

The European Commission's refusal to give public access to an audit report and an administrative inquiry report underlying its decision C(2021) 2423 on the control of weighing of fishery products in Ireland

Case opened

Case 757/2022/MIG - Opened on 06/05/2022 - Decision on 16/09/2022 - Institution concerned European Commission (No maladministration found) |

Secretariat-General

European Commission

Dear Mr X,

The Ombudsman has received a complaint against the European Commission.

The complaint is about how the Commission dealt with a request for public access to an audit report and a subsequent report from an administrative inquiry in Ireland, which led to the Commission's decision to revoke its approval of the Irish Control Plan submitted for the weighing of fishery products. The request also concerned documents related to the two reports.

The Commission identified 21 documents as falling within the scope of the request and refused to give access to these documents in their entirety, relying on a general presumption of confidentiality. It said that there was a follow-up to the administrative inquiry ongoing and that, based on the outcome of this follow-up, it had yet to decide whether or not it is warranted to open an infringement procedure against Ireland.

The complainant questions the Commission's use of a general presumption of confidentiality. Given that the Commission has already taken the decision to revoke the Irish Control Plan, the complainant considers that it should have been possible to disclose at least parts of the documents at issue. The complainant also refers to a letter from the Irish authorities dated 27 May 2021 [1], in which they said that they *"strive to operate in a transparent manner"*, and that they would *"now engage with the [Commission] in respect of [the complainant's] request for documents and in line with the requirements of Article 5 of the Regulation"*. In light of this



statement, the complainant considers it likely that the Irish authorities did not object to the disclosure of the documents at issue.

In addition, the complainant is dissatisfied with the time taken by the Commission to register and to deal with its access request.

We have decided to open an inquiry into the complaint concerning the Commission's refusal to grant access 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 documents at issue in the complainant's request. We would be grateful if the Commission could provide copies of these documents, preferably in electronic format through encrypted e-mail, [2] **by 16 May 2022** .

The documents subject to the public access request will be treated confidentially, along with any other material the Commission 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 Ombudsman's files shortly after the inquiry has ended.

We also consider that it would be helpful to schedule a meeting between the Commission and the Ombudsman inquiry team at which we can discuss this case. In particular, it would be helpful to know what the state of play is as regards any possible follow-up. A list of questions will be shared in advance of the meeting. The inquiries officer responsible for the case, Ms Michaela Gehring, can be reached to arrange the details of this meeting, ideally to take place **before 4 June 2022** .

As regards the complainant's concerns about the time taken by the Commission to deal with the request for public access, we note with much regret that the Commission did not comply with the time limits set out by Regulation 1049/2001. The Ombudsman is very concerned about delays in dealing with citizens' requests for public access to documents. However, in view of the Ombudsman's recent launch of an own-initiative inquiry into this matter, [3] we will not inquire into this aspect of the complaint.

Yours sincerely,

Rosita Hickey Director of Inquiries

Strasbourg, 06/05/2022

[1] Annex 4(f) to the complaint.



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

[3] Strategic inquiry OI/2/2022/MIG on the time taken by the Commission to deal with public access to document requests.