

Recommendation on the time the European Commission takes to deal with requests for public access to documents (strategic inquiry OI/2/2022/OAM)

Recommendation

Case OI/2/2022/OAM - **Opened on** 04/04/2022 - **Recommendation on** 21/09/2023 - **Special report on** 21/09/2023 - **Decision on** 18/09/2023 - **Institution concerned** European Commission (Maladministration found) |

The Ombudsman opened this inquiry to look into whether there are systemic delays in how the European Commission handles requests for public access to documents.

The Ombudsman's inquiry found that systemic and significant delays occur in particular when it comes to dealing with requests to review initial decisions ('confirmatory applications'). While decisions on initial requests were delayed in one case out of six during the year in question, 85% of decisions on confirmatory applications were delayed, with over 60% taking more than 60 working days (the maximum time-limit is 30 working days). One example included a request by a journalist covering the procurement of medical masks at the outset of the COVID-19 pandemic, where it took the Commission ten months to take a final decision and it took nearly two years in total for the requester to receive the documents.

The Ombudsman has consistently taken the view that 'access delayed is access denied'. Documents and information sought by requesters are often time sensitive and can lose relevance to the requester if delays occur. There may also be a dissuasive effect in that requesters opt not to exercise their fundamental right to access documents in the knowledge it takes too much time. Thus, requests for public access must be handled promptly and, at the very least, within the applicable time limits. Failure to comply with the time limits laid down by the legislator cannot be good administrative practice.

The Ombudsman acknowledges the increasing number and complexity of requests handled by the Commission. She is aware that the Commission dealt with over 8000 initial requests during the year in question, with requesters pursuing fewer than 10% of negative decisions. She is also aware that the Commission recently introduced the new EASE portal to improve how it deals with public access requests. That said, her Office continues to deal with complaints alleging serious delays. The systemic and significant delays brought to light in this inquiry amount to maladministration. The gravity of this matter is compounded by the fact that, in the Ombudsman's experience, significant delays occur in cases of great public importance. If the Commission's processing of the requests takes so much time, there is a risk that this is



perceived as deliberate, so as to avoid timely public scrutiny.

Therefore, the Ombudsman makes a recommendation to the Commission to correct the current situation, as a matter of priority. She also makes seven suggestions to address how the Commission handles access requests. She is aware that these suggestions are unlikely to be sufficient to tackle the major issue of delays which requires a more fundamental rethink within the Commission about how it plans to adhere to the timelines set out by the legislator.

made in accordance with Article 4(1) of the Statute of the European Ombudsman [1]

Background

1. Public access to documents is a fundamental right [2] that safeguards the transparency and legitimacy of the EU institutions. To ensure meaningful access, EU institutions should deal with all requests for public access as swiftly as possible. Individuals might, for example, seek access to documents so as to be able to follow in detail ongoing legislative or international negotiations or policy developments or to participate in EU decision making. This could include journalists researching articles, or civil society organisations or interest groups seeking to participate in ongoing policy debates or decision-making processes. Consequently, delays in granting access may undermine the ability of those individuals to participate in the democratic process of the EU.

2. According to the EU legislation on public access to documents (Regulation 1049/2001) [3], requests for public access should be handled “*promptly*”. Regulation 1049/2001 sets out a time limit of 15 working days for an institution’s decision, both on the initial access request and on requests for review where the institution has initially refused access, either to the entire request or to parts thereof (a ‘confirmatory application’). Each time limit can be extended once by another 15 working days, which means that EU institutions are expected to take a decision, at initial and at review stage, within a maximum of 30 working days. Failure to comply with the time limits laid down by the legislator cannot be good administration. The frustration for the requester is the absence of the type of consequences for such delays that would prompt administrative improvements.

3. In recent years, complaints to the Ombudsman concerning public access to documents held by the European Commission showed that the Commission does not always meet the time limits and that there is sometimes significant delay before it issues initial and confirmatory decisions. Complainants that regularly make public access requests have also raised concerns that there are now systematic delays in how the Commission deals with requests.

