

Report on the inspection of documents and on the meeting of the European Ombudsman inquiry team with the European Defence Agency's representatives

Correspondence - 20/09/2022

Case 1272/2022/KR - **Opened on** 13/07/2022 - **Decision on** 30/01/2023 - **Institution concerned** European Defence Agency (No maladministration found) |

Case title : The European Defence Agency's (EDA) refusal to give public access to the minutes of meetings of its 'expert groups'

Date : Monday, 19 September 2022

Physical location

EDA office Rue des Drapiers, 17-23 B-1050 Ixelles Belgium

Present

EDA representatives:

Director of Corporate Services (for introduction only)

Legal Adviser & Data Protection Officer

Legal Officer & Deputy Data Protection Officer

European Ombudsman representatives:

Mr Fergal Ó Regan, Chief Legal Expert

Mr Koen Roovers, Inquiries Officer

Purpose of the inspection and meeting

The purpose of the meeting was to obtain further information on how the EDA dealt with the complainant's request for public access, which concerned meeting minutes of the EDA's 'expert groups' in the time period between 1 January 2021 and 8 May 2022.



During the meeting, the Ombudsman inquiry team also inspected a sample of documents that the EDA had identified as falling under the scope of the complainant's request. Prior to the meeting, it was agreed that this sample would be a random selection of minutes related to each of the categories of EDA working bodies (Capability Technology groups (CapTechs), project teams and ad hoc groups).

Introduction and procedural information

The EDA director of Corporate Services introduced the EDA legal team. The EDA legal team presented the EDA, which is an EU agency established under Article 42 of the Treaty on European Union to support the Council and Member States in their efforts to improve the Union's defence capabilities. The decision-making body of the Agency is the Steering Board which meets at Ministers of Defence level. The activities of the Agency are financed by contributions of the participating Member States (pMS, all EU Member States except Denmark). The EDA's statute, seat and operational rules are defined in a Council Decision. [1]

The Ombudsman inquiry team thanked the EDA representatives for meeting with them and set out the purpose of the meeting. The inquiry team outlined the legal framework that applies to inspections and meetings held by the Ombudsman, in particular, that the Ombudsman would not disclose any information identified as confidential, neither to the complainant nor to any other person outside the Ombudsman's Office, without the prior consent of the EDA.

The Ombudsman inquiry team explained that a report on the meeting would be drawn up and that the draft would be sent to the EDA for review to ensure it was factually accurate and complete. The meeting report will be provided to the complainant.

Information exchanged

The EDA legal team presented the preparatory work they had carried out in the context of the request for public access that is subject to the Ombudsman's inquiry.

They explained that the scope of the complainant's public access request was understood to include the meeting minutes of the EDA's 76+ working bodies from 1 January 2021 to 10 May 2022.

Some of these working bodies meet regularly, others sporadically, according to the needs of the moment as expressed by pMS and Council. It was estimated that, on average, each working body met six times in the reference period. Furthermore, on the basis of a sample of meeting minutes reviewed, it was estimated that the minutes are, on average, 20 pages long. This led to the preliminary conclusion that the requested documentation would amount to over 9000 pages.

The EDA representatives considered it impossible to conduct an individual assessment of all that documentation within the deadlines established by Regulation 1049/2001 to respond to access to documents requests.



Thus, while a preliminary review of the documentation took place in order to verify what documents fell within the access request, the view as regards whether access could be given was taken on the basis that all the documents were of the same nature.

The EDA representatives explained that, while the documents at stake are not classified, the information contained in them is considered sensitive in nature. In particular, the EDA representatives said that the participation of the pMS in EDA working bodies is voluntary. When pMS participate in the EDA's working bodies, they do so with the understanding that the information that is shared is treated in confidence.

In view of this, the EDA refused public access to the documents based on various exceptions provided in Regulation 1049/2001. [2] The exceptions relied on by the EDA concern the protection of defence and military matters (Art. 4(1)(a) second indent, the commercial interest of a natural or legal person, including intellectual property (Art. 4(2) first indent), personal data (Art. 4(1)(b)) and ongoing decision-making (Art. 4(3)).

The EDA representatives noted that, to inform the public and provide accountability for its activities, the EDA makes general information on its working bodies public on its website. [3] This information was also shared with the complainant in the EDA's initial decision as regards his request for public access.

The EDA representatives added that the EDA had also considered providing partial access, but that this could not be granted without prejudicing the interests protected.

Inspection of documents

The EDA facilitated the on-site inspection of a random selection of files related to each of the categories of EDA working bodies.

The Ombudsman inquiry team confirmed that the inspected documents:

- cover discussions and exchanges between technical experts from pMS competent authorities on defence and military matters. In some instances, technical experts from defence and security industry groups also participated;
- contain sensitive information on defence and military matters throughout;
- contain, in parts, personal data of the meeting participants (specifically names and contact details) and information about the actions and plans of the pMS' defence authorities as well as defence industry companies.

Conclusion of the meeting and inspection

The inquiry team thanked the EDA representatives for their time, the explanations provided and the facilitation of the inspection. The meeting then ended.

Fergal Ó Regan, Chief Legal Expert Koen Roovers, Inquiries Officer



Brussels, 20/9/2022

[1] See: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015D1835> .

[2] See: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32001R1049> .

[3] See for information on the EDA's expert groups:

<https://eda.europa.eu/who-we-are/expert-groups> and on CapTechs in particular:

[https://eda.europa.eu/what-we-do/research-technology/capability-technology-areas-\(captechs\)](https://eda.europa.eu/what-we-do/research-technology/capability-technology-areas-(captechs))

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