



The Council of the EU's refusal to give full public access to documents related to negotiations on the draft 'Digital Markets Act'

Case 1499/2021/SF - Opened on 30/08/2021 - Recommendation on 28/02/2022 - Decision on 27/06/2022 - Institution concerned Council of the European Union (Maladministration found) |

The complainant, a team of journalists from several European countries, sought public access from the Council of the EU to documents setting out the positions of Member State governments on the draft EU 'Digital Markets Act'. The Council identified 28 documents as falling under the request but granted access to only parts of these. In doing so, it invoked an exception under the EU's rules on access to documents, arguing that full disclosure could undermine an ongoing decision-making process.

The Ombudsman's inspection revealed that the Council did not disclose any Member State positions on the legislative proposal in response to the complainant's request, but granted access to the text of the Commission's legislative proposal only. The Ombudsman found that the Council had not demonstrated that disclosing the parts of the documents in question would seriously undermine its decision-making process.

Against, this background, the Ombudsman took the view that the Council's refusal to grant



public access to the positions of Member States constituted maladministration. She recommended that the Council grant full public access to the documents at issue.

In reply, the Council granted full public access to the requested documents. The Ombudsman welcomed the Council's positive reply but regretted the time taken, which meant the documents are no longer of use for the intended purpose of informing citizens about an ongoing legislative process. The Ombudsman confirmed her finding of maladministration and urged the Council, in the future, to make available legislative documents at a time that will allow the public to participate effectively in the discussion.