Council of the European Union

Strasbourg, 26/02/2021

Complaint 360/2021/TE

Subject of case: The Council of the EU's refusal to provide full public access to documents related to trilogue negotiations on motor vehicle emissions

Dear Ms Blanchet,

The Ombudsman has received a complaint from Mr X against the Council of the EU. She has asked me to deal with the case on her behalf.

The complainant asked the Council for public access to all documents related to trilogue negotiations on the European Commission's proposal for a Regulation on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information.

In its confirmatory decision of 16 February 2021, the Council identified seven documents as falling within the scope of the complainant's request. It granted full public access to one document and partial public access to the remaining six documents.



As regards the six documents to which the Council refused full public access, it explained as follows: these documents contain preliminary positions of the Council, which have been drawn up for the purpose of forming the Council's negotiation strategy and defining its positions in the negotiations. The disclosure of these preliminary positions would seriously undermine the mutual trust and confidence that enables the Council preparatory bodies to perform their task effectively. It would also entail the risk that Member States become more entrenched in their positions to the detriment of the possibility of finding possible compromise solutions. Should the information on flexibilities within the Council be disclosed, pressure will increase for the Council to concede on some of its elements before reaching the overall balance on the whole package. The Council also argued that, as the European Parliament does not share such information with the Council, this would lead to an asymmetric situation.

We have decided to open an inquiry into this complaint against the Council's decision to refuse full 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 documents at issue in the complainant's request. We would therefore be grateful if the Council could provide us with copies of the unredacted versions of the six documents, preferably in electronic format (through encrypted e-mail [1]), by Friday, **5 March 2021** .

The documents subject to the public access request will be treated confidentially, along with any other material the Council 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.

The Council's position has been set out in its confirmatory reply of 16 February 2021. However, should the Council 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, **19 March 2021** .

The timelines set out in this request are those provided for under our Fast-Track procedure for handling public access complaints. If further time is required in order for the Council to conduct the necessary internal consultations, please let us know. 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.