

## Decision of the European Ombudsman closing her inquiry into complaint 1454/2012/ANA against the European Commission

Decision

**Case** 1454/2012/ANA - **Opened on** 26/07/2012 - **Decision on** 17/12/2013 - **Institutions concerned** European Commission ( No maladministration found ) | European Commission ( No further inquiries justified ) |

### The background to the complaint

1. The present complaint concerns access to documents and, more specifically, access to a Commission document entitled " *Discussion Note: Control of non-EU investment in EU networks* " (hereinafter, 'the Discussion Note') and to any connected ancillary documents. The complainant is an academic who carries out research in the field of the EU policy concerning natural gas.

2. On 24 February 2012, the complainant made an initial application for access to the Discussion Note and to any connected ancillary documents involving discussions within the Commission about the so-called 'third-party clause' prior to the publication of the Commission's legislative proposal of 19 September 2007 [1] amending the directive on the internal market in natural gas [2] . The 'third-party clause' concerns the rules on ownership of natural gas undertakings in the EU by non-EU countries set out in the Directive [3] . On 16 March 2012, the Commission informed the complainant that, in line with Regulation 1049/2001 [4] , it would require additional time to decide on the complainant's request.

3. In its reply of 4 April 2012, the Commission informed the complainant that the Discussion Note falls within the scope of exceptions under Regulation 1049/2001, namely Article 4(3), second subparagraph ('opinions for internal use') and Article 4(1)(a), third indent ('protection of the public interest as regards international relations') and could therefore not be made available to him. The Commission added that the complainant's request " *does not contain any element relating to an overriding public interest justifying disclosure of the document concerned* ". The Commission concluded that partial access to the document was not possible because the entire document was covered by the aforementioned exceptions.

4. On 5 April 2012, the complainant made a confirmatory application. In his letter, the complainant contested the grounds on which access to the requested documents was denied.



First, the complainant contended that there is a clear public interest in access in order to facilitate the production of high quality research which can be used to inform the EU's policymaking and decision-making processes, while also increasing public understanding of these complex policy issues. The complainant added that the information in the Discussion Note and any ancillary documents would allow him to clarify why the Commission included the 'third-party clause' in its legislative proposal for the amendment of the Directive [5] , what policy options were considered, and why this particular option was chosen. Second, the complainant disagreed with the Commission's statement that the documents contain sensitive information in relation to the EU's international relations. The complainant informed the Commission that he had seen a copy of the Discussion Note and some ancillary documents and that he was convinced that they contain no such information. Third, the complainant argued that the Commission's argument that disclosure would seriously undermine its decision-making process as regards this sensitive political issue was also unfounded as disclosing these documents would not reveal any sensitive information about the Commission's decision-making process.

5. In a letter of 3 May 2012, the Commission informed the complainant that it would be unable to meet the deadline to reply to his confirmatory application which was due to expire on that day. The Commission added that, on the basis of Article 8(2) of Regulation 1049/2001, it extended this deadline by 15 working days to 30 May 2012.

6. By letter of 30 May 2012, the Commission informed the complainant that it was still not in a position to provide him with its final position. The Commission stressed that it was doing its utmost to provide him with a final reply as soon as possible and apologised for any inconvenience caused.

7. On 26 June 2012, the complainant e-mailed the Commission requesting an update and stressed that if no response was forthcoming he would be forced to take this matter up with the European Ombudsman.

8. Having received no reply, on 11 July 2012, the complainant lodged the present complaint with the European Ombudsman.

## **The subject matter of the inquiry**

9. The Ombudsman opened an inquiry into the following allegations and claims made by the complainant.

### **Allegations:**

1) The Commission failed to process the complainant's confirmatory application for access to the requested documents within the periods foreseen in Regulation 1049/2001.

2) The Commission failed to provide satisfactory reasons for its refusal to grant access to the



requested documents.

## Claims:

- 1) The Commission should rapidly process the complainant's confirmatory application.
- 2) The Commission should grant access to the requested documents or provide satisfactory reasons for refusing to do so.

