

## Report on meeting of the European Ombudsman inquiry team with the Council of the European Union

Correspondence - 07/06/2022

**Case 815/2022/MIG - Opened on 02/05/2022 - Decision on 01/09/2022 - Institution concerned** Council of the European Union ( No maladministration found ) |

**Case title :** The refusal by the Council of the EU to grant public access to documents concerning informal arrangements with non-EU countries about returning migrants (readmission agreements)

**Date :** Tuesday, 07 June 2022

**Location :** Council premises (Justus Lipsius building)

Present

*General Secretariat of the Council of the EU*

Deputy Director, Home Affairs

Head of Unit, Information Services

Administrator, Information Services

Administrator, Home Affairs

Administrator, RELEX

Legal Adviser, Legal Service

*European Ombudsman*

Mr Fergal O'Regan, Chief Legal Expert

Ms Tanja Ehnert, Inquiries Coordinator



Ms Michaela Gehring, Inquiries Officer

## Purpose of the meeting

The purpose of the meeting was for the Ombudsman inquiry team to obtain further information on the context of the documents to which the complainant is seeking access and on the detailed reasons as to why access was refused.

Prior to the meeting, the inquiry team reviewed the documents at issue in the complainant's access request.

## Introduction and procedural information

The meeting started at 14:30 am and ended at 15:45 pm.

The Ombudsman inquiry team outlined the legal framework that applies to meetings held by the Ombudsman and, in particular, that the Ombudsman will not disclose any information identified by the Council as confidential, neither to the complainant nor to any other person outside the Ombudsman Office, without the Council's prior consent. [1]

The inquiry team explained that a report on the meeting will be drawn up and that the draft will be sent to the Council for review to ensure that the report is factually accurate and complete and that it does not contain any confidential information. The meeting report will then be finalised and shared with the complainant who will subsequently have the opportunity to provide comments.

## Information obtained

[2]

*On the general context*

The General Secretariat of the Council's officials (GSC officials) stated that the EU Member States' return rate of migrants (without a legal right to stay) is low and even decreased during recent years. The reasons for this are, *inter alia*, that return and readmission is a very sensitive area (for example, because societies often oppose the return/readmission of migrants) and that, therefore, there is a lack of cooperation on the side of the third countries concerned. The conclusion of readmission agreements is therefore key to ensure effective returns.

Whilst, generally, the EU's priority is to come to formal agreements in this area, in 2016, and thus at a time where there was a great need for cooperation from the side of the third countries concerned, the EU started exploring the possibility of negotiating informal arrangements, specifically in cases where third countries are not ready to commit to a legally binding agreement. The EU has since concluded six such arrangements, many of them with countries in



Africa, from where the largest migration flows come. The GSC officials gave relevant examples concerning the implementation of the informal arrangements.

The GSC's officials also referred to a recent special report by the European Court of Auditors (ECA), [3] noting that the ECA recommended the use of informal arrangements, where appropriate.

#### *On the refusal of public access to the documents at issue*

The GSC's officials stated that some of the documents at issue originate from the European Commission and the European External Action Service (EEAS). Both institutions have been consulted concerning the respective documents and have objected to their disclosure, relying on the exception for the protection of international relations.

The GSC's officials then detailed the reasons as to why they consider that disclosure of the informal arrangements (and drafts thereof) would undermine international relations. Asked about the procedural information included in the documents at issue, the GSC's officials explained why they consider that disclosure of parts of this information would undermine international relations. Concerning the (limited) remaining parts, they took the view that partial access to this information would be meaningless, in particular in view of the information sought by the complainants.

Concerning document 12896/20, the GSC's officials stated that this document has been disclosed to the complainant almost in full, subject to the redaction of only one sentence. [4]

As regards the fact that two informal arrangements between the EU and Afghanistan and between the EU and Bangladesh have been disclosed by the EEAS and the Commission respectively, the GSC's officials said that they could only speculate why these institutions provided public access to these documents. Concerning the formal arrangement with Afghanistan, they noted that this arrangement has been revised in 2021 and that the cooperation with Afghanistan in this area has been ongoing for several years.

## **Conclusion of the meeting**

The Ombudsman inquiry team thanked the GSC's officials for their time and for the explanations provided, and the meeting ended.

Brussels, 25/08/2022

Fergal O'Regan Michaela Gehring

Chief Legal Expert Inquiries Officer



[1] Article 4.8 of the European Ombudsman's Implementing Provisions.

[2] The information provided during the meeting complements the information provided in the Council's confirmatory decision.

[3] Available here: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=59347> [Link].

[4] The document is available at:  
<https://data.consilium.europa.eu/doc/document/ST-12896-2020-INIT/en/pdf> [Link].