

Decision in case 73/2021/MIG on the European Commission's refusal to grant public access to a document concerning the export of breeding cattle to third countries

Decision

Case 73/2021/MIG - Opened on 12/01/2021 - Decision on 04/03/2021 - Institution concerned European Commission (Settled by the institution) |

The case concerned a request for public access to a list containing information on transports of live cattle from Germany to countries outside the EU.

The Commission had given the complainant access to parts of the list, redacting the names of the local authorities responsible for the approval of the transports in question based on the need to protect personal data. In the course of the inquiry, the Commission gave the complainant unrestricted access to the requested list.

The Ombudsman welcomed the disclosure of the list but regrets the considerable delay in the Commission's handling of the complainant's access request. The Commission explained that it had been under particular pressure due to the heavy workload resulting from the COVID-19 pandemic. The Ombudsman closed the inquiry calling on the Commission to make sure that no similar delays occur in future.

Background to the complaint

1. The complainant, a journalist representing a German public TV station, is investigating the transport of live animals from the EU to third countries. [1]
2. In March 2020, the complainant asked the Commission to give public access [2] to information recorded in the Commission's TRACES [3] database. In particular, the complainant requested a list of data on exports of breeding cattle from Germany to non-EU countries, covering the year 2019, as well as January and February 2020. He wanted a list that indicated the respective local authority responsible, the number of transports that took place, the number of cattle exported, and the destination countries of those transports.
3. The requested information originated from the German authorities, which the Commission



consulted [4] , and which objected to the disclosure of certain information, namely the names of the local competent authorities responsible for approving the transports in question. [5] The Commission then gave the complainant access to parts of the requested list extracted from the TRACES database, redacting the information indicated by the German authorities.

4. Following a request for review by the complainant (a so-called 'confirmatory application'), the Commission consulted the German authorities again. As they no longer objected to the disclosure, the Commission granted the complainant full access to the list in June 2020.

5. On 3 June 2020, the complainant made a similar request for public access to the Commission, asking for a list containing the same information on transports of breeding cattle as the one disclosed, but concerning the period from March to June 2020.

6. The Commission consulted the German authorities, which again objected to the disclosure of the names of the local competent authorities. They argued that disclosure would harm the privacy and the integrity of the veterinarians concerned, who, based on that information, could be identified.

7. On 8 July 2020, the Commission gave the complainant access to parts of the requested list, redacting the names of the local competent authorities.

8. On 23 July 2020, the complainant made a confirmatory application.

9. Having not received a reply, the complainant sent a reminder to the Commission on 17 August 2020.

10. On 19 August 2020, the Commission informed the complainant that it had not been able to reply to his confirmatory application within the prescribed time limit as it was still awaiting the German authorities' comments.

11. On 21 August 2020, after he asked to be updated, the Commission informed the complainant that, in the meantime, it had received the German authorities' comments, saying that it would now respond to his confirmatory application as soon as possible.

12. On 4 September 2020, the complainant sent another reminder. In its reply of 14 September 2020, the Commission said that it had not yet been able to collect all the elements needed to take a decision. It said again that it would respond to the complainant's confirmatory application as soon as possible.

13. After having sent two more reminders, to which the Commission did not reply, the complainant turned to the Ombudsman in January 2021.

The inquiry



14. The Ombudsman opened an inquiry into (i) the Commission's refusal to grant full public access to the requested document and (ii) the Commission's failure to deal with the complainant's confirmatory application within the prescribed time limit.

15. In the course of the inquiry, the Ombudsman's inquiry team inspected the requested document, as well as some of the Commission's correspondence with the German authorities that had been consulted.

16. On 2 March 2021, the Commission disclosed the requested list in full (see paragraph 23 below).

Arguments presented to the Ombudsman

17. The Commission argued that it could not give public access to the requested list in full, as disclosure of the names of the local competent authorities could jeopardise the privacy and integrity of the veterinarians concerned. [6]

18. In his confirmatory application, the complainant referred to the EU's rules on the protection and welfare of animals, which, he argued, are applicable also outside the EU, namely to transports between EU member states and third countries that involve a long journey for the animals concerned. [7] The complainant pointed out that it is for the responsible veterinary office of the respective EU member state to ensure compliance with those rules. To that end, the veterinary office responsible has to verify whether sufficient stops are foreseen for a given journey and whether there are appropriate facilities ("resting places") at those stops that allow for taking proper care of the animals that are being transported.

19. The complainant added that a veterinarian office of a third country had informed the German authorities that there are no certified resting places for journeys through its territory and the territory of neighbouring countries. Based on his investigation, the complainant suspected that the German authorities had nevertheless approved journeys to those countries in the relevant period (March to June 2020).

