Sprendimas dėl to, kaip Europos Komisija nagrinėjo prašymą leisti visuomenei susipažinti su dokumentais, susijusiais su COVID-19 pandemijos metu platinamų medicininių kaukių kokybe (byla 790/2021/MIG)

Sprendimas
Byla 790/2021/MIG - **Atidaryta** 30/04/2021 - **Rekomendacijos** 05/11/2021 - **Sprendimas** 25/05/2022 - **Susijusios įstaigos** Europos Komisija (Nustatytas netinkamas administravimas) | Europos Komisija (Institucija sutiko su rekomendacija) |

Byla susijusi su prašymu leisti visuomenei susipažinti su dokumentais, susijusiais su 1,5 mln. medicininių kaukių, kurias Komisija įsigijo ankstyvajame COVID-19 pandemijos etape ir kurios neatitiko reikalaujamo kokybės standarto. Komisija atsisakė leisti susipažinti su kai kuriais prašomais dokumentais (jų dalimis), remdamasi būtinybe apsaugoti atitinkamo gamintojo komercinius interesus.

Ombudsmenė nustatė, kad aptariama informacija negali būti pagrįstai laikoma komercine paslaptimi ir kad, net jei būtų pripažinta, jog Komisija galėtų pagrįstai remtis atitinkama išimtimi, atskleidimas yra labai svarbus visuomenės interesas.

Todėl ombudsmenė laikėsi nuomonės, kad Komisijos atsisakymas leisti visuomenei susipažinti su dokumentais šioje byloje yra netinkamas administravimas. Ji rekomendavo Komisijai persvarstyti savo poziciją, kad būtų leista susipažinti su gerokai daugiau nagrinėjamų dokumentų, o gal net ir su visais jais.

Komisija sutiko laikytis ombudsmenės rekomendacijos. Ji iš naujo įvertino savo sprendimą ir suteikė daugiau galimybių susipažinti su dauguma ginčijamų dokumentų. Tačiau ombudsmenė apgailestauja, kad Komisija vis dar nesuteikė galimybės visapusiškai susipažinti su likusiais trimis dokumentais. Ji taip pat pažymėjo, kad nors skundo pateikėjas dabar turi daugiau galimybių susipažinti su dokumentais, kadangi nuo jo prašymo pateikimo praėjo beveik dveji metai, dokumentai, kurie jam buvo atskleisti jo numatytu tikslu, nebėra naudingi.

Todėl ji patvirtino, kad nustatė netinkamo administravimo atvejį, ir nutraukė tyrimą.

Background to the complaint
1. In spring 2020, to help tackle the COVID-19 pandemic, the European Commission purchased ten million medical masks, via the Emergency Support Instrument. [1] The

Commission had already started to distribute 1.5 million of them to 17 Member States and the United Kingdom, when it turned out that the masks were of poor quality. The trader agreed to mitigating measures.

2. In June 2020, the complainant, a journalist, asked [2] the Commission to give public access to the exchanges between the Commission and the Member States concerning the shipment of these masks.

3. On 26 October 2020, the Commission informed the complainant that it had identified 134 documents and granted wide public access. However, it refused access to (parts of) some of the documents, relying on a number of exceptions provided for under the EU legislation on public access to documents.

4. The complainant asked the Commission to review its decision to refuse access (by making a 'confirmatory application').

5. The Commission then granted the complainant wider access. However, it maintained parts of its decision, including that access to (parts of) 12 documents had to be refused based on the need to protect the commercial interests [3] of the manufacturer concerned.

6. Dissatisfied with the outcome in relation to these twelve documents, the complainant turned to the Ombudsman in April 2021.

The Ombudsman's recommendation

7. The Ombudsman considered that the Commission's argument, that disclosure of the withheld information would undermine the commercial interests of the manufacturer as it could be used to damage its reputation and thus jeopardise its market position, was not sufficient to establish the existence of a legitimate and actual risk. Specifically, it was unclear to the Ombudsman how the redacted information, particularly on the specific mitigating measures, could be used to harm the manufacturer's reputation.