## The inquiry

**10.** On 26 July 2012, the Ombudsman asked the Commission to submit an opinion on the complainant's allegations and claims. In the opening letter, the Ombudsman also informed the Commission that the Ombudsman's services would carry out an inspection of the Commission's file.

**11.** On 20 September 2012, the Ombudsman's representatives carried out an inspection of the file at the Commission's premises. The Commission's file contained two documents: the Discussion Note and a note from the Commission's Legal Service on 'third country investments in Community undertakings' (hereinafter, 'the Legal Service Note'). On 10 October 2012, the report on the inspection was sent to the complainant with an invitation to submit observations. The complainant did not submit any observations.

**12.** On 7 December 2012, the Commission sent its opinion which was forwarded to the complainant for observations by 31 January 2013. The complainant sent his observations on 12 October 2013.

## The Ombudsman's analysis and conclusions

### Preliminary remarks

**13.** At the outset, it should be pointed out that the Commission replied to the complainant's confirmatory application on 14 May 2013 (hereinafter, 'the decision of 14 May 2013'). In its decision of 14 May 2013, the Commission informed the complainant that, following a detailed search, it had identified 22 documents as falling within the scope of his request and enclosed a list of these documents. The Commission noted that a number of documents deal with additional subjects and, therefore, only the relevant parts thereof, namely those that deal with the subject-matter identified in the complainant's request, were included in the examination. The Commission granted (a) full access to documents no. 5, 7, 10, 12, 14 and 19. The Commission (b) denied access to documents no. 2, 3 (the Legal Service Note), 11, 18, 21 and granted (c) partial access to documents no. 1 (the Discussion Note), 4, 6, 8, 9, 13, 15, 16, 17, 20 and 22.



As regards (b) and (c), the Commission based its refusal on the exceptions laid down in Regulation 1049/2001 and, in particular, Article 4(2), second indent ('protection of legal advice'), Article 4(1)(b) ('privacy and the integrity of the individual') and Article 4(1)(a), third indent ('protection of the public interest as regards international relations').

**14.** The Ombudsman notes that the Commission adopted its decision of 14 May 2013 after the present inquiry was opened and after the Commission sent its opinion on the complaint. At the opening stage, the object of the inquiry was the Commission's failure to reply within the statutory time-limits which, according to Article 8(3) of Regulation 1049/2001 [6] , amounted to an implied refusal. The Ombudsman notes that, during her inquiry, the Commission's implied refusal has been replaced by the decision of 14 May 2013 and that the complainant had the opportunity to comment thereon in his observations.

**15.** In light of this and in line with the Court of Justice of the European Union (CJEU)'s settled case-law on the matter [7] , the Ombudsman considers that it is in the interest of sound administration and consistent with the requirements of procedural economy to examine the complainant's allegations and claims in light of the Commission's decision of 14 May 2013.

## **A. Allegation that the Commission failed to process the complainant's confirmatory application for access within the periods foreseen in Regulation 1049/2001 and the related claim**

### **Arguments presented to the Ombudsman**

**16.** In his complaint, the complainant alleged that the Commission had not responded to his confirmatory application within the timeframe set out in Regulation 1049/2001.

**17.** In its opinion, the Commission acknowledged that it had not adopted a decision on the complainant's confirmatory application within the time limits prescribed by Regulation 1049/2001 and apologised for the delay. However, the Commission observed that the complainant's request concerned a potentially large number of documents, which, despite being several years old, nevertheless deal with issues of particular political sensitivity in the EU's relations with third countries. The Commission argued that the retrieval and examination of these documents required significant administrative resources as well as coordination between several internal services.

**18.** In its decision of 14 May 2013, the Commission reiterated the statements made in its opinion and apologised for the time taken to examine the complainant's request.

