

How the European Commission dealt with a request for public access to messages sent by Commissioners to the Commission President concerning Poland's national plan under the Recovery and Resilience Facility

Case opened

Case 2186/2022/SF - Opened on 15/12/2022 - Decision on 17/07/2023 - Institution concerned European Commission (No further inquiries justified) |

Secretariat General

European Commission

Dear Mr X,

The Ombudsman has received a complaint against the European Commission. The complaint concerns the Commission's refusal to give public access to the messages Commissioners sent to the Commission President relating to Poland's national plan under the Recovery and Resilience Facility.

Specifically, the complainant asked for documents containing the following information:

"All letters, e-mails and notes sent by European Commissioners to President Von der Leyen regarding the 1 June 2022 College discussion about Poland's Recovery and Resilience Plan (point 12.3 on the College agenda), including but not limited to those by Commissioners Reynders and Jourova."

The Commission refused access to the requested documents arguing that their disclosure would seriously undermine the Commission's decision-making process. [1] The Commission considered that, based on the information provided with the complainant's request, it was not able to identify an overriding public interest. The Commission added that the file is particularly sensitive and that, in accordance with the Treaty on the Functioning of the European Union [2] and its own Rules of Procedure [3] , it acts by a majority of its Members following discussions that *"shall remain confidential"*.



The complainant considered that the sensitivity of the file is an argument that there is an overriding public interest. He pointed out that one of the Executive Vice-Presidents of the Commission has publicly stated that he believed the Commission's decision to be "*incorrect*". He argues that there is no evidence that this public statement has had a negative effect on the Commission's ability to take well-informed decisions.

We have decided to open an inquiry into the complaint against the Commission's decision to refuse access under Regulation 1049/2001.

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 falling within the scope of the complainant's request. We would be grateful if the Commission could contact the inquiries officer responsible for this inquiry, Ms Silvia Fuller to arrange for an inspection on site, or for a transfer of copies of these documents, preferably in electronic format through encrypted e-mail, [4] by **6 January 2023** .

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.

The Commission's position has been set out in its reply dated 27 July 2022, which was shared with the complainant on 1 August 2022. However, should the Commission 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 within fifteen working days from the receipt of this letter, that is, 17 January 2023.

Yours sincerely,

Rosita Hickey Director of Inquiries

Strasbourg, 15/12/2022

[1] Article 4(3) second subparagraph of Regulation 1049/2001.

[2] Article 250 TFEU.

[3] Articles 8 and 9 Rules of Procedure.



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