8. Moreover, the Ombudsman considered that there was a strong public interest in knowing what steps have been taken to ensure that no faulty masks were brought into circulation and used.

9. The Ombudsman thus found that the Commission's refusal to give full public access to the twelve documents at issue constituted maladministration. She made the following recommendation [4] :

The Commission should reconsider its decision to refuse public access to (parts) of the twelve documents at issue based on the need to protect the manufacturer's commercial interests with a view to giving the complainant significantly increased, if not full, access to those documents.

10. In reply, **the Commission** [5] granted the complainant significant access to nine documents, including to the information on the proposed mitigating measures that they contain, redacting only limited personal data [6] . It considered that, almost one year after

the adoption of the confirmatory decision, the factual and legal circumstances had changed and that these nine documents are therefore no longer covered by the exception for the protection of commercial interests. As regards the remaining three documents, the Commission reiterated that these documents contained commercially sensitive information from an identified company with which it does not have a direct contract and maintained that disclosure would undermine the company's commercial interests.

11. In his comments, **the complainant** expressed discontent with the Commission's handling of his access request. He stated that it had taken nearly two years to receive access to the documents at issue and that this delay had made it impossible for him to carry out his work as a journalist. The complainant also contended that the Commission had failed to provide a clear and substantiated explanation for the existence of a risk to the commercial interest of the manufacturer concerned or why it considers that this risk has subsided.

The Ombudsman's assessment after the recommendation

12. The Ombudsman welcomes the Commission's positive response to her recommendation to reconsider its decision to refuse public access to (parts) of the twelve documents at issue.

13. The Ombudsman notes that, following a re-assessment, the Commission has granted greater public access to nine of the twelve documents at issue.

14. However, the Ombudsman maintains the view that the grounds on which the Commission had based its decision to refuse access to the relevant parts of these documents at the time of adoption of its confirmatory decision were not convincing.

15. Regarding the remaining three documents containing information on quality control tests, the Ombudsman reiterates her view that that information does not qualify as commercially *sensitive* simply because it relates to a company. She thus regrets that the Commission maintained its refusal to give access to these documents in their entirety.

16. The Ombudsman also regrets the time the Commission has taken in this case to provide access. While she acknowledged in her recommendation that the complainant's access request concerned one of the busiest parts of the Commission at the time, how the Commission dealt with this case was clearly at odds with the spirit of Regulation 1049/2001. This is illustrated by the fact that, due to the passage of time, the complainant cannot use the information that has now been disclosed to him for the purpose he had intended. The Ombudsman therefore once again emphasises the importance of transparency in times of crisis [7] , as well as the need to seek to adhere to the time limits set out in the EU legislation on public access. [8]

Conclusion

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

The Commission has reacted positively to the Ombudsman's recommendation by giving wider public access to the documents at issue. However, the Commission has still not given access to the three remaining documents in their entirety. Moreover, due to the passing of nearly two years, the complainant cannot use the information disclosed to him for the purpose he had intended. The Ombudsman therefore confirms

her finding of maladministration.

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

Emily O'Reilly European Ombudsman

Strasbourg, 25/05/2022

[1] For information on the Emergency Support Instrument, visit: https://ec.europa.eu/info/live-work-travel-eu/coronavirus-response/emergency-support-instrument_en .

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

[3] In accordance with Article 4(2), 1st indent of Regulation 1049/2001.

[4] The full text of the recommendation and the assessment that led to it are available at: https://www.ombudsman.europa.eu/en/recommendation/en/148785 .

[5] The Commission's reply to the Ombudsman's recommendation is available at:

https://www.ombudsman.europa.eu/en/doc/correspondence/en/156129 .

[6] In accordance with Article 4(1)(b) of Regulation No 1049/2001.

[7] See the Ombudsman's letter to the Commission of 20 April 2020: https://www.ombudsman.europa.eu/en/doc/correspondence/en/127057 .

[8] See also the Ombudsman's own-initiative inquiry into the time taken by the European Commission to deal with requests for public access to documents: https://www.ombudsman.europa.eu/en/case/en/60766 .