Examples of delays by the Commission raised in Ombudsman inquiries

- A journalist sought public access to letters, e-mails and notes sent by EU commissioners to the Commission President concerning Poland's national plan under the Recovery and Resilience Facility. [4] The Commission took almost seven months to take a confirmatory



decision. While it ultimately provided extensive access, the complainant pointed out that this should have happened much sooner and that much of the information had lost its value .

- A journalist sought public access to documents concerning the Commission's analysis of Germany's national plan under the Recovery and Resilience Facility. [5] After agreeing a 'fair solution' with the journalist, the Commission took over a year to take a final decision.
- A non-governmental organisation sought public access to documents concerning negotiations on the revision of the Energy Charter Treaty. [6] The Commission took almost eight months to take a decision on the initial request.
- A journalist sought public access to documents concerning 1.5 million medical masks which the Commission had purchased at an early stage in the COVID-19 pandemic and which did not meet the required quality standard. [7] It took the Commission ten months to provide a final reply to the complainant and it took nearly two years from the initial request until the documents were finally released to the requester. The complainant noted that, during this time, he was unable to carry out his journalistic task, as he was not provided with the information he requested.
- A journalist sought public access to documents concerning expenses related to a work-related trip of a Commissioner to the United States. [8] The Commission took eleven months to deal with the initial request and a further three months to deal with the confirmatory application.
- A journalist sought public access to documents related to a project funded under the Internal Security Fund. [9] The Commission took almost six months to deal with the complainant's confirmatory application. The complainant noted in his comments to the Ombudsman that the way the Commission has been treating his request curtails his ability to exercise the fundamental right of access to documents.
- A non-governmental organisation sought public access to the list of EU-funded projects under the National Sanitation Program in Morocco. [10] The Commission took almost seven months to take a confirmatory decision.
- A non-governmental organisation sought public access to documents concerning the negotiations for the procurement of COVID-19 vaccine. The Commission took over seven months to deal with the initial request and took a further eleven months to fully process the request. [11] While the request concerned a large number of documents, and was dealt with at a time of disruption during the pandemic, it illustrates the challenges: those entities in the Commission which are to the fore in dealing with crisis situations are also likely to face greater numbers of and more time-sensitive public access requests. This is a reality that needs to be addressed particularly as crisis situations are regularly faced by the EU including in recent years, the financial crisis, the migration crisis, the COVID-19 crisis and the Russian invasion of Ukraine.

4. Against this background, the Ombudsman opened an own-initiative inquiry to look at the possible systemic scope and nature of delays in the Commission's handling of requests for public access to documents.

The inquiry

The steps taken by the Ombudsman

5. The Ombudsman first asked [12] the Commission to provide statistical data for the year 2021



on: (i) the number of requests and confirmatory applications it received, and (ii) the time it took to deal with these requests, including how often it exceeded the maximum time limit of 30 working days. The Ombudsman also asked the Commission for information about its plans to introduce an online portal for dealing with public access requests (since launched as the Electronic Access to Commission Documents 'EASE' portal). [13]

6. The Ombudsman inquiry team then inspected about 70 files, including requests where the Commission had complied with the time limits and where it had incurred a significant delay. The Ombudsman also asked the Commission to reply to additional questions.

7. Subsequently, the Ombudsman inquiry team held a meeting [14] with representatives from the Commission to obtain additional information as well as a better understanding of how public access requests are handled by the Commission.

The Commission's replies to the Ombudsman

8. In 2021, the Commission received 8 420 access requests and 355 confirmatory applications. On average, it took the Commission 20 working days to deal with an initial access request and 93 working days to take a confirmatory decision.

9. In five instances, it took the Commission more than 300 working days to issue a decision on the initial request. The longest time taken to issue a confirmatory decision, following a request for review, was 291 working days.

