



The refusal by the Council of the EU to grant public access to documents concerning informal arrangements with non-EU countries about returning migrants (readmission agreements)

Case opened

Case 815/2022/MIG - **Opened on** 02/05/2022 - **Decision on** 01/09/2022 - **Institution concerned** Council of the European Union (No maladministration found) |

Director-General of the Legal Service

Council of the European Union

Dear Ms X,

The European Ombudsman has received a complaint against the Council of the EU.

The complaint concerns (i) the EU's use of informal agreements in the area of readmission of migrants and (ii) the Council's refusal to give public access to documents concerning six informal readmission 'arrangements' and related documents.

Please note that we are not inquiring into the first aspect of the complaint, given that the complainants have not made prior administrative approaches and that it concerns the political work of the institutions. We have informed the complainants accordingly.

As regards the second aspect of the complaint, the complainants have made a number of public access requests to the Council, seeking disclosure of six informal readmission arrangements and related documents on the negotiations leading up to them. The Council identified 42 documents. It granted full access to 21 documents and refused to give access to parts of three documents and to 18 documents in their entirety.

The complainants are dissatisfied with the Council's decision to refuse access to those 21 documents, in part or in full. They consider that the Council's approach was restrictive and that it also seemed inconsistent, as the Council agreed to disclose two readmission arrangements but not others.

We have decided to open an inquiry into the complaint against the Council's decision to



refuse access, in full or in part, to the 21 documents at issue under Regulation 1049/2001.

Regulation 1049/2001 states that applications for access should be handled promptly. It is in line with this principle that the Ombudsman also seeks to deal with cases such as this as quickly as possible.

As a first step, we consider it necessary to review the 21 documents at issue in the complainants' access requests. We would therefore be grateful if the Council could provide us with copies of the 14 non-classified documents to which it refused access, preferably in electronic format through encrypted e-mail. [1]

The documents subject to the public access request will be treated confidentially, along with any other material the Council chooses to share with us that it marks confidential. Documents of this kind will be handled and stored in line with this confidential status and will be deleted from the European Ombudsman's files shortly after the inquiry has ended.

As regards the seven classified documents ('RESTREINT UE'), we would ask the Council services to contact the inquiries officer responsible for this inquiry, Michaela Gehring, to arrange for an inspection on site.

The Council's position has been set out in its confirmatory responses dated 20 May, 28 June, 19 July and 30 July 2021. However, should the Council wish to provide additional views, to be taken into account by the Ombudsman during this inquiry, we would appreciate it if they could be provided to us.

We would be grateful if the Council could let us know, as soon as possible, by when it can respond to this request.

Once we have reviewed the documents at issue, it might also be helpful to schedule a meeting between representatives of the Council and the Ombudsman inquiry team at which this case can be discussed.

Yours sincerely,

Rosita Hickey Director of Inquiries

Strasbourg, 02/05/2022

[1] Encrypted emails can be sent to our dedicated mailbox.