**19.** In his observations, the complainant did not explicitly address the issue of the Commission's delay.



## **The Ombudsman's assessment**

**20.** The Ombudsman notes that the complainant made his confirmatory application on 5 April 2012 and that the Commission responded to it on 14 May 2013, that is, more than a year later. It is manifest that this delay is not in line with the time-limits foreseen in Regulation 1049/2001. The Commission's arguments (i) that the complainant's request concerned a potentially large number of documents and (ii) that the retrieval and examination of these documents required a significant effort are unconvincing. First, the Commission identified 22 documents as being covered by the complainant's request. This is not a particularly high number. Second, it was only in its decision of 14 May 2013 that the Commission referred to what it considered to be the large number of documents concerned. However, Article 8(2) of Regulation 1049/2001 explicitly provides for the possibility to extend the period of 15 working days foreseen for the processing of confirmatory applications by another 15 working days where the application refers to 'a very high number of documents'. Given that the Commission made use of this possibility in the present case, it cannot justify the further delay of nearly an entire year by invoking the same reason.

**21.** At the same time, however, the Ombudsman notes that, both in its opinion and in its decision of 14 May 2013, the Commission apologised for the delay. She further notes that the complainant did not revert to the issue of delay in his observations. In these circumstances, the Ombudsman sees no useful purpose in pursuing this issue further. The Ombudsman thus finds that no further inquiries are justified in respect of the complainant's first allegation and related claim. The Ombudsman recalls, however, that she has recently opened an own-initiative inquiry aimed at ascertaining how the Commission, the Council and the European Parliament comply with the deadlines set out in Regulation 1049/2001 [8] .

## **B. Allegation that the Commission failed to provide satisfactory reasons for its refusal to grant access to the requested documents and the related claim**

### **Arguments presented to the Ombudsman**

**22.** As noted above, in its decision of 14 May 2013, the Commission based its refusal not to grant full access to the requested documents on the exceptions laid down in Regulation 1049/2001 and, in particular, (i) Article 4(2), second indent ('protection of legal advice'), (ii) Article 4(1)(b) ('privacy and the integrity of the individual') and (ii) Article 4(1)(a), third indent ('protection of the public interest as regards international relations').

**23.** As regards (i) the exception concerning the protection of legal advice, the Commission argued, with reference to the judgment of the Court of Justice of the European Union ('CJEU') in *Turco* [9] , that it should establish, first, whether the requested documents relate to legal advice, second, whether disclosure of the document would undermine the protection of that advice and



third, whether there is any overriding public interest justifying disclosure.

**24.** According to the Commission, document no. 3 (the Legal Service Note) was the Commission's Legal Service's opinion on whether the EU may restrict investment or establishment in the energy sector for undertakings from third countries and for their subsidiaries. In the Commission's view, this document was covered by the legal advice exception in its entirety [10] .

**25.** To justify its refusal, the Commission contended that control of third-country investments in the EU is an issue of political significance, both within the Member States and in relations with third countries. Disclosure of the document would thus be highly detrimental to the Commission's interest in seeking and obtaining frank, objective and comprehensive legal advice in the future in these matters. The Commission underscored that, while the deadline for the transposition of the Directive had expired in March 2011, a number of Member States failed to implement it fully and were subject to infringement proceedings. Furthermore, the Commission emphasised that the legal opinion concerned was given not in the context of a legislative process, but took a considerably wider perspective, concerning the EU and Member State obligations stemming from a variety of international law instruments, from the General Agreement on Trade in Services (GATS) to the OECD Code of Liberalization of Capital Movements.

**26.** Moreover, the Commission argued that the exception concerning the protection of legal advice also applied to sections in several other documents, where the legal considerations set out in the Legal Service Note were either quoted, referred to or commented upon, namely, in documents no. 1, 8, 9, 15, 16 and 22.

**27.** As regards the existence of an overriding public interest in disclosure, the Commission stated that it welcomes and understands the public interest in a transparent debate on its policies. However, it argued at the same time that internal documents, especially legal opinions concerning considerations that remain relevant, should not be made public, at least for a certain period of time, in order to allow the Legal Service to express its opinions freely and to allow the Commission to prepare its decisions having at its disposal all the elements it requires.

