

## The European Commission's refusal to give public access to documents concerning the Swedish and the Danish Recovery and Resilience plans

Case opened

**Case** 925/2022/LDS - **Opened on** 10/05/2022 - **Decision on** 29/11/2022 - **Institution concerned** European Commission ( No further inquiries justified ) |

Head of Unit - C2

Secretariat-General

European Commission

Dear Mr X,

The Ombudsman has received a complaint against the European Commission concerning requests for public access to “ *documents held by the Commission on the evaluation of the Swedish recovery and resilience plan, as part of the European Recovery and Resilience Facility (RRF)* ” and “ *documents held by the Commission on the evaluation of the Danish recovery and resilience plan, as part of the European Recovery and Resilience Facility (RRF)* ”. These requests were registered as GESTDEM 2021/5985 and GESTDEM 2021/5460, respectively.

In its confirmatory decision concerning documents related to the evaluation of the Swedish Recovery and Resilience Plan (GESTDEM 2021/5985), the Commission refused access to the documents included in Annex 1. The Commission based its refusal on the fourth indent of Article 4(1) (a) (protection of the public interest as regards the financial, monetary or economic policy of the European Union or a Member State), the first subparagraph of Article 4(3) (protection of the decision-making process) and Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

As for its confirmatory decision concerning documents related to the evaluation of the Danish Recovery and Resilience Plan (GESTDEM 2021/5460), the Commission granted partial access to some of the documents in Annex 1 and refused access to the documents in Annex 2. The Commission, again, based its refusal for full disclosure on the fourth indent of Article 4(1)(a) (protection of the public interest as regards the financial, monetary or economic policy of the European Union or a Member State), the first subparagraph of Article 4(3) (protection of the



decision-making process) and Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001. We have decided to open an inquiry into the complaint against the Commission's decision to refuse access to the documents listed in Annex 1 of the request concerning the evaluation of the Swedish Recovery and Resilience Plan (GESTDEM 2021/5985) and to the documents listed in Annex 2 of the request concerning the evaluation of the Danish Recovery and Resilience Plan (GESTDEM 2021/5460) under Regulation 1049/2001. We would also like to look into the Commission's decision to grant only partial access to the documents listed in Annex 1 of the request concerning the evaluation of the Danish Recovery and Resilience Plan (GESTDEM 2021/5460).

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. I would be grateful if the Commission could provide copies of the documents listed in Annex 1 of its confirmatory reply in GESTDEM 2021/5985 and in Annexes 1 and 2 of the confirmatory reply in GESTDEM 2021/5460, along with any documentation relating to the consultation of Member States (conducted in line with Article 4(5) of Regulation 1049/2001), preferably in electronic format through encrypted e-mail, [1] by 17 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.

The Commission's position has been set out in its confirmatory responses. However, should the Commission wish to provide additional views, to be taken into account by the European Ombudsman during this inquiry, we would be grateful if they could be provided to us within fifteen working days from the receipt of this letter, that is, 3 June 2022.

We also consider that it would be helpful to schedule a meeting between the Commission and the Ombudsman's inquiry team at which we can discuss this case. The inquiries officer responsible for the case, Leticia Díez Sánchez, can be reached to arrange the details of this meeting, ideally to take place before 10 June 2022.

Yours sincerely,

Rosita Hickey Director of Inquiries

Strasbourg, 10/05/2022

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

