

Decision on the European External Action Service (EEAS)'s refusal of public access to the European Peace Facility's Integrated Methodological Framework (case 124/2022/NH)

Decision

Case 124/2022/NH - Opened on 20/01/2022 - Decision on 28/06/2022 - Institution concerned European External Action Service (No maladministration found) |

The case concerned a request for public access to documents held by the European External Action Service (EEAS) concerning a methodological framework for assistance measures under the European Peace Facility. The EEAS refused to disclose the documents, arguing that disclosing the documents could undermine the protection of the public interest as regards defence and military matters, as well as international relations of the EU's Member States.

The Ombudsman found that the decision by the EEAS to refuse public access was reasonable and that it had provided the complainant with a sufficient explanation. She thus closed the inquiry finding no maladministration.

Background to the complaint

1. In March 2021, the complainant, a non-governmental federation for human rights organisations, requested public access to a document [1] prepared by the European External Action Service (EEAS) entitled “ *Integrated methodological framework for assessing and identifying the required measures and controls for assistance measures under the European Peace Facility* ”.

2. The European Peace Facility is a financial instrument of approximately EUR 5 billion for the period 2021-2027 with the aim of financing assistance measures to partner countries, either by supporting their peace-keeping operations or by helping increase the capability of their armed forces to ensure peace and security on their national territory. It was established by a Council decision in March 2021. [2] The European Peace Facility is an off-budget fund, which means that contributions come from EU Member States directly. The EU recently used the instrument in order to send military equipment to Ukraine.

3. The EEAS identified two documents as falling within the scope of the complainant's request,



both containing guiding principles and possible concerns to be addressed when assisting partners in the military and defence areas in the context of assistance measures under the European Peace Facility. The EEAS refused public access to these documents relying on the need to protect the public interest as regards defence and military matters, as well as international relations. These exceptions are set out in Article 4(1)(a) of Regulation 1049/2001.

4. The EEAS explained that disclosing information contained in those documents could provide third parties with sensitive information that would negatively influence the EU partnerships with beneficiaries of assistance measures under the European Peace Facility. Misusing the documents could also negatively affect the EU's military operations and missions, EU Member States' and third countries' military and defence forces, and international relations, since they would bring details about identified and potential partners' vulnerabilities into the public domain.

5. The EEAS drew the complainant's attention to a "Questions and Answers" webpage hosted by the EEAS [3] on the European Peace Facility's integrated methodological framework, in which the main features of the methodology are outlined.

6. In May 2021, the complainant requested a review of the EEAS's decision (by making a so-called 'confirmatory application'). The EEAS maintained its decision to refuse access.

7. Dissatisfied with this outcome, the complainant turned to the Ombudsman in January 2022.

The inquiry

8. The Ombudsman opened an inquiry into the complainant's position that the EEAS was wrong to refuse public access to the requested documents.

9. In the course of the inquiry, the Ombudsman inquiry team inspected the requested documents and held a meeting with the EEAS to obtain clarifications on the reasons for refusal. The Ombudsman also provided the complainant with an opportunity to comment on the EEAS's explanations.

Arguments presented to the Ombudsman

By the complainant

10. The complainant argued that the integrated methodological framework merely contained general principles that the EEAS and EU member states need to follow when designing assistance measures under the European Peace Facility. As such, the complainant did not understand how disclosure of the requested documents would negatively influence the EU partnerships with beneficiaries of assistance measures.



11. The complainant explained that, as a human rights organisation, it needed to see the requested documents in order to assess whether the human rights safeguards set up in the European Peace Facility are sufficient to ensure the respect of the EU and Member States' human rights obligations. Disclosure was necessary in order to allow EU citizens and civil society to hold institutions accountable for their actions, particularly in the context of the European Peace Facility where lethal weapons are provided to third countries.

By the EEAS

12. During the meeting with the Ombudsman inquiry team, the EEAS representatives provided examples of provisions in the integrated methodological framework that could harm the EU's international relations. The EEAS requested that these examples remain confidential.

The Ombudsman's assessment

13. The Ombudsman inquiry team has inspected the requested documents and met with EEAS representatives to obtain additional explanations and concrete examples in order to understand why it could not disclose them. The Ombudsman acknowledges the EEAS's wish that the information provided during the meeting should remain confidential, and will not make that information public.

14. In addition, the EEAS informed the complainant of the reasons for its refusal of public access. It provided a link to its website where it published general information on the nature of the documents and their context.

15. The Ombudsman understands the argument raised by the complainant that there is a public interest in disclosure of the documents, namely that disclosure is necessary for it to hold the EU and the Member States accountable for their actions. However, she notes that, under the EU legislation on public access to documents, the protection of the public interest as regards international relations cannot be overridden by any other public interest. [4]

16. After having assessed the documents and checked them against the EEAS's explanations, the Ombudsman is satisfied that the decision by the EEAS to refuse public access to the requested documents was reasonable.

17. The Ombudsman notes that a high level of transparency is key in ensuring proper accountability of the assistance measures approved in the context of the European Peace Facility. Since the European Parliament does not have scrutiny powers in this area, transparency should allow relevant national parliamentary bodies to ensure the necessary democratic oversight in this field.

Conclusion



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

There was no maladministration by the European External Action Service in refusing public access to the documents at issue.

The complainant and the EEAS will be informed of this decision .

Emily O'Reilly

European Ombudsman

Strasbourg, 28/06/2022

[1] Under Regulation 1049/2001 on public access to European Parliament, Council and Commission documents:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&from=EN> [Link].

[2] Council Decision (CFSP) 2021/509 of 22 March 2021, available at:
<https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32021D0509> [Link]

[3] Available at:
https://eeas.europa.eu/headquarters/headquarters-homepage/95400/questions-answers-european-peace-facility_en
[Link]

[4] See Article 4(1) of Regulation 1049/2001.