**28.** As regards (ii) the exception relating to the privacy and the integrity of the individual, the Commission argued that the deletions in document no. 6 (Minutes of Meeting on the rights of third country companies and energy networks) concern personal data of individuals, who took part in that meeting. The Commission referred to the relevant case-law of the CJEU [11] , according to which the impact on the privacy and the integrity of the individual must always be examined and assessed on the basis of the legislation of the Union concerning the protection of personal data, and in particular with Regulation No 45/2001 [12] . The Commission explained how it applied the said Regulation and, on that basis, argued that the complainant did not establish the necessity of having these data transmitted to him. Indeed, the Commission stated that the complainant does not appear to have an interest in obtaining any such personal data.

**29.** Finally, as regards (iii) the protection of the public interest as regards international relations,



the Commission pointed out that, by its very nature, the complainant's request for access concerns issues that are subject to discussions with third countries, as they all relate to the 'third-country clause' of the Directive. The Commission stressed that, while the Directive had been adopted, its transposition process was not complete. Indeed, given the significant economic interests as well as the fact that most gas suppliers are based in third countries, the subject matter of the complainant's request remained debated in various international fora, both by the EU and by Member States. Moreover, the Commission argued that this issue is also an important element of discussions in the on-going EU-Russia energy dialogue.

**30.** In this respect, when assessing the possibility of granting access to the documents requested, the Commission took into account the public interest as regards the EU's and Member States' relations with third countries. The Commission emphasised that it remains important to protect a certain level of confidentiality of documents containing internal discussions on various options available to the EU and the Member States in negotiations with third countries and their legal implications in order to protect their margin of manoeuvre in relations with these countries. It highlighted the importance of the issue particularly regarding discussions with Russia, as the interests of the EU and that country may diverge and, in many cases, may even be contradictory. On this basis, given that the requested documents contain an analysis of legal and political considerations with respect to the control of the third country investments in the EU transmission networks, the Commission argued that their publication would clearly undermine the public interest as regards the EU's international relations, as it would put into the public domain not only options examined but also their perceived weak and strong points from the EU's legal and political perspective.

**31.** Consequently, the Commission concluded that access must be refused to the relevant parts of the requested documents on the basis of the exception relating to the protection of the public interest as regards international relations enshrined in Article 4(l)(a), third indent of Regulation 1049/2001. The Commission explained that this exception concerned the deletions in documents no. 1, 2, 4, 8, 9, 11, 13, 15, 16, 18, 20, 21 and 22.

**32.** In his observations, the complainant made the preliminary remark that, having examined the decision of 14 May 2013 and the disclosed documents, he considered that the Commission had responded to his request. However, he put forward certain concerns regarding the Commission's response and asked the Ombudsman to take them into account in determining whether the Commission's decision is fully justified.

**33.** Specifically, the complainant argued that, as regards (i) the exception concerning the protection of legal advice, he would be happy to accept the Commission's decision not to disclose certain documents or parts thereof, provided that the Ombudsman is satisfied that the requirements set out in the legislation on access to documents are met.

**34.** The complainant noted that the same applies as regards (ii) the exception relating to the privacy and the integrity of the individual. The complainant agreed with the Commission that he has no interest in obtaining personal data, provided that the Ombudsman is satisfied that the deletions made by the Commission meet the requirements set out in the legislation on access to





documents.

**35.** As regards (iii) the exception concerning the protection of the public interest as regards international relations, the complainant argued that he respects the decision to delete information that could genuinely undermine the protection of the EU's international relations. However, he expressed concern about the manner in which the Commission had proceeded in the case of his request. In several documents, large sections of text had been deleted, instead of deleting key sentences which make explicit reference to particular individuals, companies, EU Member States or third countries. In particular, the complainant urged the Ombudsman to check whether the Commission was justified in refusing access under this exception to documents 2, 11, 18 and 21 in their entirety.

**36.** Moreover, the complainant argued that, in its decision of 14 May 2013, the Commission gave a rather general explanation as to how it applied the exceptions to specific deletions. The complainant observed that the Commission's decision indicated why sections of documents were deleted by referring to document numbers. In some cases (documents 1, 8, 9, 15, 16, 22), both the exception relating to the protection of legal advice and the exception concerning the protection of the public interest as regards international relations' exceptions were found to apply, without, however, making it clear in the specific deletions concerned which provision is meant to apply. The complainant took the view that, in the interests of transparency, the Commission should provide clear indications as to why each individual section was deleted or give reasons why this is not possible.

