Ombudsmanul European

Deciziei în cazul 1282/2018/EWM privind refuzul Comisiei Europene de a acorda acces public la mesajul unui funcționar al Comisiei Europene adresat unui funcționar al Regatului Unit cu privire la proiectul de Recomandare a Consiliului Europei privind rolurile și responsabilitățile intermediarilor de servicii pe internet

Decizie
Caz 1282/2018/EWM - **Deschis la** 18/07/2018 - **Decizie din** 19/09/2018 - **Instituţia vizată** Comisia Europeană (Nu s-a constatat administrare defectuoasă) |

Cazul viza tratarea de către Comisia Europeană a unei cereri de acces la documente legate de proiectul de Recomandare a Consiliului Europei privind rolurile și responsabilitățile intermediarilor de servicii pe internet, cum ar fi gazdele serviciilor bazate pe web, motoarele de căutare și platformele de vânzare.

Comisia a acordat acces deplin la unele documente, acces parțial la alte documente și a refuzat să acorde acces la anumite documente. Comisia a refuzat în special accesul la un mesaj adresat de un funcționar al Comisiei Europene secretariatului WeProtect Global Alliance din cadrul Home Office (Ministerul de Interne), Regatul Unit. Comisia a susținut că divulgarea ar submina protecția interesului public în ceea ce privește relațiile internaționale și securitatea publică. Reclamantul a contestat decizia Comisiei, parțial, pe baza prezenței companiilor private în consiliul de administrație al WeProtect. El a susținut că, în astfel de circumstanțe, mesajul nu poate fi considerat că subminează relațiile internaționale.

Ombudsmanul nu a constatat nicio administrare defectuoasă din partea Comisiei prin faptul că aceasta a refuzat accesul la acest document și a închis cazul.

Background to the complaint

1. The Council of Europe “Recommendation on the roles and responsibilities of internet intermediaries” [1] (the “Recommendation”) calls on States, including all Member States of the EU, to follow a number of guidelines in their relationships with internet intermediaries, such as hosts of web-based services, search engines and sales platforms. [2] This includes recommendations with regard to the detection and removal of illegal content, such as terrorist propaganda and sexual abuse of children. It also includes the procedures to be followed to

ensure compliance with human rights.

2. It appears from the complaint that the European Commission, working with EU Member States, was closely involved in the work relating to the Council of Europe Recommendation. In this context, the complainant requested the European Commission to give him public access [3] to several documents related to a draft of the Recommendation. They included communications, comments, notes and minutes.

3. In response, the Commission granted full access to some documents, limited access to other documents and no access to certain other documents. The complainant challenged that decision. In response to the complainant's request for review [4] , the Commission granted full and partial access to several additional documents.

4. One of the documents to which the Commission denied access is a message from a European Commission official to a UK civil servant, dated 20 October 2017 (the "message"). According to the Commission, the message contains " *the analysis and views of a Commission official in the context of an exchange of information between a member of the Board and the secretariat of the WeProtect Global Alliance to End Child Sexual Exploitation online. It refers to the impact of the draft Recommendation of the Council of Europe on the WeProtect Global Alliance's activities and goals to promote national and global action to end the sexual exploitation of children online, and to possible course of action* ".

5. The Commission supports the activities of the *WeProtect Global Alliance* (" *WeProtect* "), an international movement across more than 80 countries, involving governmental organisations, industry and civil society. *WeProtect* is dedicated to national and global action to end the sexual exploitation of children online. The Board of *WeProtect* includes representatives from international and civil society organisations, governments and private companies. The United Kingdom Government is represented on the Board, as is the European Commission, and the Board's secretariat is provided by the UK Government's Home Office.

6. Wishing to obtain access to the message, the complainant turned to the Ombudsman with his complaint on 13 July 2018.

The inquiry

7. The Ombudsman opened an inquiry into the complainant's concern that the European Commission has wrongfully refused access to the message.

8. In the course of the inquiry, the Ombudsman's inquiry team considered the arguments made by the parties in the access to documents procedure and carried out an inspection of the message.

Arguments made by the complainant and the European

Commission

9. The complainant argued that there was a strong public interest in the message being made public.

10. The Commission argued that disclosure of the message would undermine the public interest as regards international relations [5] . It stated that it was essential for the proper functioning of *WeProtect* that members of the Board, observers and secretariat may exchange information and share views in matters that have an impact on the initiative's objective in an atmosphere of trust and confidentiality. Disclosure of such exchanges of information and views would deter members from making contributions to *WeProtect* discussions.

11. The complainant contended in that respect that the message did not constitute "international relations", because it was addressed to a solitary official and because it may have been shared with the private companies on the board.

12. In the response to the initial application for access to documents, the Commission also argued that disclosure of the message would undermine the protection of the public interest as regards public security [6] . The Commission stated that disclosure of the information about sensitive issues would undermine the effectiveness of the EU policies in the fight against child abuse online and that the activities of *WeProtect* contribute to the EU policy goals in this area.

The Ombudsman's assessment

13. Having inspected the message, the Ombudsman has been able to ascertain that the message was sent only to an official of the UK Home Office. It was not sent for distribution to all members of the Board of *WeProtect* . Specifically, it was not destined for the internet companies that are represented on the Board and was not supposed to be shared with such companies.

14. The Ombudsman, having inspected the document, is satisfied with the Commission's argument that the release of this message would have undermined the public interest as regards public security. The message, if released, could be used to put pressure on and deter internet intermediaries from taking voluntary measures to facilitate the effective detection and removal of illegal content online. This could have a negative impact on the functioning of *WeProtect* , whose mission it is to protect children against sexual exploitation. *WeProtect* contributes to the efforts of the EU in the fight against child sexual abuse online. Disclosure would thus impact the effectiveness of the EU's measures to fight child sexual abuse and terrorism propaganda online. These are matters of public security. Given the importance of industry's involvement in this area, the Ombudsman finds that it is at least reasonably foreseeable, and not purely hypothetical, that disclosure of this message would risk undermining public security.

15. As regards the complainant's argument that there is a strong public interest in the disclosure of the message, under EU public access rules, the public interest cannot, as a matter of law,

override the need to protect the public interest as regards public security.

16. The Ombudsman also accepts the Commission's view that it could not give any meaningful partial access to the message.

17. The Ombudsman thus concludes that the Commission was entitled not to disclose the message. However, she welcomes the fact that the Commission has granted full or partial access to 13 of the 16 documents to which the complainant sought access.

Conclusion

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

There was no maladministration by the European Commission.

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

Emily O'Reilly

European Ombudsman

Strasbourg, 20/09/2018

[1] Recommendation CM/Rec(2018)2 of the Committee of Ministers to Member States on the Roles and responsibilities of Internet Intermediaries, adopted by the Committee of Ministers on 7 March 2018 at the 1309th meeting of the Ministers' Deputies: https://rm.coe.int/1680790e14 [Link].

[2] According to the Recommendation, internet intermediaries are players that facilitate interactions on the internet between natural and legal persons by offering and performing a variety of functions and services.

[3] According to Regulation 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R1049&rid=1

[4] Formally called "confirmatory application" according to Regulation 1049/2001.

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

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