10. In taking a decision on the initial request, the Commission exceeded the maximum time limit of 30 working days in 1 332 cases (about 16% of all cases), while it took more than 60 working days in 5% of all cases. [15] In issuing a confirmatory decision, the Commission took more than 30 working days in 305 cases (85% of all cases). It took more than 60 working days in over 60% of all cases. [16]

11. Concerning the reasons for delays, the Commission considered that they are due to the ever increasing number of access requests it receives and the fact that access requests increasingly concern a large number of documents. In addition, delays might be caused by the following procedural steps:

- For each case, the Commission needs to search for documents, carefully assess them and, when justified, make redactions to them.
- An assessment of legislation other than Regulation 1049/2001 might be required.
- Access requests are sometimes unclear (for example, requesters may ask for all documents related to a specific topic or policy). In such cases, it takes comparatively longer to identify the documents, including because it might be necessary to seek clarification from the requester or to find a 'fair solution' [17] .
- If a document originates from a third party (for example a Member State), the assessment might require external consultations with that party.
- If the Commission decides to overrule a third party's objections to disclosure, this involves additional steps such as sending a ten-day letter of notice (which gives the third party concerned the opportunity to bring court action).
- Possible translation requirements, either of communication with the requester or a third party



(the Commission indicated that a translation can take up to 10 working days).

- Given that a confirmatory decision can be challenged before the court, it has to contain detailed argumentation, which requires internal consultation with relevant Directorates-General and the Commission's Legal Service, and possibly (re-)consultation of third parties.

12. The Commission stated that it often receives many public access requests related to topical policies or legislative issues. It gave examples of issues that led to a higher volume of public access requests in 2021, including the COVID-19 pandemic, the Recovery and Resilience Facility, the Common Agricultural Policy, migration-related issues and the Digital Markets and Services Acts.

13. The Commission also stated that the new EASE portal is intended to improve the efficiency of how it deals with public access requests. In addition to standardising the requests that the Commission receives, the portal includes a backend that will enable the Commission to more systematically deal with requests within the Commission, establishing an automated workflow from the registration and attribution stage of requests to the transfer of documents. The portal will also enable easier and more structured communication with individuals that request access to documents.

Inspection of sample files and meeting

14. Despite the increasing amount of access requests, the inspection showed that the Commission is able to deal with initial requests promptly in most cases. In the vast majority of cases, the maximum time limit of 30 working days was met. In most of the cases where the time limit was not met, the Commission issued the decision shortly after the time limit expired. The inspection demonstrated that delays, including significant delays, occur much more frequently when the Commission deals with confirmatory requests.

15. The registration of requests usually takes place quickly (on the same day or the following day).

16. The inspection also showed that the documents falling within the scope of a request are usually correctly identified by the relevant directorate-general or service of the Commission following the initial request. In a small number of cases, additional documents were identified at the confirmatory stage.

Potential causes for delays

17. As regards **external consultations of third parties (including Member States)**, the inspection showed that the Commission normally receives a reply within five working days. If a deadline deferment is requested by the third party, the reply may be delayed by a few working days. In cases where a delay occurred, the reason was often that the third party failed to explain in its first reply on what grounds it objected to disclosure and that, therefore, the Commission had to follow-up with the third party. Any significant delay was thus not due to the consultations themselves. Instead, where there were delays in dealing with requests involving external consultations, these appear to be due to the Commission launching the consultation at a late stage (often even after the maximum 30-day time limit had expired).

18. In the meeting with the Ombudsman inquiry team, the Commission representatives clarified



that, as a general practice, the Commission first conducts a preliminary assessment of the confirmatory request and then consults Member States or other third parties. The Commission considers this approach to facilitate the dialogue and to help the third party concerned to understand the Commission's intentions and to reach a positive outcome (where the intention is to give public access). The Commission representatives also referred to the principle of sincere cooperation, and the Commission's obligation to engage in a genuine dialogue with Member States. The Commission representatives also noted that a constructive dialogue with Member States renders it less likely that the Commission has to overrule a Member State's opposition to disclosure and may thus avoid Court action.

19. As regards the Commission's argument that it sometimes has to **overrule third party-objections** (which requires an additional step that takes about ten days), the inspection showed that the directorate-general dealing with the initial request normally follows the third party's view. At the confirmatory stage, objections of third parties were overruled in only two cases (out of almost 70 files).

