

## Decision of the European Ombudsman closing the inquiry into complaint 705/2012/BEH against the European Commission

Decision

**Case** 705/2012/BEH - **Opened on** 27/04/2012 - **Decision on** 31/01/2014 - **Institution concerned** European Commission ( Settled by the institution ) |

The complainant is a German journalist. In November 2011, he asked the Commission for access to documents concerning the period during which Greece was admitted into the Eurozone (1 January 1999 to 30 June 2000). The Commission granted access to certain documents. It also informed the complainant that a significant research effort would be needed to identify and locate any further documents that might be covered by the complainant's request, as these documents had already been archived. It therefore proposed to send its final reply by the end of February 2012 at the latest. The complainant accepted this proposal. However, by June 2012 the complainant had still not received any such reply. He therefore turned to the Ombudsman, claiming that the Commission should properly deal with his request and grant access to the requested documents.

In its submissions to the Ombudsman, the Commission underscored the complexity of the complainant's request, given that the relevant documents date back to a period where no electronic registering and scanning system existed within the Commission. Documents dating from the relevant period were stored in several hundred boxes, which needed to be searched one by one. The Commission acknowledged that the way it had handled the complainant's request was unsatisfactory. It stressed, however, that this was not due to any unwillingness on its part.

The Ombudsman proceeded to an inspection of the Commission's file. It emerged that the Commission had ceased to actively deal with the request in early 2012 and did not resume its examination before May 2013 (when the Ombudsman had asked it for further information about the case), without being able to put forward any specific or convincing reasons explaining its inactivity.

However, the Ombudsman noted that, following the Ombudsman's request for further information, the Commission resumed processing the complainant's access request and made vigorous and structured efforts, involving all Commission services concerned, to identify the documents covered by the complainant's request. These efforts led to the identification of some 140 documents and their subsequent full disclosure. The complainant declared himself satisfied



with the result achieved by the Ombudsman. The Ombudsman therefore concluded that the Commission had settled the case to the complainant's satisfaction.

## The background to the complaint

1. The complainant is a German journalist. On 8 November 2011, he asked the European Commission for access to the following documents:

*" All documents from 1 January 1999 to 30 June 2000 regarding the entry of Greece into the euro zone (including - without excluding any other documents - all documents on the Greek convergence reports from 1998 and 2000 in the mentioned period of time, all kind of preparatory documents on the issue of the Greek euro entry, letters and e-mails between the Commission, the Greek authorities and the authorities of other member states) from the following Commission services:*

- DG Ecfín [1]
- DG ESTAT (Eurostat) [2]
- The cabinet of the Commissioner responsible for DG Ecfín and DG ESTAT
- The cabinet of the President of the Commission
- The Secretariat General "

2. On 9 November 2011, the Commission acknowledged receipt of the complainant's request for access.

3. DG ECFIN and DG ESTAT subsequently disclosed certain documents, which, according to the complainant, partly corresponded to his access request.

4. As regards the requested documents from the cabinet of the President of the Commission and the Commission's Secretariat-General, the Commission told the complainant on 30 November 2011 that, due to their age, most of these documents had been transferred to historical archives and were spread over a multitude of files. Therefore the complainant's request would require significant research work. After that the Commission would be able to establish the number of documents concerned and the amount of work needed to examine them with a view to possible disclosure. The Commission stated that *" we might not be able to finalise the reply to your request within the deadlines foreseen by Article 7 of Regulation 1049/2001 [3] , even after extension according to its third paragraph "*. Thus, *" by means of a proposal for a fair solution under Article 6(3) of Regulation 1049/2001 "*, the Commission proposed to prepare its reply *" as quickly as possible, aiming at a reply by 29 February 2012 at the latest "*.

5. The complainant accepted this proposal.

6. On 28 March 2012, the complainant sent a further e-mail to the Commission asking for the requested documents immediately.



7. The Commission did not reply and the complainant turned to the Ombudsman on 2 April 2012.

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

8. The Ombudsman opened an inquiry into the following allegation and claim.

### **Allegation**

The Commission failed properly to handle the complainant's request for access to documents dated 8 November 2011.

### **Claim**

The Commission should properly deal with the complainant's request for access and grant access to the requested documents.

## **The inquiry**

9. On 27 April 2012, the Ombudsman asked the Commission for an opinion on the allegation and claim included in the inquiry. The Commission's opinion was forwarded to the complainant for observations, which he sent on 28 September 2012.

