



Décision dans l'affaire 721/2019/MIG concernant le refus de la Commission européenne d'accorder le plein accès du public à des documents relatifs à des audits sur de possibles conflits d'intérêts en République tchèque

Décision

Affaire 721/2019/MIG - **Ouvert le** 10/05/2019 - **Décision le** 23/07/2019 - **Institution concernée** Commission européenne (Pas d'acte de mauvaise administration constaté) |

L'affaire concernait une demande d'accès du public à des documents rédigés par la Commission européenne en ce qui concerne les audits qu'elle mène en République tchèque concernant de possibles conflits d'intérêts. La Commission a refusé de rendre publics les documents faisant valoir que la divulgation mettrait en péril l'achèvement des audits.

La Médiatrice a inspecté les documents en cause et a constaté que la Commission était fondée à refuser l'accès du public à ces documents. Elle a par conséquent clôturé l'enquête en concluant à l'absence de mauvaise administration.

Background to the complaint

1. The European Union provides funding to Member States to support economic development and to strengthen social cohesion across the EU. The economic and social cohesion programmes are implemented by the Member States, which means they select, monitor and evaluate the projects that receive EU funding.
2. The Commission monitors each programme and may suspend payments if " *there is clear evidence to suggest a significant deficiency in the functioning of the management and control system*" [1] or if "*expenditure (...) is linked to an irregularity having serious financial consequences (...)*" [2] In this context, the Commission has the power to carry out audits to verify that Member State control mechanisms are adequate and if there are any deficiencies and/or irregularities concerning EU funded projects.
3. In 2018, responding to allegations of potential conflicts of interest related to certain EU funded projects in the Czech Republic, the Commission audited EU funds granted to Agrofert, a company with links to the Prime Minister of the Czech Republic.
4. On 13 December 2018, after hearing the Commission account of the above, the European Parliament issued a Resolution in which, amongst other points, it requested the Commission to "*publish all documents at its disposal related to the possible conflict of interest of the Czech*



Prime Minister and Minister of Agriculture, and to explain what steps it intends to take to remedy the situation ." [3]

5. On 19 December 2018, the complainant, a member of the Senate of the Czech Republic, requested the Commission to make public documents relating to the Commission's audits. [4] These were a letter sent by Commissioner Oettinger to the Czech authorities on 29 November 2018 (the non-disclosure of which is the object of the parallel case before the Ombudsman, case 724/2019/MIG) and four documents from December 2018 setting out the scope and the methodology of audits to be carried out in early 2019 (the non-disclosure of which is the object of the present case).

6. The Commission refused, but did identify four documents as falling within the scope of the complainant's request for documents setting out the scope and the methodology of the audit.

7. The complainant then asked the Commission to review its decisions by making so-called 'confirmatory applications'.

8. In January 2019, the Commission began the new series of audits relating to funding granted to Agrofert, which were announced in the documents of December 2018 (see paragraph 5 above).

9. In February and March 2019 respectively, the Commission confirmed its decisions not to disclose the documents (it issued so-called 'confirmatory decisions'). The Commission gave, in both cases, two reasons: it argued that releasing the documents would undermine the purpose of inspections, investigations and audits [5] and that it would undermine the privacy and integrity of the individual [6] . Regarding the letter sent by Commissioner Oettinger to the Czech authorities (complaint 724/2019/MIG), the Commission also argued that disclosure would seriously undermine its decision-making [7] . Regarding the other four documents, the Commission argued that disclosure would undermine the public interest as regards the financial policy of the EU [8] .

10. While the Commission recognised that there is "*a certain interest in the subject-matter at hand*", it considered that this interest would not override the public interest in ensuring that the on-going audits, and the Commission's decision-making, are properly conducted, free from external pressure.

11. Dissatisfied with the Commission's decision to not disclose the documents, the complainant turned to the Ombudsman on 18 April 2019.
The inquiry

12. For the purposes of efficiency, the Ombudsman joined the inquiries (into this complaint and into complaint 724/2019/MIG). In the course of the joint inquiry, the Ombudsman examined the relevant documents.

13. While the Ombudsman's assessment in case 724/2019/MIG led to a proposal for a solution that the Commission should grant partial public access to a document, the present



case can be closed for the reasons set out below.

Arguments presented to the Ombudsman

14. The Ombudsman first noted that the Commission's position in both cases had been set out in its confirmatory responses to the complainant. The Ombudsman informed the Commission that it could, if it wished, provide additional views. The Commission did not do so and the Ombudsman therefore bases her assessment on the Commission's confirmatory decision and on the complaint.

