The European Commission's refusal of public access to text messages exchanged between the Commission President and the CEO of a pharmaceutical company on the purchase of a COVID-19 vaccine

Case 1316/2021/MIG - Opened on 16/09/2021 - Recommendation on 26/01/2022 - Decision on 12/07/2022 - Institution concerned European Commission (Maladministration found)

The complainant sought public access from the European Commission to text messages and other documents concerning discussions between the Commission President and the CEO of a pharmaceutical company on the purchase of COVID-19 vaccines. In reply, the Commission said it did not identify any text messages falling under the request.

In the context of the Ombudsman's inquiry, it emerged that the Commission does not consider that text messages generally fall under its internal criteria for recording in its document register, due to the 'short-lived' nature of their content. In dealing with the request, the Commission had asked the Commission President's personal office (cabinet) to identify only documents that fulfil its recording criteria. As such, the Commission President's personal office was not required to identify any text messages, and the Commission therefore did not assess whether such messages should be disclosed.

The Ombudsman took the view that this constituted maladministration. To address this, she made a recommendation that the Commission ask the Commission President's personal office to search again for relevant text messages, making it clear that the search should not be limited to registered documents or documents that fulfil its recording criteria. If any text messages were subsequently identified, she urged the Commission to assess whether public access could be granted.

In reply, the Commission did not inform the Ombudsman whether it had looked again for text messages that had not been recorded in its register, and gave no reasons why it did not look for such messages. Against that background, the Ombudsman confirmed her finding of maladministration.