## **The Ombudsman's assessment**

### **Preliminary remarks**

**37.** At the outset, it should be pointed out that, in his observations, the complainant confirmed that the Commission had responded to his request. The Ombudsman understands that the complainant is generally satisfied with the content of the Commission's decision of 14 May 2013 and the documents that were eventually disclosed to him. At the same time, however, the complainant asked the Ombudsman to ensure that the Commission's approach was in line with the applicable case-law as regards the limits it set when providing access to the requested documents.

**38.** On this issue, it is necessary to point out that the Ombudsman is in a position to proceed to a final assessment of the complainant's second allegation and the related claim only as regards those documents that her services were able to examine on the occasion of the inspection carried out in the present case, namely, documents no. 1 and 3. At the time when this inspection took place, the Commission had not yet identified documents no. 2, 11, 18, 21, to which it later denied access, and documents no. 4, 6, 8, 9, 13, 15, 16, 17, 20 and 22, to which it subsequently granted partial access, as being covered by the complainant's application. In order to determine whether the Commission's position as regards these documents is correct, a





further inspection would have to be carried out. Such an inspection would further extend the duration of an inquiry that has already been delayed by the fact that (i) the Commission decided on the complainant's confirmatory application only in May 2013 and that (ii) the complainant was consequently only able to provide observations as regards the substance of the Commission's position after having examined this decision.

**39.** On the occasion of a telephone conversation that took place on 28 November 2013, the complainant informed the Ombudsman's services that he agreed that it would make sense for the Ombudsman to limit her examination of his present complaint to the examination of his allegation and claim as regards documents no. 1 and 3 and to examine the issue of access to the remaining documents within the framework of a new inquiry.

**40.** The present decision therefore only concerns the issue whether the Commission's decision of 14 May 2013 was correct in so far as documents no. 1 and 3 are concerned.

## Assessment

**41.** The Ombudsman recalls that transparency is an essential aspect of good democratic governance. Transparency makes it possible for citizens to scrutinise the activities of public authorities, evaluate their performance, and call them to account. As such, openness and public access to documents form an essential part of the institutional checks and balances that mediate the exercise of public power and promote accountability. Transparency also facilitates citizens' participation in public activities by ensuring access to information and the means to take part in the process of governance to which they are subject [13] .

**42.** The quest for transparency of the European Union institutions finds specific expression in the fundamental right of access to documents, enshrined in Article 42 of the Charter of Fundamental Rights of the European Union. This fundamental right is embodied in the Union legal order by Regulation 1049/2001 [14] .

**43.** The Ombudsman recalls that the right of public access to documents is related to the democratic nature of the institutions [15] and that the existence of the right in principle is nonetheless subject to certain limitations based on grounds of public or private interest [16] . It follows that access to documents may be refused if this refusal is based on one of the exceptions laid down in Article 4 of Regulation 1049/2001 [17] . In view of the objectives pursued by Regulation 1049/2001, in particular the aim of ensuring the widest possible access to documents held by the institutions, any exceptions to this principle have to be interpreted strictly [18] .

**44.** Mindful of the above observations setting out the contours of her analysis, the Ombudsman proceeds to the examination of the complainant's second allegation.

## Exception concerning the protection of legal advice



**45.** The Ombudsman recalls that, as regards the exception concerning the protection of legal advice, which the Commission invoked to refuse access to document no. 3 in its entirety and to provide only partial access to document no. 1, the application of this exception is only justified if the Commission has previously assessed whether access to the document concerned would specifically and actually undermine the protected interest [19] and, if the reply is in the affirmative, whether there was no overriding public interest in disclosure. However, the risk of a protected interest being undermined must be reasonably foreseeable and not purely hypothetical [20] .