Arguments presented by the Commission

15. The Commission argued that the documents at issue in the present case concern on-going audits and that disclosing them could endanger the completion of these audits. [9] Specifically, the Commission stated that disclosure of the documents would expose the Commission to the risk of external pressure, which would be detrimental to the proper conduct of the audits and compromise cooperation between the Commission and the Czech authorities.

16. The Commission also argued that full disclosure of the documents would undermine the privacy and integrity of individuals, as the documents contain some personal data [10], such as the names of non-management Commission staff.

17. Regarding this case (case 721/2019/MIG), the Commission also argued that disclosure of the requested documents would undermine the financial interest of the European Union as it would hamper the Commission's ability to address constructively possible shortcomings in the mechanisms in place to prevent conflicts of interests in the Czech Republic and apply appropriate corrective measures.

18. As regards whether there was a public interest which might justify disclosure of the documents, the Commission stated that it understands that there is " *a certain interest in the subject matter at hand* ". Nevertheless, it concluded that this interest would not override the public interest in ensuring that the on-going audits are properly conducted, free from external pressure.

Arguments presented by the complainant

19. The complainant argued that the Commission incorrectly assessed the existence and importance of the public interest in obtaining access to the documents. The complainant argued that the Commission failed to provide any justification as to why there is no public interest in the disclosure of the requested documents.

The Ombudsman's assessment



20. The Ombudsman considers that public awareness of the Commission's actions regarding the allegations of potential conflicts of interest involving a high-level public representative, and involving the use of significant EU funds, serves a very important public interest. It serves to inform the public whether the Commission, and the Czech authorities, are taking, in good time, all the relevant steps to protect the financial interests of the EU and to ensure that the rule of law is respected. That public interest is a significant one as the individual at the centre of the Commission investigation is the current Prime Minister of the Czech Republic.

21. While the public interest in this matter is obvious, the key issue, nonetheless, is whether the release of the requested documents, *at this stage of the Commission's audits*, would serve the public interest, or whether the public interest would be better served if the Commission were to release the documents *once* it has completed its audits. In making this assessment, the Ombudsman understands that the completion of the Commission's audits is of vital importance in terms of clarifying precisely the extent, if any, of potential conflicts of interest and in terms of protecting EU public funds.

22. Nevertheless, having inspected the relevant documents, the Ombudsman considers that, for the reasons set out below, the Commission was justified in refusing public access to them *at this point in time* to protect the purpose of on-going audits.

23. This case concerns four documents outlining the timeframe, the scope and the methodology of on-going Commission audits.

24. The Ombudsman notes that the audits were on-going at the time when the Commission took its decision on the complainant's confirmatory application. The documents set out detailed information on the auditing steps and timelines. Given the content of the documents, it is clear that the audits are still on-going and that releasing this very specific information, *at this time*, could undermine the efforts to complete the audits. The Ombudsman considers that the public interest is best served by allowing the Commission to complete the audits. By doing so, the Commission may be able to obtain even more information on the existence, if any, of potential conflicts of interest. Therefore, the Ombudsman concludes that the Commission was justified to refuse access to the four documents at this time.

25. The Ombudsman however reminds the Commission that, given the very strong public interest in disclosure of the documents, the Commission should reconsider whether it can make the documents public once its audits have been completed.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

There was no maladministration by the Commission in refusing public access to four documents relating to on-going audits.

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



Emily O'Reilly

European Ombudsman

Strasbourg, 23/07/2019

[1] Article 83(1)(a) of the Common Provisions Regulation 1303/2013:
<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R1303&from=EN> .

[2] Article 142(1)(b) of the Common Provisions Regulation.

[3] European Parliament resolution of 13 December 2018 on conflicts of interest and the protection of the EU budget in the Czech Republic, Point 13,
http://www.europarl.europa.eu/doceo/document/TA-8-2018-0530_EN.pdf .

[4] Under Regulation 1049/2001 regarding public access to the European Parliament, Council and Commission documents:
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32001R1049> .

[5] Article 4(2), third indent of Regulation 1049/2001.

[6] Article 4(1)(b) of Regulation 1049/2001.

[7] Article 4(3), first subparagraph of Regulation 1049/2001.

[8] Article 4(1)(a), fourth indent of Regulation 1049/2001.

[9] Judgment of the General Court of 12 May 2015, *Technion v European Commission*, T-480/11, EU:T:2015:272.

[10] In the meaning of Regulation 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725> .