20. As regards **internal consultations**, the inspection showed that the Commission normally receives replies very swiftly from the relevant directorate-general (within 24 hours for the initial request and within five working days for confirmatory applications). The same is generally true where the Legal Service is consulted. While, in some cases, it took the Legal Service longer, almost all consultations were concluded within two weeks.

21. In the meeting with the Ombudsman inquiry team, the Commission representatives clarified that the consultation of the Legal Service at confirmatory stage is mandatory. The Legal Service is therefore consulted as soon as possible on the draft confirmatory decision in all cases (the relevant exchanges are registered on the file). In some cases, further exchanges with the Legal Service might be needed, for example, where the Legal Service needs additional clarifications before giving its opinion or where the Commission requires input/guidance from the Legal Service before it can finalise the draft confirmatory decision. Consultations of the Legal Service may take more time if the scope of the access request is wide and where, given the nature of the documents, they have to be screened in detail.

22. The inspection showed that, in some cases, where the private offices of Commissioners are consulted, no record was kept of the exchanges in the file on the access request, so it is difficult to assess if there were related delays.

23. During the meeting with the Ombudsman inquiry team, the Commission representatives clarified that internal consultations are not recorded on the file if they are 'informal' in nature.

24. As regards the Commission's claim that delays arise due to the need to translate documents, the inspection suggested that there are few **translation requests**. Most requests in the inspected files were made in English and any related consultations were also mainly conducted in English. Furthermore, in some of the few cases in which there were translation requests, and where delays in handling the requests occurred, the Commission provided the requester with an English language version of the decision initially and indicated that it would



provide the translation as soon as it was available.

25. Requests for clarification do not account for delays in the recorded statistics, since the Commission counts the days only after the request has been clarified. Of course, while this is not recorded as a delay in the statistics, it still represents a de facto delay for the requester and may create dissatisfaction, in particular as the Commission sometimes takes some time to follow up with requesters or did not provide them with sufficient information initially to enable them to clarify their request (such as identifying and listing the documents falling within the scope of their request).

26. The Commission typically proposes a **fair solution** to the requester where the scope of the access request is too large and it would not be possible to process the request within the timelines set out in Regulation 1049/2001. In the meeting with the Ombudsman inquiry team, the Commission representatives explained that, before proposing a fair solution, the Commission screens all the documents within the scope of the request so as to be able to categorise them and to describe them to the requester, with the aim to understand what documents could be most useful to the requester and to enable the Commission to propose a very concrete solution (for example, that the scope of the access request be limited to certain categories of documents or samples thereof). This first assessment of the documents can be time-consuming, taking months for particularly broad requests. During this process, the timeline is not suspended.

27. During the meeting with the Ombudsman inquiry team, the Commission representatives also stressed that the significant increase in the number of confirmatory requests received in recent years, their complexity and ever-wider scope, has not been matched by a sufficient increase in human resources in the team dealing with confirmatory requests. The huge amount of access requests received, combined with **human resources limitations** has resulted in a significantly high workload for staff dealing with requests, meaning they have to prioritise certain cases at times.

28. As regards possible efficiency gains through the new EASE portal, the Commission representatives explained that many administrative steps are now automatised (such as the registration of correspondence in the Commission's document management system). However, this tool does not facilitate those steps of the procedure that are carried out by staff members, such as analysing and redacting the requested documents. Nor does it automate the process of third-party consultation. It does, however, allow managers to monitor the progress of cases and facilitates the efficient assignment of new cases.

29. The inspection also showed that, in some cases, the Commission did not process confirmatory application where it had not yet given an explicit reply to the initial request. Rather, even after the submission of the confirmatory application, the relevant directorate-general continued its assessment of the case and issued an initial decision. The Commission then **cancelled the confirmatory application** informing the requester that they could make a new confirmatory application.



30. The Commission representatives explained that this practice safeguards the requester's right to have a two-stage procedure and, thus, be able to challenge the Commission's reasons for non-disclosure (where access is refused). Therefore, where the directorate-general has not taken an explicit initial decision when a confirmatory application is received by the Commission, the directorate-general will continue dealing with the case.

The Ombudsman's assessment leading to a recommendation

31. The Ombudsman opened this inquiry because there are regularly complaints about delays in how the Commission handles requests for public access documents. The purpose of the inquiry was to determine if delays are systemic.

