



## Decision of the European Ombudsman in case 789/2016/EIS concerning the EEAS' handling of a request for public access to the "Political Dialogue and Cooperation Agreement" between the EU and Cuba

Decision

**Case 789/2016/EIS - Opened on 01/07/2016 - Decision on 10/11/2016 - Institution concerned** European External Action Service ( Settled by the institution ) |

The case concerned the handling by the European External Action Service (EEAS) of the complainant's request for public access to the "Political Dialogue and Cooperation Agreement" between the EU and Cuba. In the course of the Ombudsman's inquiry, the EEAS released the document. As a result, the Ombudsman closed the case as settled.

The background to the complaint

1. The complainant works as a Programme Director for a Swedish NGO operating in the field of human rights.
2. On 14 March 2016, he submitted an initial request for public access to documents to the EEAS under Regulation 1049/2001 [1] . He wished to obtain access to the "Political Dialogue and Cooperation Agreement" between the EU and Cuba (hereinafter the 'PDCA'), which was initialled in Havana on 11 March 2016.
3. On 27 April 2016, the EEAS replied to the complainant's initial application. It stated that, since the PDCA is of " *provisional nature and part of an ongoing negotiation* ", its disclosure could (i) seriously undermine the institutional decision-making process; and (ii) risk undermining international relations, since " *disclosure before finalisation could damage the EU's relationship with Cuba* ". In accordance with Articles 4(3) [2] and 4(1), third indent [3] of Regulation 1049/2001, the requested document could thus not be disclosed either in full or partially.
4. The complainant subsequently sought a review of this decision (a "confirmatory application") on 2 May 2016.
5. On 26 May 2016, the EEAS replied to the complainant's confirmatory application. It maintained its earlier position. It said that the PDCA was then provisional and, after initialling of the text by the negotiators, it still needed to undergo internal scrutiny on both sides by lawyer-linguists and other experts. The text was therefore not the final outcome of the



negotiations, which were taking place in a restricted form and on the basis of a restricted negotiation mandate. Any disclosure could thus undermine the ongoing decision-making process.

**6.** The EEAS added that the PDCA would become final once the High Representative and the Commission recommend the Council to sign it. At that stage, the EEAS stated, it would also be made public.

**7.** In the complainant's view, the EEAS' position was not convincing, because since the document had been initialled, it could not be considered "provisional". He thus turned to the European Ombudsman.

The inquiry

**8.** On 1 July 2016, the Ombudsman opened an inquiry into the complaint and identified the following allegation and claim:

1) The EEAS wrongly decided not to disclose the document.

2) The EEAS should disclose the document.

**9.** In the course of the inquiry, the Ombudsman duly considered the information provided in the complaint. In particular, she carried out a thorough analysis of the correspondence that had taken place between the EEAS and the complainant before the complainant turned to the Ombudsman.

Allegation that the EEAS wrongly decided not to disclose the document

## Further developments

**10.** On 12 August 2016, that is, before the Ombudsman's planned inspection of the file had been arranged, the EEAS sent an e-mail to the Ombudsman's services, stating that it would disclose the requested document to the complainant once it had been adopted by the Commission. This was expected to happen before the end of September 2016.

**11.** By e-mail of 17 August 2016, the Ombudsman invited the complainant to submit his observations on the EEAS' letter. The complainant did so on 18 August 2016. In his observations, the complainant thanked the Ombudsman for her efforts in trying to resolve the matter. He also invoked Articles 10 and 11 TEU and argued that, by not publishing the document that was publicly initialled by the respective negotiation teams, the EEAS was clearly limiting the capacity of citizens to publicly exchange views on the matter. He argued that the Agreement is a public document, and not a draft, irrespective of its adoption by the Commission.

**12.** On 27 September 2016, the EEAS forwarded to the Ombudsman an e-mail it had sent to the complainant on 22 September 2016, informing him that since the document was by then considered final, he could have access to it. The EEAS forwarded to the complainant a copy of the requested document as an attachment to this e-mail. The EEAS further stated that the Commission had adopted its proposal to the Council on the signing of the PDCA one day



earlier, that is, on 21 September 2016.

**13.** The EEAS also enclosed with its letter to the Ombudsman a copy of an e-mail that the complainant had sent to it on 22 September 2016, confirming that he had received the document and thanking the EEAS for it.

## The Ombudsman's assessment

**14.** The complainant has now received the requested document. The complainant has not raised any further concerns as regards the timing of the disclosure. The Ombudsman thus closes the inquiry as settled by the EEAS.

**15.** However, the Ombudsman wishes to make clear that this conclusion should not be understood as implying that the disclosure by the EEAS was in fact timely.

Conclusion

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

**The EEAS has settled the matter.**

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

Strasbourg, 10/11/2016

Emily O'Reilly

European Ombudsman

[1] Regulation (EC) No 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.

[2] "*Access to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's **decision-making process** , unless there is an overriding public interest in disclosure. Access to a document containing opinions for internal use as part of deliberations and preliminary consultations within the institution concerned shall be refused even after the decision has been taken if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure ."* [emphasis added]



[3] " *The institutions shall refuse access to a document where disclosure would undermine the protection of **international relations*** ". [emphasis added]