

Report on the inspection and meeting of the European Ombudsman inquiry team with the European External Action Service's representatives

Correspondence - 16/02/2022

Case 2051/2021/MIG - **Opened on** 25/11/2021 - **Decision on** 07/03/2022 - **Institution concerned** European External Action Service (No maladministration found) |

Case title : The European External Action Service's (EEAS) refusal of public access to documents concerning the EU's Police Mission for the Palestinian Territories

Date : Thursday, 13 January 2022

Location : EEAS premises in Brussels

Present

European External Action Service

Secretariat-General/Legal Service

Acting Head of Division, Parliamentary Affairs Division

Team Leader, Parliamentary Questions and Transparency Team

Policy Officer, Parliamentary Affairs Division

Administrative Assistant, Parliamentary Affairs Division

Legal Advisor, Legal Affairs Division

The Civilian Planning and Conduct Capability (CPCC)

Policy Officer - Acting Head of Section

Legal Officer

Integrated Strategic Planning for CSDP and Stabilisation



Head of Sector (Middle East and North Africa)

Policy Officer (Middle East and North Africa)

European Ombudsman (Directorate of Inquiries)

Mr Ó REGAN Fergal, Chief Legal Expert

Ms KING Jennifer, Legal Expert

Ms GEHRING Michaela, Inquiries Officer

Ms LAERMANS Dorien, Inquiries Officer

Purpose of the meeting

The purpose of the meeting was for the Ombudsman inquiry team to inspect the documents to which the complainant is seeking access and to obtain further information, in particular, on the context of the documents and on why the EEAS refused to give access to them.

Introduction and procedural information

The Ombudsman inquiry team introduced themselves, thanked the EEAS representatives for meeting with them and set out the purpose of the meeting. They outlined the legal framework that applies to meetings held by the Ombudsman, in particular, that the Ombudsman would not disclose any information identified by the EEAS as confidential, neither to the complainant nor to any other person outside the Ombudsman's Office, without the EEAS's prior consent. [1]

The inquiry team explained that they would draw up a draft report on the meeting to be sent to the EEAS to ensure that it was factually accurate and complete. The meeting report would then be finalised, included in the file and provided to the complainant. No confidential information would be included in the report or otherwise provided to the complainant or any third party.

Information provided by the EEAS

On the non-classified document at issue (“strategic review”)

The EEAS representatives explained that a strategic review of a mission is carried out at regular intervals, normally close to the expiry date of the mission's mandate. Thus, the strategic review at issue covers a period of two years. A strategic review is an assessment of the relevance of the mission's mandate and includes a recommendation as to whether it should be extended and/or adapted. It is a very important document that is validated by the High Representative



before it is shared with the Member States (MS) in the Council of the EU. The MS then take a decision on the extension and/or adaption of the mission's mandate (by issuing an "advice on strategic review" that takes account of the strategic review carried out by the EEAS but may depart from it in terms of its content).

To draw up a strategic review, the EEAS gathers input from all stakeholders relevant to the mission, namely other EU actors (such as the European Commission, Frontex), United Nations Agencies, and in this case, Palestinian institutions and organisations and third countries (such as Israel, the US and the UK). This process can last several months during which the EEAS holds meetings with the stakeholders concerned. These meetings and the exchanges are not public which is important so as to ensure that stakeholders can discuss openly, and thus that the EEAS obtains accurate and objective information.

The EEAS representatives further explained that the EEAS's role in conducting strategic reviews was similar to that of an external auditor (ISP can ensure impartiality, as it does not form part of the chain of command of the mission). The staff involved in this task have to assess whether the mission's engagement is relevant.

The EEAS representatives emphasised that the mission at issue ('EUPOL COPPS) is ongoing and that it operates in a delicate area (security and criminal justice sectors). The interactions with stakeholders thus greatly rely on mutual trust and confidence. The EEAS representatives considered that, if any information contained in the strategic review at issue were to be disclosed, the stakeholders would be less open in future or no longer willing to share information, as they might fear that this information would become public too. In other words, disclosing any part of the strategic review would undermine the EU's international relations [2] with those partners.

This exception, the EEAS representatives argued, is interrelated with the exception for the protection of the public interest as regards public security. Namely, if the cooperation of the stakeholders were to decrease, an invaluable instrument to assess civilian missions in an objective way would be lost, which would in turn diminish the EU's role as a security provider in the region concerned.

The EEAS representatives also considered that disclosure could undermine the decision-making process leading to the adoption of strategic reviews. [3] However, the EEAS had not relied on this exception in its decision, as it was not considered to be necessary, given that the document is deemed to be covered in its entirety by the two exceptions invoked.

The EEAS representatives and the inquiry team then reviewed the strategic review at issue (that had been provided to the Ombudsman's Office ahead of the meeting). During this exercise, the inquiry team obtained detailed information as to how specifically disclosure of the document (or certain parts thereof) would undermine the public interest as regards international relations and public security.

The inquiry team noted that large parts of the document concern a mission other than EUPOL



COPPS and thus appear to fall outside the scope of the complainant's access request.

On the classified documents at issue

Following that, the inquiry team was provided with a copy of the classified documents [4] that have been identified as falling within the scope of the complainant's access request by the EEAS, that is, four six-monthly reports on the mission concerned and one special report on anti-corruption drawn up by the mission.

The EEAS representatives explained that the format of the six-monthly reports has been agreed with the Council of the EU. They contain information on the activities of the mission, including on any weaknesses or gaps, as well as on the mission's budget. A special report is a document that can be drawn up at any time and includes information which the mission would like to bring to the attention of the Member States. All of these reports are prepared directly for the Member States (they are not drawn up for the High Representative).

The EEAS representatives stated that the reasons for withholding the classified documents are the same as those for non-disclosure of the strategic review.

The inquiry team then selected and reviewed one sample document (the latest six-monthly report) and obtained further views from the EEAS representatives on the, in their view, sensitive nature of those documents.

The inquiry team noted that these documents might not fall within the scope of the complainant's access request, given that they did not go through the High Representative.

Conclusion of the meeting

The inquiry team thanked the EEAS representatives for their time and for the explanations provided, and the meeting ended.

Following the meeting, the EEAS shared two additional documents with the Ombudsman for information. These documents set out the rules on how and to whom civilian CSDP missions shall report.

Brussels, 07 March 2022

Fergal Ó Regan Michaela Gehring



Chief Legal Expert Inquiries Officer

[1] Article 4.8 of the European Ombudsman's Implementing Provisions.

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

[3] In accordance with Article 4(3) and recital (11) of Regulation 1049/2001.

[4] The documents are classified as EU-RESTRICTED. For more information, see:
<https://www.consilium.europa.eu/en/general-secretariat/corporate-policies/classified-information/>
[Link].