20. The complainant took the view that there is a specific public interest in the disclosure of the redacted information, namely an interest in the compliance with and enforcement of the EU's rules on the protection and welfare of animals. He argued that, in a democratic society, it must be possible for the media to verify whether EU rules are implemented and the necessary control is being exercised by the relevant authorities, and to uncover possible structural deficits.

21. The complainant also pointed to the Commission's decision on his previous access request, in which it disclosed the same information pertaining to an earlier period.

22. The complainant concluded that, in this case, the public interest in knowing whether and how animal rights are being implemented must prevail and that the requested list should therefore be disclosed in its entirety.



23. On 10 February 2021, the Commission took a decision on the complainant's confirmatory application. It said that the arguments put forward by the German authorities were not sufficient to justify the application of the need to protect the privacy and integrity of individuals. The Commission therefore decided to give the complainant full access to the requested list subject to the condition that the German authorities would not take court action within ten working days. After that time limit had expired, the Commission disclosed the full list to the complainant (on 2 March 2021).

24. Regarding the duration of the procedure, the complainant argued that the Commission had failed to comply with the prescribed time limit when processing his confirmatory application. [8] He also noted that the Commission had not explained why the delay had occurred, and stated that he required timely information for his work as a journalist.

25. In the course of the inquiry, the Commission explained that its department responsible for dealing with the complainant's access request [9] had been under particular pressure due to the heavy workload resulting from the COVID-19 pandemic.

The Ombudsman's assessment

26. The Ombudsman welcomes the Commission's decision to disclose the requested list. She notes that the Commission took this decision, despite the fact that the German authorities, from whom the relevant data originates, had objected to disclosure. She considers that the complaint has been resolved.

27. Concerning the delay that occurred in this case, the Ombudsman notes that Regulation 1049/2001 requires EU institutions to deal with requests for public access *promptly*, that is, within 15 working days from the date of registration. [10]

28. The Ombudsman understands the unprecedented challenge that the COVID-19 pandemic poses and appreciates that delays can occur under such circumstances.

29. In addition, the list to which the complainant was seeking access originated from a third party which the Commission had to consult.

30. However, the delay that occurred in this case was not insignificant. Rather, the Commission replied to the complainant's confirmatory application only *six months* after the expiry of the applicable time limit. In addition, since September 2020, the Commission has no longer replied to the reminders sent by the complainant. It neither provided him with any reasons for the further delay nor with an (at least) indicative time limit as to when he could expect a reply.

31. It is also important to note that this case concerns information to which full access had previously been given to the complainant, albeit for a different time period.



32. As the Ombudsman has repeatedly stated, access delayed is access denied. This is clearly illustrated by this case that was brought by a journalist who intended to use the information contained in the requested document for his work and therefore relied on it to be given to him in a timely way. The Ombudsman calls on the Commission to ensure that similar delays in the processing of requests for public access to documents are averted in future.

Conclusions

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

The Commission has settled the complaint by disclosing the document at issue in the complainant's request for public access.

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

Emily O'Reilly European Ombudsman

Strasbourg, 04/03/2021

[1] See article dated 16 July 2020:

<https://www.tagesschau.de/investigativ/mittagsmagazin/tiertransporte-> [Link]

[107~amp.html](#) [Link], and report broadcasted in August 2020:

<https://www.daserste.de/information/politik-weltgeschehen/mittagsmagazin/videos/schwerpunkt-rinderexporte-video> [Link].

[2] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents:

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

[3] TRACES is an online platform that allows for the exchange of data/documents with a view to obtaining the certification that is required for the importation/exportation/intra-EU trade of animals, animal products, food and feed, and plants. For more information, see:

https://ec.europa.eu/food/animals/traces_en [Link].

[4] In accordance with Article 4(5) of Regulation 1049/2001.

[5] In accordance with Article 4(2), first indent, of Regulation 1049/2001.

[6] In accordance with Article 4(1)(b) of Regulation 1049/2001.



[7] The complainant referred to the Judgment of the Court of 23 April 2015 in *Zuchtvieh-Export GmbH v Stadt Kempten*, case C-424/13:

<http://curia.europa.eu/juris/document/document.jsf?text=&docid=163872&pageIndex=0&doclang=EN&mode=req&d>
[Link]

[8] According to Article 8(1) of Regulation 1049/2001, an institution must process a confirmatory application within fifteen working days. Article 8(2) allows for one extension of another fifteen working days in exceptional cases.

[9] The Directorate-General for Health and Food Safety (SANTE).

[10] Article 7(1) of Regulation 1049/2001.