32. The Ombudsman's inquiry showed that there are delays, including significant delays, in dealing with requests in particular at confirmatory stage. While at the initial stage, delays occur in one case out of six, at the confirmatory stage delays are the rule: 85% of all confirmatory applications are processed with a delay. Over 60% of all confirmatory applications are dealt with in more than 60 working days, despite the legal time-limit being 30 working days.

33. The systemic and significant delays at confirmatory stage are problematic. While the Ombudsman is aware that the Commission dealt with over 8000 initial requests during the year in question, with requesters pursuing fewer than 10% of negative decisions, [18] it is at the confirmatory stage that requesters disagree with the Commission's initial assessment: either they consider that wider or full access should have been granted or that the Commission did not identify all documents falling within the scope of their requests. The documents at stake at confirmatory stage are thus 'sensitive' in nature, in one way or another. The legislator, however, set the same timeline at the confirmatory stage, as at the initial stage, and this should be respected. The gravity of this matter is compounded by the fact that, in the Ombudsman's experience, significant delays occur in cases of significant public importance. [19]

34. If the Commission's processing of the requests for public access takes so much time, there is a risk that this is perceived as deliberate, so as to avoid timely public scrutiny.

35. The EU legislation on public access to documents requires that requests should be handled promptly, and in any case within the applicable time limits, at initial and confirmatory stage. The Ombudsman has consistently taken the view that 'access delayed is access denied'. Documents and information sought by requesters may be required quickly and can lose relevance to the requester if delays occur. This is particularly so for journalists seeking documents in the context of articles or investigations, or for civil society or interest groups seeking to follow and engage in advocacy work relating to ongoing legislative or policy decision-making procedures.

36. In view of this, the Ombudsman considers that the systemic and significant delays in processing access requests amount to maladministration. The Commission should correct that situation, as a matter of priority.

37. The Ombudsman makes a series of suggestions below to address four particular issues in the handling of access requests, which can lead to delays. She is aware that addressing these



issues will go only a small way towards tackling the major issue of delays which requires a more fundamental rethink within the Commission about how it plans to adhere to the timelines set out by the legislator.

A. Insufficient human resources

38. Delays are, in percentage terms, much more frequent at confirmatory stage than at the initial stage. Initial requests for access to documents are dealt with by staff working in the Commission's directorates-general or other services, while confirmatory applications are dealt with by a dedicated team in the Commission's Secretariat-General.

39. The Commission noted the limited human resources available to the team dealing with confirmatory applications. The considerable increase in confirmatory applications in recent years, many of which have become more complex and wider in scope, has not been matched by a proportionate increase in staff.

40. Considering the increasing number of confirmatory applications and the fact that the Commission does not meet the prescribed time limit in the vast majority of cases, the Ombudsman suggests that the Commission should dedicate more resources to dealing with confirmatory applications .

B. Time-consuming and resource-intensive practices

41. The Ombudsman notes that the Commission's practices for dealing with confirmatory applications are often time-consuming and resource-intensive. For example, the Commission systematically conducts a preliminary assessment of a confirmatory application before launching external consultations of Member States or other third parties, and systemically conducts a first assessment of documents potentially falling under the scope of large requests before proposing a fair solution to requesters.

42. As regards the preliminary assessment of confirmatory applications prior to third-party consultations, the Commission considers this practice facilitates dialogue with third parties, helping the third party concerned understand the Commission's intentions and thus reach a positive outcome in cases. The Commission also considers that this practice respects the principle of sincere cooperation with Member States and makes it less likely that the Commission has to overrule a Member State's opposition to disclosure, hence avoiding possible Court action.

43. However, the Ombudsman's inspection showed that this practice means that the Commission's Secretariat-General often only carries out external consultations long after receiving the public access request. It also showed that, in many cases, even if the Commission shared a preliminary assessment suggesting the requested documents could be disclosed, in the end it refused access. That is, it did not overrule the objections of the third parties consulted.



