

## **Decision on the European Commission's refusal to grant public access to documents concerning compliance with biofuels sustainability criteria under the Renewable Energy Directive (case 1527/2020/DL)**

Decision

**Case** 1527/2020/DL - **Opened on** 24/09/2020 - **Recommendation on** 08/11/2021 - **Decision on** 14/03/2022 - **Institution concerned** European Commission ( Maladministration found ) |

The complainant wished to obtain access to a list of all countries of origin of used cooking oil (UCO) for the years 2016 to 2019, together with the volumes of UCO feedstock collected for each country for each year, as reported by the voluntary certification schemes for biofuels sustainability to the European Commission under the Renewable Energy Directive. The Commission said that it does not hold any document corresponding to this request.

The Ombudsman found that the Commission held detailed information on the countries of origin and the volumes of UCO collected spread over a number of documents. The Ombudsman proposed that the Commission should review these documents with a view to disclosing them.

The Commission did not accept the Ombudsman's solution proposal. The Ombudsman concluded that the Commission's failure to cooperate with the complainant and to take into account his clarifications concerning the documents he wished to obtain access to constituted maladministration. She therefore recommended that it should review the documents it holds containing the countries of origin and relevant volumes of production and import of used cooking oil for the period indicated by the complainant with a view to disclosing them.

The Commission rejected the Ombudsman's recommendation. The Ombudsman regrets the Commission's unwillingness to resolve this case in a citizen-friendly and service-minded way. She closes the case, confirming her finding of maladministration.

Background to the complaint



1. The Renewable Energy Directive (RED) of 2009 [1] sets out targets for Member States for the production of energy from renewable sources. In order to achieve these targets, the RED privileges certain waste-based types of feedstock such as used cooking oils (UCO) for the production of biofuels [2] by allowing them to be counted twice towards the relevant targets. [3]

2. The directive also created so-called 'voluntary certification schemes' [4], which are private entities recognised by the European Commission or EU Member States [5]. These voluntary certification schemes submit yearly reports to the Commission on the production and import of feedstock and biofuels that they certify, such as UCO. [6]

3. The complainant is an Irish citizen who works in the biofuels sector. To examine possible fraud in the UCO sector, he asked the Commission for public access [7] to *"a list of all Countries of Origin of Used Cooking Oil (UCO) for the years 2016, 2017, 2018 and 2019, together with the volumes of UCO feedstock collected for each Country of Origin for each year as reported to the European Commission by all voluntary certification schemes for biofuels sustainability under the Renewable Energy Directive."*

4. The Commission replied that, although it did collect such data, it does not hold a document that would correspond to the complainant's request. In particular, it stated that it did not produce any documents that would "extract" the information requested by the complainant from the reports in the Commission's possession.

5. The complainant asked the Commission to review its decision (by making a 'confirmatory application'). [8] He argued that, even if the Commission does not hold documents that are specific to his request, it did hold the information he requested [9] in an easy to access format such as text file, simple database or excel sheet, and it would require no more than a few moments to copy it and make it available to him.

6. In the absence of a reply to his confirmatory application, the complainant turned to the Ombudsman in September 2020. The Ombudsman's inquiry team held a meeting with the Commission and inspected a sample of the reports submitted to it by the voluntary schemes. The Commission then also adopted a confirmatory decision, in which it confirmed its initial position.

## **The Ombudsman's proposal for a solution**

7. The inspection of documents confirmed that the Commission holds detailed information on the countries of origin and the volumes of UCO collected, spread over a number of documents. Since the complainant indicated that he was interested in receiving the information even if not compiled into a single document, the Ombudsman made the following proposal [10]:

**8. The Commission should review the documents it does hold containing the**



countries of origin and relevant volumes of production and import of used cooking oil for the period indicated by the complainant with a view to disclosing them.

9. The Commission did not accept the Ombudsman's proposal for a solution. The Commission said that it does not hold any document that corresponds to the complainant's initial request. It thus argued that it did not disclose the documents containing the countries of origin, volumes of production and import of UCO since they were not covered by the request. The complainant could consider submitting a new request if he so wished.

## The Ombudsman's recommendation

10. The Ombudsman said that, in line with the EU legislation on public access to documents, an institution shall ask an applicant to clarify its application if it is not sufficiently precise, and shall assist the applicant in doing so. [11] The wording of this provision implies that an applicant has the right, in the course of the procedure, to clarify an application and that the institution shall take these explanations into due account.

11. In his request for review, the complainant specified which information he wanted and indicated to which documents he wished to obtain access. The Ombudsman found that the Commission's failure to take these clarifications into account was at variance with the principles of citizen-friendliness and service-mindedness that govern the EU administration.

12. While the Ombudsman offered the Commission, in her proposal for a solution, the opportunity to settle this case by reviewing the documents it held containing the information requested, the Commission simply reiterated that it does not hold any document corresponding to the request. The Ombudsman considered that it would have been more helpful if the Commission had engaged with her proposal rather than inviting the complainant to make a new request.

