

Decision in case 2049/2014/NF on the European Council's refusal to grant access to documents concerning the 2010 Economic Task Force

Decision

Case 2049/2014/NF - Opened on 08/01/2015 - Decision on 15/03/2016 - Institution concerned European Council (Settled by the institution) |

The case concerned the European Council's refusal to grant the complainant public access to two documents in relation to the 2010 Task Force to strengthen economic governance across the EU. The European Council initially argued that the publication of the documents would undermine the protection of the financial, monetary or economic policy of the Union or a Member State and of the institution's decision-making process.

Having inspected the relevant documents, the Ombudsman took the preliminary view that their content did not appear as sensitive as claimed by the European Council, given in particular that the documents dated from 2010. The European Council then reconsidered its assessment and released the two documents to the complainant. The Ombudsman found that the European Council had thus settled the matter complained about.

The background to the complaint

1. The complainant, under Regulation 1049/2001 [1] , made a request, in June 2014, for access to documents held by the European Council. The documents concerned the work of the Task Force which was set up by the President of the European Council to strengthen the economic governance across the EU in 2010.

2. The General Secretariat of the Council, acting as secretariat for the European Council, granted access initially to 23 documents covered by the complainant's access request. Subsequently, it disclosed 17 further documents. However, it refused access to one German and one Romanian contribution to the work of the Task Force, reasoning that their disclosure would undermine the institution's decision-making process (Article 4(3) of Regulation 1049/2001).

3. The complainant then made a confirmatory application and requested to be given full access to the relevant German and Romanian contributions.



4. The European Council replied to the complainant's confirmatory application and upheld the decision that no access, not even partial, could be granted to the two documents in question. For both documents, it based its refusal to grant access on Article 4(1)a, fourth indent, that is, the protection of the financial, monetary or economic policy of the EU or a Member State, and Article 4(3), second subparagraph, of Regulation 1049/2001, that is, the protection of the institution's decision-making process after the decision has been taken.

5. The complainant then turned to the Ombudsman.

The inquiry

6. The Ombudsman opened an inquiry into the complaint and identified the following allegation and claim:

The European Council wrongly refused to give public access to two documents concerning the 2010 Task Force to strengthen economic governance across the EU. The complainant claimed that the European Council should grant access to the two relevant documents.

7. The Ombudsman inspected the documents in question in order to be able to determine whether the European Council had applied Regulation 1049/2001 correctly. The inspection led the Ombudsman to form the preliminary view that the documents' content did not appear as sensitive as claimed by the European Council. The Ombudsman also considered that it was not obvious that the documents were covered by the exceptions of Regulation 1049/2001 on the basis of which the European Council had refused public access.

8. The Ombudsman then asked the European Council to submit an opinion on the complaint. In particular, the Ombudsman invited the European Council to address the question of how, in applying the relevant exceptions of Regulation 1049/2001, it had taken into account the fact that the two documents, to which it refused access, dated from 2010. The Ombudsman received the opinion of the European Council. In conducting the inquiry, the Ombudsman has taken into account the arguments put forward by the parties. The complainant did not submit comments on the Ombudsman's inspection report or the European Council's opinion.

The allegation that the European Council wrongly refused to give public access to documents

Arguments presented to the Ombudsman

9. As regards the exception of Article 4(3), second subparagraph, of Regulation 1049/2001, that is, the protection of the institution's decision-making process, the complainant put forward two arguments to substantiate his allegation that the European Council had wrongly refused



access to the two documents concerned. First, he argued that the exception provided for in Article 4(3) could only be invoked where the decision has not yet been taken by the institution. In this context, he pointed out that the European Council had already signed off on the recommendations of the Task Force, which in turn had been approved in the form of two legislative packages known as "Six-Pack" and "Two-Pack", by the European Parliament and the Council. Second, the complainant disagreed with the European Council's assessment that the protection of the decision-making process would outweigh the public interest in disclosure. He argued that, by helping to shape the EU's response to the financial crisis, the Task Force's recommendations impacted on the lives of citizens across the EU. For this reason, the public interest in disclosure should, in the complainant's view, outweigh the protection of the institution's decision-making process.

10. The complainant did not comment on the European Council's application of the exception of Article 4(1)a, fourth indent, of Regulation 1049/2001, that is, the protection of the financial, monetary or economic policy of the EU or a Member State. **11.** In its opinion, the European Council informed the Ombudsman that, in light of the Ombudsman's preliminary view, the two documents had been thoroughly reassessed. The new assessment led the European Council to conclude that it was no longer appropriate to refuse public access to the documents, given in particular that the documents were by then more than five years old. The European Council thus released the documents, in their entirety, and shared them with the complainant.

The Ombudsman's assessment

12. The Ombudsman welcomes the European Council's decision to grant public access to the documents in question.

Conclusion

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

The European Council has settled the matter.

The complainant and the European Council will be informed of this decision.

Emily O'Reilly

Strasbourg, 15/03/2016

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

