



Report on the on-site inspection by the European Ombudsman inquiry team at the premises of the European Commission

Correspondence - 15/11/2022

Case 1980/2022/NH - **Opened on** 10/11/2022 - **Decision on** 14/03/2023 - **Institution concerned** European Commission (No maladministration found) |

Case title : The European Commission's refusal to give public access to a proposal and a grant agreement concerning an EU funded project in the defence industry [reference: GESTDEM 2022/2956]

Date : Tuesday, 15 November 2022

Physical location (Directorate-General for Defence Industry and Space (DEFIS), Brussels)

Present

European Commission

- Head of Unit, DG DEFIS, Unit A4: EDF Implementation - Defence Systems
- Legal Officer, DG DEFIS, Unit A4
- Project Officer, DG DEFIS, Unit A4
- Legal Officer, DG DEFIS, Unit A4
- Security Officer, DG DEFIS, Unit A2: EDF Implementation - Programming & SME Support
- Access to Documents Coordinator, DG DEFIS Unit 01: Coordination & Interinstitutional Relations
- Legal and Policy Officer, Secretariat-General, Unit C1: Transparency, Document Management & Access to Documents
- Senior Expert, Secretariat-General, Unit C2: Ethics, Good Administration and Relations with the European Ombudsman

European Ombudsman

- Christophe Lesauvage, Legal Expert
- Nicholas Hernanz, Inquiries Officer

Purpose of the inspection

The purpose of the on-site inspection was for the Ombudsman inquiry team to review the documents identified by the Commission as falling within the scope of the complainant's request for public access to documents registered by the Commission under the reference number GESTDEM 2022/2956.



In addition, the Ombudsman inquiry team sought to obtain further information on the reasons provided by the Commission to refuse public access to the documents (protection of the public interest as regards public security, defence and military matters, protection of commercial interests of a legal person, as well as protection of the privacy and integrity of the individual under Regulation 1049/2001).

Introduction and procedural information

The Ombudsman inquiry team introduced themselves, thanked the Commission representatives for meeting with them and set out the purpose of the meeting. They outlined the legal framework that applies to meetings held by the Ombudsman, in particular, that the Ombudsman would not disclose any information identified by the Commission as confidential, neither to the complainant nor to any other person outside the Ombudsman's Office, without the Commission's prior consent. [1]

The inquiry team explained that they would draw up a draft report on the inspection to be sent to the Commission to ensure that the contents were factually accurate and complete. The inspection report would then be finalised, included in the file and provided to the complainant. No confidential information would be included in the report or otherwise provided to the complainant or any third party.

Documents inspected

- **Document 1** : " *Proposal for the Project EDIDP-SME-2019-027-DECISMAR, Ares(2022) 6899139* "

- **Document 2** : " *Grant Agreement Project EDIDP-SME-2019-027-DECISMAR – Annex 1 Ares(2020)5754968* "

The Commission showed the documents to the Ombudsman inquiry team on a screen in the meeting room and provided explanations while scrolling through the documents. The Commission explained that both documents are **confidential** and should not be shared with the complainant or any other unauthorised person.

Information exchanged

The Commission explained that Document 1 (the project proposal) is a document drafted by the applicants in 2019, and presented to the Commission, in order to apply for EU funding in the context of the call for proposals 'Innovative and future-oriented defence solutions (EDIDP-SME-2019)'. After the Commission decided to award EU funding to that project ("DECISMAR"), it signed a grant agreement with the beneficiaries. Document 2 is the first Annex of the grant agreement for DECISMAR.

In reply to a question from the Ombudsman inquiry team, the Commission confirmed that no other document related to the DECISMAR project fell within the scope of the complainant's request, which asked for " *a detailed description of the technology developed and the specific military equipment that was produced based on such technology* ". It has been discussed during the meeting whether some project deliverables could have been identified as documents falling within the scope of the complainant's request because they concern specific results achieved by the project. The Commission explained that deliverables in the form of interim reports relating to an ongoing project with no final result were considered outside the scope of the request. The Commission further explained that certain deliverables



were classified by the Member States involved in the project, due to their sensitivity. The deliverables remain the property of the beneficiaries or Member States and the Commission has no control over the classified status of these documents.

The review of Document 1 showed that it follows the standard outline for applications to EU grants: it starts with a presentation of the proposed project, a description of how the project would respect the criteria set out in the EDIDP call, a list of planned deliverables and work packages, a presentation of the applicants, etc.

The review of Document 2 showed that it presents an abstract of the project's objectives and then lists the beneficiaries, sub-contractors and financing arrangements. It also repeats *verbatim* the information presented in Document 1 concerning work packages.

The Commission insisted during the inspection on the arguments already put forward in the confirmatory decision: the documents contain sensitive information concerning the development and future exploitation of a defence product. If disclosed to the public, the information contained in these documents could become accessible to ill-intentioned parties which could increase the risks of sabotage of the defence capabilities of the EU and of its Member States. In addition, Document 1 contains detailed information about the inside knowledge and experience of the applicants and needs to be kept confidential in order to protect their commercial interests and the security and defence elements in the project.

The Commission explained that the requested documents are marked as "sensitive non-classified", which means they can only be released on a 'need-to-know' basis.

In reply to a question from the Ombudsman inquiry team, the Commission confirmed that it assessed whether partial access to the documents could have been granted, but found that it would not have been possible as the resulting document would have been meaningless.

The Commission underlined that a summary of all projects financed under EDIDP and PADR had been published on the Commission's website (in the form of factsheets).

The Commission also explained that DG DEFIS handled the initial request for public access, and the Secretariat General handled the complainant's confirmatory application, as per the Commission's standard practice. This explains why the Commission invoked an additional exception at confirmatory stage, namely the protection of personal data, as the Secretariat General noticed that the requested documents also contain personal data.

Conclusion of the inspection of documents

The inquiry team thanked the Commission's representatives for their time and for the explanations provided, and the meeting ended.

Christophe Lesauvage Nicholas Hernanz

Legal Expert Inquiries Officer



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