10. Having analysed the opinion and the observations, the Ombudsman requested further information from the Commission. In addition, the Ombudsman inspected the Commission's files on 7 and 8 November 2013. Copies of the inspection report were sent to the Commission and the complainant who was invited to submit observations. The Commission's reply to the Ombudsman's request for further information was also sent to the complainant for observations by 30 November 2013. No observations were received but on 23 January 2014, the complainant discussed developments with the Ombudsman's services by telephone.

## **The Ombudsman's analysis and conclusions**

### **Preliminary remarks**

11. The complainant's allegation and claim will be considered together.



## A. The complainant's allegation and claim

### Arguments presented to the Ombudsman

12. The Commission submitted that the complainant's request for access was split across different services and that the complainant was informed that he would therefore receive separate replies from each service concerned.

13. The Commission pointed out that the complainant received additional documents from DG ECFIN after the Ombudsman's request for further information. Given that the complainant did not react to DG ECFIN's reply, the Commission stated that it assumed that the complainant was satisfied with that DG's reply. The Commission submitted that it therefore considered the present complaint to cover "*documents from the Cabinets of the President and of the Commissioner responsible for DG Ecfm and Eurostat as well as documents of the Secretariat-General.*"

14. The Commission then noted that the Secretariat-General told the complainant on 30 November 2011 that his request covered archived documents which were not located in a single file. The Commission said that "*until now*" no relevant documents originating from the Secretariat-General or the Cabinets of the President and of the Commissioner responsible for DG ECFIN and DG ESTAT had been identified. While the Commission stated that this did not mean that no such documents existed, it emphasised that it had given the complainant all the documents that had been found. The Commission conceded that it did not tell the complainant that no further documents could be located and apologised. At the same time, the Commission pointed out that it is willing to pursue its searches in the paper archives so as to identify relevant documents. However, "*taking into account the difficulty of searching in these archives, it is not possible to give a deadline by which a final reply could be given to the complainant.*"

15. The complainant observed that the Commission took almost five months to produce an opinion that he considered inadequate and which did not resolve his complaint.

16. As regards documents from DG ECFIN, the complainant confirmed that the Commission granted him access to certain further documents, mostly briefing and speaking notes, on 10 May 2012. With the exception of one document, however, none of the documents disclosed predated the Commission's finding of 3 May 2000 that Greece meets the convergence criteria, while such documents must clearly exist. The complainant pointed out that both DG ESTAT and the German Chancellery had provided him with a number of documents from DG ECFIN dating from the relevant period of time. There could therefore be no doubt that DG ECFIN held a number of documents relevant to his access request which it did not disclose to him.

17. The complainant also pointed out that DG ESTAT had disclosed a relevant document from the Cabinet of the Commissioner then in charge of DG ECFIN and DG ESTAT. The complainant said it would be inconceivable if there were no similar documents originating from the Cabinet of the then President of the Commission and from the Secretariat-General.



**18.** The complainant noted that Regulation 1049/2001 requires institutions to keep a public register of documents. While the Commission provides for a search engine on its website, this cannot, given the absence of lists of documents and the lack of completeness of the information provided, be considered to be a register, however. The complainant said that he hoped that the Commission had an internal register which allows identifying the documents covered by his request. If the Commission stated that it could not itself identify relevant documents, the complainant asked that he could do so. If not, the Commission would have to explain why not.

**19.** The complainant also said that, if the Commission's claimed inability to retrieve further documents was true, this meant that the Commission either did not have a functioning register or had destroyed a significant number of documents. If this was the case, the Commission should admit so publicly and allow the public and the other EU institutions to react accordingly and insist on an accurate keeping of files.

**20.** The Ombudsman then addressed a request for further information to the Commission, asking why disclosure by DG ECFIN was apparently not complete, and to identify any further relevant documents originating from DG ECFIN. As more than six months had elapsed since the Commission submitted its opinion, the Ombudsman asked to be informed about the Commission's final reply to the complainant.

**21.** The Commission acknowledged that considerable time had elapsed since the complainant's initial access request. The Commission also said that its services "*have been facing real difficulties of a multiple nature to achieve progress in the handling of this very complex request*".

**22.** The Commission explained that the complainant's request had been registered under four different registration numbers reflecting the different responsible services to which the complainant's request referred.

