

Letter to the European Securities and Markets Authority's (ESMA) on refusal to grant public access to documents concerning the U.K. equivalence decisions

Correspondence - 15/07/2022

Case 1278/2022/JK - Opened on 15/07/2022 - Decision on 19/06/2023 - Institution concerned European Securities and Markets Authority (No maladministration found) |

Dear Ms X,

The Ombudsman has received a complaint against ESMA and its refusal to grant public access to correspondence between ESMA's board and/or executive team with the European Commission on the topic of U.K. equivalence decisions during the period 2020, 2021 and 2022. ESMA refused access, arguing that the disclosure of the documents requested would undermine international relations.

We have decided to open an inquiry into the complaint against ESMA's decision to refuse access under Regulation 1049/2001 to the documents requested, excluding those to which partial access has already been granted.

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. I would be grateful if you could provide us with the correspondence between the ESMA board and/or executive team with the European Commission on the topic of U.K. equivalence decisions during the period 2020, 2021 and 2022 excluding the three emails identified and partially disclosed in your confirmatory reply. The documents should be shared preferably in electronic format through encrypted e-mail, [1] by 22/07/2022.

The documents subject to the public access request will be treated confidentially, along with any other material ESMA 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 note that ESMA's position has been set out in its confirmatory response. However, should



ESMA 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 by 15 August 2022.

Following the review of the documents requested, we may consider it useful to schedule a meeting between representatives of ESMA and the Ombudsman inquiry team to discuss this case further. Ms Y, who is responsible for this inquiry, can be reached at the following telephone number: 0000.

Yours sincerely,

Rosita Hickey

Director of Inquiries

Strasbourg, 15/07/2022

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