

Commission's refusal to grant access to drafts of the final Impact Assessment Report on the Commission's proposal for a Directive amending the Fuel Quality Directive and to summaries of the draft IARs

Case 709/2015/MDC - Opened on 15/06/2015 - Decision on 04/10/2017 - Institution concerned European Commission (No further inquiries justified) |

Allegation(s)

The Commission wrongly denied access to the eight requested documents.

Supporting arguments put forward by the complainant:

- 1. The Commission wrongly relied on the exception laid down in the first subparagraph of Article 4(3) of Regulation 1049/2001 to refuse the complainant's request for access because that exception only applies where the decision has not been taken by the institution concerned by the request. In this case, a decision has been taken since the Commission has made a legislative proposal to the Council and Parliament to amend the Renewable Energy and Fuel Quality Directives.*
- 2. The Commission did not establish that the disclosure of the requested documents would seriously, specifically and actually undermine its decision-making process and that such a risk is reasonably foreseeable and not just purely hypothetical. The Commission relied on mere general and abstract assertions that are in no way substantiated by detailed arguments. Moreover, it did not respect the judgment of the General Court in the MasterCard case.*
- 3. The Commission should have recognised that there was an overriding public interest in disclosure because (i) the documents are intimately related to the legislative process of the institutions, which is an area in which the transparency obligation is critical; (ii) in this specific legislative process more than in any other there is a real need for transparency to ensure increased openness of the institutions' decision-making process to the public; and (iii) the information the Commission is trying to withhold constitutes environmental information to which the public should have wider access by virtue of Regulation No 1367/2006 as there is a clear public interest in disclosure.*

**Claim(s)**

The Commission should grant the complainant access to the requested documents.

The Ombudsman invites the Commission to submit an opinion by 31 December 2015.