**46.** The Ombudsman notes that document no. 3 (the Legal Service Note) contains detailed and comprehensive legal advice concerning restrictions on third country investments in EU energy undertakings in light of the EU and Member States' international commitments under several bilateral or multilateral agreements. Moreover, it provides a detailed review of possible national and EU measures concerning such restrictions and the legal and political repercussions of the different options.

**47.** On the basis of a careful examination of the document in question, the Ombudsman takes the view that it falls within the scope of the invoked exception. The Ombudsman also considers that disclosure of this document would specifically undermine the Commission's interest in obtaining frank, objective and comprehensive advice from its Legal Service, within the meaning of the Court's judgment in *Turco* . [21] This conclusion is based on the following reasons. First, it is clear that the relevant document does not merely cover the third-country clause for the purposes of the legislative procedure that led to the adoption of the Directive but addresses wider issues. Second, as the Commission convincingly argued, the legal advice contained in document no. 3 remains politically sensitive, in particular in relation to the EU's and Member States' international relations both in multilateral and bilateral fora. Disclosure of the legal advice given in this context would thus most certainly impair the Commission's ability to take decisions on the ownership by non-EU countries of natural gas undertakings in the EU after examination of all the available options, including those that are politically controversial.

**48.** It is true that the Commission recognised that the need to protect document no. 3 may only apply for a certain period of time. However, the Ombudsman considers that, at the relevant point in time, that is, on the date when the Commission decided on the complainant's confirmatory application for access, the Commission was justified to rely on the exception concerning the protection of legal advice. Moreover, in view of the character of document no. 3, the Ombudsman finds that the exception relating to the protection of legal advice applies to the entire document and therefore the Commission was justified in not providing partial access either. It follows that the Commission gave satisfactory reasons for its refusal to grant access to the relevant document.

**49.** The question whether the Commission was justified to provide only partial access to document no. 1 (the Discussion Note) on the ground that the legal considerations set out in the Legal Service Note were either quoted, referred to or commented upon, the Ombudsman takes the view that the answer should be in the affirmative. This is because a careful examination of



document no. 1 demonstrates that the deleted sections refer to and reproduce the advice of the Legal Service in its Note. It also follows from this consideration that the extent of the deleted sections was justified.

## Exception relating to the protection of the public interest as regards international relations

**50.** As regards the exception relating to the protection of the public interest as regards international relations, the Ombudsman recalls that the CJEU has held that an institution " *must be recognised as enjoying a broad discretion for the purpose of determining whether the disclosure of documents relating to the fields covered by those exceptions could undermine the public interest* ", given that " *the particularly sensitive and essential nature of the interests protected by Article 4(1)(a) of Regulation No 1049/2001, combined with the fact that access must be refused by the institution, under that provision, if disclosure of a document to the public would undermine those interests, confers on the decision ... a complex and delicate nature which calls for the exercise of particular care. Such a decision requires, therefore, a margin of appreciation* " [22] .

**51.** Given that, according to the relevant case-law, the EU institutions enjoy a margin of discretion when they invoke the exception here in question, the scope of the Ombudsman's review is limited to verifying whether the procedural rules have been complied with and whether the institution gave plausible and sufficiently concrete explanations for its decision [23] .

**52.** In the case at hand, document no. 1 (the Discussion Note) falls within the scope of the exception concerning the protection of the public interest as regards international relations in that it directly concerns the EU's and Member States' international relations. In fact, this document examines the legal options, the political feasibility of the proposed options as well as the advantages and disadvantages of those options. On the basis of a careful examination of the document in question, the Ombudsman considers that disclosure of those parts that have not been disclosed might have seriously harmed the interests protected by the exception laid down in Article 4(1)(a), third indent of Regulation 1049/2001. Again on the basis of the inspection of the document at issue, the Ombudsman considers the extent of the deletions made by the Commission in the disclosed document to be justified. It follows that the Commission's approach was reasonable in this regard.

**53.** In light of the above considerations, the Ombudsman finds that there has been no maladministration by the Commission in relation to the complainant's second allegation and the related claim in relation to documents no. 1 and 3.

