

The Council of the EU's refusal to give full public access to a legal opinion on the proposed EU directive on adequate minimum wages

Case opened

Case 1834/2022/NH - **Opened on** 25/10/2022 - **Recommendation on** 04/04/2023 - **Decision on** 25/09/2023 - **Institutions concerned** Council of the European Union (Maladministration found) | Council of the European Union (Recommendation agreed by the institution) |

Council of the European Union

Dear Ms X,

The Ombudsman has received a complaint against the Council of the EU concerning the above issue. She has asked me to deal with the case on her behalf.

The complainant asked the Council for public access to the legal opinion of the Council Legal Service on the Commission proposal for a directive on adequate minimum wages (Document ST 6817/21 INIT). In its confirmatory decision dated 27 May 2021, the Council decided to grant partial access to certain paragraphs of the document, in addition to paragraphs 1-10 that had already been disclosed in the initial decision of 31 March 2021. The Council refused access to the remainder of the document, arguing that the interest in a public debate on legislative proposals cannot automatically override the protection of the efficiency of the decision-making process and legal advice.

We have decided to open an inquiry into the complaint.

As a first step, we consider it necessary to review the document at issue in the complainant's request. We would therefore be grateful if the Council could provide us with the following:

1. a copy of the unredacted version of document ST 6817/21 INIT that the Council refused to disclose in its entirety;
2. a copy of the redacted version of the document disclosed to the complainant on 27 May 2021 [1] with explanations concerning which exception(s) the Council invoked to those parts



partially withheld.

We would be grateful if the documents could be sent preferably in electronic format through encrypted e-mail, [2] by 11 November 2022.

The document subject to the public access request will be treated confidentially, along with any other material the Council 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 Council's position has been set out in its confirmatory response of 27 May 2021. However, should the Council 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 11 November 2022.

The inquiries officer responsible for the case is Mr Nicholas Hernanz.

Yours sincerely,

Rosita Hickey Director of Inquiries

Strasbourg, 25/10/2022

[1] We understand that the redacted version is accessible via the Council's public register: <https://data.consilium.europa.eu/doc/document/ST-6817-2021-INIT/en/pdf> [Link]

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