

Decision on how the European Commission dealt with a complaint that Portugal breaches national and EU law on public access to documents (case 15/2022/ABZ)

Decision

Case 15/2022/ABZ - Opened on 27/01/2022 - Decision on 27/01/2022 - Institution concerned European Commission (No maladministration found) |

Dear Mr X,

You recently submitted a complaint to the European Ombudsman against the European Commission. Your complaint concerns how the Commission dealt with your complaint that Portugal breaches national and EU law on public access to documents.

In your complaint to the Commission, you alleged that, by unjustifiably refusing you access to documents concerning you, the Portuguese Ministry of Foreign Affairs was violating your right of access to documents and the rules governing its exercise, at national [1] and EU [2] level. You asked the Commission to compel the Portuguese authorities to grant access to the requested documents.

In your complaint to the Ombudsman, you contend that the Commission wrongly refused to investigate your complaint concerning the above matter.

After a careful analysis of all the information you provided with your complaint, we have decided to close the inquiry with the following conclusion:

There was no maladministration by the European Commission in this case.

The Commission's policy on infringements of EU law is set out in its Communication "*EU law: Better results through better application*". [3] Regarding the substance of an infringement complaint, the Ombudsman may only intervene (by asking the Commission to look at the complaint again) in case there is an indication that the Commission was manifestly wrong in its presentation of the facts or of the law.

The Commission informed you that national rules on access to documents held by national authorities remain the exclusive responsibility of the respective Member State. The Commission cannot investigate the matter as it falls outside the scope of EU law. [4] Since the documents



concerned are not in the Commission's possession, EU rules on public access to documents do not apply. The Commission cannot intervene before the national authorities in relation to your request.

We find nothing to suggest that the Commission manifestly misinterpreted the facts or the law in this case. Rather, we consider that the Commission has dealt with your complaint in an appropriate manner by providing a reasonable and appropriate reply.

Moreover, please note that the Charter of the Fundamental Rights of the European Union applies to the Member States *only* when they implement EU law. [5] The Charter is not applicable to matters falling *exclusively* within the competence of the Member States, like the matter in this case.

Although we understand this is not your expected outcome, we nevertheless hope you find the above explanations helpful. [6]

Thank you for contacting the European Ombudsman.

Yours sincerely,

Tina Nilsson Head of the Case-handling Unit

Strasbourg, 27/01/2022

[1] Article 268 of the Constitution of the Portuguese Republic, and Law No. 26/2016, of 22 August 2016 approving the regime governing access to administrative and environmental information and re-use of administrative documents(...).

[2] Article 42 ("Right of access to documents" of the Charter of Fundamental Rights of the European Union (available at: https://www.europarl.europa.eu/charter/pdf/text_en.pdf [Link]) and Article 15(3) of the Treaty on the Functioning of the European Union (available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016E015> [Link]). The exercise of the right of access to documents at EU level is regulated by 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] : [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52017XC0119(01)&from=EN) [Link]

[4] In accordance with point 3 of an Annex to the Commission's Communication.



[5] Article 51(1) of the Charter of the Fundamental Rights of the European Union.

[6] Full information on the procedure and rights pertaining to complaints can be found at

<https://www.ombudsman.europa.eu/en/document/70707> [Link]