13. The Ombudsman thus found that the Commission's failure to cooperate with the complainant and to take into account his clarifications concerning the documents to which he wished to obtain access constituted maladministration. She made the following recommendation [12] :

**The European Commission should cooperate with the complainant, taking into account his clarifications and review the documents it holds containing the countries of origin and relevant volumes of production and import of used cooking oil for the period indicated by the complainant with a view to disclosing them.**

## The Commission's reply to the Ombudsman's



recommendation

**14.** The Commission rejected [13] the Ombudsman's recommendation.

**15.** The Commission reiterated that it does not hold any document corresponding to the complainant's initial application. In addition, it said that the complainant modified the scope in his confirmatory application.

**16.** The Commission said that it had clarified in its confirmatory decision that it held the reports submitted by the voluntary schemes in accordance with the Renewable Energy Directive. The Commission had also published a new report on the operation of the voluntary schemes [14], which included the data on the origin of UCO as well as an assessment of the data. The Commission said that it had explicitly invited the complainant again to consider whether the published report already satisfied in whole or in part his interest, or whether he still wanted to submit a new request to obtain access to the report mentioned in his confirmatory request.

**17.** In conclusion, the Commission considered that, in order for it to engage with what the Ombudsman had put forward, the complainant should first specify which documents he still wished to have access to.

## **The Ombudsman's assessment after the recommendation**

**18.** The Ombudsman maintains her view that the Commission's failure to take into account the complainant's clarifications concerning the documents he wished to obtain access to constituted maladministration.

**19.** The Ombudsman notes that the Commission provided varying information to the complainant throughout the process of handling his request, as well as during the Ombudsman's inquiry. In its confirmatory decision, the Commission said that the reports submitted by the voluntary schemes do not cover all certified material or specifically circumscribe used cooking oil as they extend to all feedstock. In the meeting with the Ombudsman inquiry team, however, the Commission representatives said that the Commission holds the data requested by the complainant, albeit not in a single document. In reply to the Ombudsman's proposal for a solution, the Commission said that it had not disclosed the documents containing the countries of origin, volumes of production and import of UCO since they were not covered by the original request. In reply to the Ombudsman's recommendation, the Commission said that it could not engage with the Ombudsman's solution proposal since the complainant failed to specify which documents he still wished to have access to.

**20.** The Ombudsman understands that the Commission does not hold a specific document



as defined in the complainant's initial request. However, the wording of the complainant's initial request, as well as the clarifications provided in his confirmatory request, should have allowed the Commission to identify the documents concerned.

**21.** The Ombudsman reiterates, once again, that if a request is not sufficiently clear, it is for the Commission to contact the complainant in order to clarify the request. Had the Commission done so at an early stage, there would have been no need to involve the Ombudsman.

**22.** However, even following the Ombudsman's clear indication that the complainant wished to obtain access to documents containing the countries of origin and relevant volumes of production and import of used cooking oil, the Commission refused to engage constructively.

**23.** The Ombudsman cannot but conclude that the way the Commission handled this request contradicts the principles of citizen friendliness and service-mindedness. In line with the spirit of the EU legislation on access to documents, the Commission should seek to engage with applicants to ensure their fundamental right of public access to documents is respected.

Conclusion

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

**The European Commission's failure to cooperate with the complainant and to take into account his clarifications concerning the documents he wished to obtain access to constituted maladministration.**

Emily O'Reilly European Ombudsman

Strasbourg, 14/03/2022

[1] Directive 2009/28/EC on the promotion of the use of energy from renewable sources: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02009L0028-20151005> .

[2] Article 17 of Directive 2009/28/EC.

[3] See Annex IX of Directive 2009/28/EC.

[4] Article 18 of Directive 2009/28/EC, see also [https://ec.europa.eu/energy/topics/renewable-energy/biofuels/voluntary-schemes\\_en](https://ec.europa.eu/energy/topics/renewable-energy/biofuels/voluntary-schemes_en) .

[5] Article 18 of Directive 2009/28/EC.



[6] See

[https://ec.europa.eu/energy/topics/renewable-energy/biofuels/voluntary-schemes\\_en#documents](https://ec.europa.eu/energy/topics/renewable-energy/biofuels/voluntary-schemes_en#documents)

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

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001R1049> .

[8] Pursuant to Article 7(2) of Regulation 1049/2001.

[9] The complainant argued that all the requested information is collected for the Commission by a single organisation called 'International Sustainability & Carbon Certification' (ISCC), which uses a simple online system for collecting the data. He provided a link to the ISCC website, where it is stated that according to the Renewable Energy Directive each recognised voluntary certification scheme is obliged to send a report to the Commission every year: <https://www.iscc-system.org/> .

[10] For further information on the background to the complaint, the parties' arguments and the Ombudsman's inquiry, please see the full text of the Ombudsman's proposal for a solution, available at:

<https://www.ombudsman.europa.eu/en/doc/correspondence/en/145658> .

[11] Article 6(2) of Regulation 1049/2001.

[12] The full text of the Ombudsman's recommendation may be consulted at the following link: <https://www.ombudsman.europa.eu/en/doc/correspondence/en/145658> .

[13] The Commission's reply may be consulted at the following link:

<https://www.ombudsman.europa.eu/en/doc/correspondence/en/152764> .

[14] The report may be consulted here:

<https://op.europa.eu/en/publication-detail/-/publication/86eb1ce8-11b5-11eb-9a54-01aa75ed71a1>

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