**23.** As regards relevant documents held by DG ESTAT, those were disclosed to the complainant in February 2012.

**24.** Regarding documents from DG ECFIN, the Commission noted that a first disclosure was made in May 2012 which the complainant criticised as incomplete. The Commission emphasised that this had given rise to further efforts by DG ECFIN to locate relevant documents, which were complicated by the fact that relevant documents date back to a period where no electronic registering and scanning system existed within the Commission. Documents dating from the relevant period are stored in several hundred boxes, with only a very global indication of their content, which necessitated a longer search. DG ECFIN also had to search the boxes of the Commissioners in charge of that service at the time. The Commission explained that an inter-service meeting between the Secretariat-General and DG ECFIN had recently been held in order to structure this research and added that a part of the envisaged archives is stored in intermediate stocks at DG ECFIN offices and another part is stored in the Commission's central historical archives.



**25.** With regard to documents from the archives of the cabinet of the then President and the Secretariat-General, the Commission said that a number of documents stored in the archives of President Prodi (who had taken up his duties in September 1999) had been identified. These documents needed to be examined one-by-one by the Secretariat-General's services to see if they met the criteria of the request. The Commission added that, if they did, clearance for their release from the former Head of Cabinet of President Prodi would have to be sought. As regards documents from the archives of the then care-taker President Marin, the same procedures would have to be applied.

**26.** As regards documents from the archives of the Secretariat-General, the Commission described the situation to be similar to that of DG ECFIN.

**27.** The Commission acknowledged that the treatment of the complainants' request remained unsatisfactory. The Commission underlined, however, that this was not due to any unwillingness on the part of its services, but to the complexity of the request. It stressed that it would swiftly complete the work in a way which would allow its services to meet all their other duties.

## The results of the inspection of the Commission's file

**28.** The inspection of the Commission's file showed that the Commission's Secretariat-General was coordinating the handling of the complainant's access request and had, until February 2012, repeatedly been in contact with DG ESTAT and DG ECFIN concerning documents covered by the complainant's access request. Work on the complainant's access request then stopped without any file note explaining why.

**29.** After the Ombudsman's letter to the Commission of 3 May 2013 requesting further information, work on the access request resumed. This led to an 'Action Plan' for the Commission's further handling of the access request (drafted at the Secretary-General's request), which was followed by an 'Intermediate Report' (submitted to the Secretary-General).

**30.** The Commission's representatives present at the inspection pointed out that the Commission had been able to identify roughly 140 documents in total which were covered by the complainant's access request and that a decision concerning disclosure of the documents identified would be taken shortly.

**31.** As far as DG ESTAT was concerned, the Commission's representatives explained that no documents other than those already disclosed to the complainant had been found within that service.

**32.** The complainant did not submit any observations on the Commission's reply to the Ombudsman's request for further information and the inspection report.

**33.** However, in a telephone conversation with the Ombudsman's services on 23 January 2014,



the complainant pointed out that, following the inspection of the Commission's file by the Ombudsman's services, he had been granted full access to the documents requested. He therefore considered that the matter had been settled.

## **The Ombudsman's assessment**

**34.** The Ombudsman acknowledges that the Commission was confronted with a difficult request for access to documents as the complainant's request concerned documents which, due to their age, were not available in an electronic format and were held by a number of Commission services. Dealing with the complainant's request therefore required a research and coordination effort going beyond that usually involved in processing access requests.

**35.** The Ombudsman takes note of the Commission's acknowledgement that its handling of the complainant's request was unsatisfactory. At the same time, she is not convinced that the complexity of the request alone could account for the extent of the delay in processing the complainant's request, as the Commission suggested. In particular, as the inspection of the Commission's file revealed, the Commission ceased to actively deal with the complainant's request at some time in early 2012 and not resumed its examination before May 2013, without the Commission being able to put forward any specific or convincing reasons explaining its inactivity.

**36.** However, the Ombudsman notes that, subsequent to the Ombudsman's letter to the Commission of 3 May 2013, the Commission resumed processing the complainant's access request and made vigorous and structured efforts, involving all Commission services concerned, to identify the documents covered by the complainant's access request. These efforts led to the identification of roughly 140 documents covered by the complainant's request and their subsequent full disclosure. The Ombudsman applauds the steps taken by the Commission to bring the processing of the complainant's access request to a successful end.

**37.** Considering that the Commission has satisfied the complainant's claim, as recognised by the complainant, the Ombudsman concludes that the Commission has settled the case to the complainant's satisfaction.

## **B. Conclusions**

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

**The Commission has settled the case to the complainant's satisfaction.**

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



Emily O'Reilly

Done in Strasbourg on 31 January 2014

[1] DG stands for Directorate-General. DG ECFIN is the Commission's Directorate-General for Economic and Financial Affairs.

[2] Eurostat (DG ESTAT), a Directorate-General of the Commission, is the statistical office of the EU.

[3] Regulation (EC) No 1049/2001/EC 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.