

The European Commission's failure to reply to two confirmatory requests for access to documents concerning Germany's recovery and resilience plan under the Recovery and Resilience Facility (RRF) (Your references: GESTDEM 2021/4458 and GESTDEM 2021/6192)

Correspondence - 15/07/2022

Case 187/2022/LDS - Opened on 02/02/2022 - Decision on 13/09/2022 - Institution concerned European Commission |

Dear Mr X,

We are contacting you about the Commission's failure to reply to the complainant's confirmatory applications within the prescribed time limits set out in Article 8 of Regulation 1049/2001. The Commission had extended the time limit for its replies on 14 December 2021 and on 7 January 2022, and has not provided the complainant with the replies within the extended time limit. We asked the Commission on 2 February 2022 to reply to the complainant's confirmatory applications and to inform us when it is done.

On 7 March 2022, the Commission informed us that both requests cover a very high number of documents and that, in these circumstances, the Commission could not complete the processing of these cases within the deadlines set out in Article 8 of Regulation 1049/2001. Furthermore, the Commission informed us that it was seeking a 'fair solution' with the complainant. We understand that the complainant agreed to the Commission's proposal for a 'fair solution' on 24 February 2022.

Upon request, the Commission informed us, on 21 May 2022, that it is currently consulting its internal services.

On 21 June 2022, we sent another reminder to the Commission. The Commission informed us that it is still consulting its internal services, after which it will draft its confirmatory decision.

Given the ongoing delay in replying to the complainant's confirmatory applications, we now consider it necessary to examine the documents at issue in the complainant's requests. I would therefore be grateful if the Commission could provide the Ombudsman with "*all documents concerning GESTDEM 2021-6192 and here to all documents of the "Sustainability axis" (page 1*



one of the list), except for documents 21, 26, 53, 69, 70, 100, 101, 157, 158, 208 and 209”, as agreed by the complainant in the ‘fair solution’. We would prefer to receive the documents in electronic format through encrypted e-mail [1] , by 26 July 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.

Following the review of the documents requested, we might consider it useful to schedule a meeting between representatives of the Commission and the Ombudsman inquiry team to discuss this case. The inquiries officers responsible for the case are Ms Y and Ms Z.

Yours sincerely,

Rosita Hickey

Director of Inquiries

Strasbourg, 15/07/2022

[1] Encrypted emails can be sent to our dedicated mailbox eo-secem@ombudsman.europa.eu. Please contact eo-secem@ombudsman.europa.eu beforehand.