44. While the Ombudsman understands that there may be advantages in conducting a preliminary assessment before consulting externally in individual cases, it could rather be decided on a case-by-case basis, taking into account factors such as time, the number of documents, and the third party to be consulted. In any case, it must be done whilst respecting the applicable time limits. Third party consultations are meant to be finalised within the applicable time limits, not to be initiated once the time limits have expired or so late that the time limits cannot be respected. Thus, the Commission must initiate any third party consultation in a timely way.

45. For requests with a wide scope, and where the Commission seeks to propose a fair solution, a systematic first assessment of documents potentially falling under the scope of the request often takes a considerable amount of time. This means that the time limits for dealing with requests have often long elapsed by the time the Commission proposes a fair solution. During the meeting with the Ombudsman inquiry team, the Commission representatives mentioned the example of one case in which it took the Commission several months to screen and categorise several hundred documents before making a fair solution proposal.

46. The Ombudsman understands that the Commission has put in place this practice so as to understand what documents could be most useful to the requester and then to propose a very concrete solution.

47. The Ombudsman invites the Commission to reflect on this practice and, in particular, whether it is appropriate in all cases. For example, instead of screening all documents, the Commission could, in some cases, consider sharing with the requester a list of the documents identified (or categories of documents), and ask the requester whether, based on that, they could narrow down the request themselves. In some cases, a solution might be found by asking the requester what documents they are actually interested in (rather than trying to second-guess what documents could be most useful to the requester based on the request). This also relates to how the Commission communicates with requesters, which is dealt with below.

C. Communication with requesters

48. The Ombudsman's inquiry showed that there appears to be limited interaction with requesters both at initial and at confirmatory stage

49. The Commission noted that access requests are often broad and unclear. This may be due to requesters not knowing what documents the Commission holds. In addition, there is no obligation for requesters to give reasons for making an access request, meaning that it can be unclear what documents are of particular interest to them.

50. There are many benefits in engaging with requesters in an open and constructive manner as soon as a request is received. This can enable requesters to provide necessary clarifications



or narrow down the scope of their request, if appropriate. Speaking directly with requesters can help determine what information they are actually interested in. Providing requesters with a list of documents at an early stage when seeking a 'fair solution' can also clearly improve the process for both sides. This implies a different approach in how the Commission deals with access requests.

D. Cancelling confirmatory applications

51. According to Regulation 1049/2001, the failure to take an initial decision on a request within 30 working days may be considered an implicit refusal. In such cases, requesters may make a confirmatory application. The inspection showed that the Commission has developed a practice of cancelling confirmatory applications made in such circumstances. In such cases, the Commission's Secretariat-General does not process the confirmatory application but waits for an initial decision to be adopted and, then, informs the requester that they may make a (new) confirmatory application.

52. This practice is at odds with Regulation 1049/2001, which states that, where an institution fails to take an initial decision within the prescribed time limits, the requester may make a confirmatory application. Once the time limits for adopting a confirmatory decision have expired, the requester can then turn to the Court of Justice of the EU or to the European Ombudsman.

53. Currently, the Commission does not inform requesters of the possibility to turn to the Court of Justice of the EU or the Ombudsman in such cases. It merely informs requesters that they may make a new confirmatory application.

Proactive transparency

54. Proactive transparency is one of the primary means of securing public trust in the EU administration's actions, and obviates the need for the cumbersome processes of requesting documents and dealing with such requests. Concretely, the Ombudsman suggests that the Commission should continue its attempts to anticipate policy areas/topics that may generate particular public interest, and ensure proactive transparency in relation to these policy areas/topics. This could be done by considering, in advance, what documents should be made public and publishing such information in user-friendly and accessible formats, for example on dedicated webpages.

55. To exploit the full potential of the new EASE portal in that regard, the Ombudsman suggests that the Commission improves how it publishes on the EASE portal documents disclosed in the context of public access requests. This implies publishing those documents with clear titles that include sufficient information; adding relevant keywords to facilitate a search for documents; or even adding the subject of the access request under which access was granted. Clear guidance on drafting titles for all those involved in dealing with public access requests could be useful to this end.