## C. Conclusions

On the basis of her inquiry into this complaint, the Ombudsman closes it with the following conclusions:



**No further inquiries are justified into the complainant's first allegation and related claim.**

**There has been no maladministration by the Commission in relation to the complainant's second allegation and related claim concerning documents no. 1 and 3.**

**As for the Commission's decision on the complainant's request for access to documents no. 2, 4, 6, 8, 9, 11, 13, 15, 16, 17, 18, 20, 21 and 22, it will be addressed in the context of a new inquiry.**

The complainant and the Commission will be informed of this decision.

Emily O'Reilly

Done in Strasbourg on 17 December 2013

[1] Proposal for a Directive of the European Parliament and of the Council amending Directive 2003/55/EC concerning common rules for the internal market in natural gas, COM(2007) 529 final, Brussels, 19.9.2007.

[2] The Directive currently in place is Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC, OJ 2009 L 211, p. 94 (hereinafter, the 'Directive')

[3] In an e-mail dated 26 July 2012, the complainant informed the Ombudsman that the third-party clause can be found in Article 11 ('Certification in relation to third countries') of the Internal Market in Natural Gas Directive.

[4] Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ 2001 L 145, p. 43.

[5] Above footnote 1.

[6] "*Failure by the institution to reply within the prescribed time limit shall be considered as a negative reply and entitle the applicant to institute court proceedings against the institution and/or make a complaint to the Ombudsman, under the relevant provisions of the EC Treaty .*"

[7] Case T-111/11 *ClientEarth v Commission* , judgment of 13 September 2013, not yet reported in the European Court Reports, at paragraph 36; Case T-111/00 *British American Tobacco International (Investments) v Commission* [2001] ECR II-2997, at paragraph 22.

[8] OI/6/2013/KM.



[9] *Joined Cases C-39/05 P and C-52/05 P Kingdom of Sweden and Maurizio Turco v Council of the European Union* [2008] Page ECR I-4723, at paragraphs 37-44.

[10] *Sweden and Turco v Council* , at paragraph 42.

[11] *Case C-28/08 P Commission v Bavarian Lager* [2010] ECR I-6051.

[12] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000

on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, OJ 2001, L 8, p. 1.

[13] Decision of the European Ombudsman closing the inquiry into complaint 1649/2012/RA against the Council of the European Union, available at:

<http://www.ombudsman.europa.eu/cases/decision.faces/en/51650/html.bookmark> [Link]

[14] *Joined Cases C-514/07 P, C-528/07 P and C-532/07 P Sweden v API and Commission* [2010] ECR I-8533, paragraph 69; *Case C-139/07 P Commission v Technische Glaswerke Ilmenau* [2010] ECR I-5885, paragraph 51.

[15] *Sweden v API and Commission* , at paragraph 68; *Joined Cases C-39/05 P and C-52/05 P Sweden and Turco v Council* [2008] ECR I-4723, at paragraph 34.

[16] *Case C-266/05 P Sison v Council* [2007] ECR I-1233, at paragraph 62; *Technische Glaswerke* , at paragraph 53.

[17] *Case C-64/05 Sweden v Commission* [2007] ECR I-11389, paragraph 57; *Sison v Council* , at paragraph 62.

[18] *Sweden v API and Commission* , at paragraph 73; *Sweden v Commission* , at paragraph 66; *Sison v Council* , at paragraph 63.

[19] *Sweden v API and Commission* , at paragraph 72.

[20] *Case T-2/03 Verein für Konsumenteninformation v Commission* [2005] ECR II-1121, at paragraph 69.

[21] *Sweden and Turco v Council* , at paragraph 42.

[22] *Sison v Council* , at paragraphs 34 to 36; *Case T-362/08 IFAW Internationaler Tierschutz-Fonds GmbH v Commission* [2010] ECR I-669, at paragraph 104.

[23] See, for instance, Decision of the European Ombudsman closing the inquiry into complaint



1633/2008/DK against the European Commission, available at  
<http://www.ombudsman.europa.eu/cases/decision.faces/en/10577/html.bookmark> [Link]