Recommendation



On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendation to the Commission:

The systemic and significant delays in processing requests for public access to documents amount to maladministration. The European Commission should correct this situation as a matter of priority.

The Commission will be informed of this recommendation. In accordance with Article 4(2) of the Statute of the European Ombudsman, the Commission shall send a detailed opinion by 26 June 2023.

Moreover, the Ombudsman makes the following suggestions for improvement to the Commission.

Suggestions for improvement

- 1. Considering the increasing number of confirmatory requests and the fact that the Commission does not meet the prescribed time limit in the vast majority of cases, the Commission should dedicate more resources to dealing with confirmatory requests.**
- 2. At the outset of the procedure, following the registration of a request, the Commission should verify whether external consultation will be necessary and, if so, launch that process in a timely way.**
- 3. Where necessary, the Commission should seek to obtain clarifications from requesters within days of the request being registered.**
- 4. The Commission should engage with requesters openly and constructively at all stages, and ensure they are provided with all necessary information that may enable them to clarify their requests (for example by providing a list of documents that potentially fall within the scope of the request).**
- 5. For confirmatory applications submitted where the Commission has failed to take an initial decision within the prescribed time limits, the Commission should end its practice of calling its decision on the confirmatory application an initial decision.**
- 6. The Commission should continue anticipating policy areas/topics that may generate particular public interest, and ensure proactive transparency in relation to these policy areas/topics, such as by considering in advance what documents should be made public and publishing such information in user-friendly and accessible formats, for example on dedicated webpages.**

- 7. Documents disclosed in the context of public access requests should be published**



and easy to find on the Electronic Access to Commission Documents' Portal (EASE). This implies having clear titles that have sufficient information. Guidance on drafting clear titles could be made available to all those involved in dealing with public access requests.

Emily O'Reilly European Ombudsman

Strasbourg, 24/03/2023

[1] Available at:

https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.253.01.0001.01.ENG&toc=OJ%3AL%3
[Link]

[2] The right to access documents held by the EU institutions is enshrined in Article 15 of the Treaty on the Functioning of the European Union (

https://eur-lex.europa.eu/eli/treaty/tfeu_2016/art_15/oj [Link]) and also recognised in Article 42 of the Charter of fundamental Rights of the EU (https://eur-lex.europa.eu/eli/treaty/char_2012/oj [Link]).

[3] Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents: <https://eur-lex.europa.eu/eli/reg/2001/1049/oj> [Link].

[4] 2186/2022/SF

[5] 187/2022/LDS

[6] 2022/777/ABZ

[7] 790/2021/MIG

[8] 129/2019/MIG

[9] 1896/2021/MIG

[10] 1420/2021/DL

[11] 2206/2021/MIG

[12] The Commission's reply is available here:

<https://www.ombudsman.europa.eu/en/doc/correspondence/en/167660> [Link]



[13] The 'Electronic Access to Commission Documents' Portal (EASE) through which requests for public access to documents can be made has since been launched and is available at: <https://ec.europa.eu/transparency/documents-request/home> [Link].

[14] The meeting report is available here: <https://www.ombudsman.europa.eu/en/doc/inspection-report/en/167659> [Link]

[15] According to the Commission's reply to the Ombudsman, in 6% of all cases, the Commission issued a decision within 31-40 working days; in 4% the cases, the Commission issued a decision within 41-60 working days; in 5% of cases, the Commission issued a decision after more than 60 working days.

[16] According to the Commission's reply to the Ombudsman, in 9% of all cases, the Commission issued a decision within 31-40 working days; in 13% of cases, the Commission issued a decision within 41-60 working days; in 62% of cases, the Commission issued a decision after more than 60 working days.

[17] In accordance with Article 6(3) of Regulation 1049/2001.

[18] According to the Commission's 2021 Report on the application of Regulation 1049/2001, out of the 4296 initial replies where a confirmatory application was warranted (either because only partial access was granted, or access was refused entirely, or because the Commission stated that no documents were held), 355 cases were pursued. The Commission's reports and annexes are available at: https://commission.europa.eu/publications/annual-reports-commission-application-regulation-10492001_en [Link].

[19] See for example the list of cases in paragraph 3 above.