

**Reply of the European Commission to the proposal for a solution from the European Ombudsman**  
**- Complaint by Mr Lukas WAGENKNECHT, ref. 724/2019/MIG**

---

## **I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY**

On 3 December 2018, the complainant (member of the Senate of the Czech Republic) submitted an initial application<sup>1</sup> for access to the letter dated 29 November 2018, sent by Commissioner Oettinger to the Czech authorities, in relation to a possible conflict of interests in the context of certain European Union funded projects in the Czech Republic (hereafter ‘the requested document’). The application was dealt with by the Directorate-General for Budget.

In its initial reply of 21 December 2018, the Directorate-General for Budget refused access to the requested document, based on the exception of Article 4(2), third indent (protection of the purpose of inspections, investigations and audits) of Regulation (EC) No 1049/2001.

In the confirmatory decision C(2019)1704 of 25 February 2019, the European Commission confirmed its decision not to disclose the requested document based on the exceptions of Article 4(2), third indent (protection of the purpose of inspections, investigations and audits), Article 4(3), first subparagraph, (protection of the decision-making process) and Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

The European Commission explained that the requested document concerns an ongoing audit procedure. Therefore, an early disclosure of the document would undermine the purpose of the audit as it would expose the institution to the foreseeable risk of external pressure. Moreover, public access to the document would endanger the completion of the audit and compromise the smooth cooperation between the European Commission and the Czech authorities.

## **II. THE COMPLAINT TO THE EUROPEAN OMBUDSMAN**

On 18 April 2019, the complainant turned to the European Ombudsman.

In his complaint, the applicant argues that the European Commission incorrectly assessed the existence and importance of the public interest in obtaining access to the requested document. The complainant stated that the European Commission failed to provide any justification as to why there is no public interest in the disclosure of the requested document.

## **III. THE EUROPEAN OMBUDSMAN’S INQUIRY AND THE PROPOSAL FOR A SOLUTION**

In the course of the inquiry, the European Ombudsman reviewed the requested document and issued the present proposal for a solution.

In its proposal, the European Ombudsman noted that the requested document concerns two substantive issues, one relating to the audit activities of the European Commission during the

---

<sup>1</sup> Registered under reference GESTDEM 2018/6387.

period prior to the date of the entry into force, on 2 August 2018, of Regulation (EU, Euratom) 2018/1046 on the financial rules applicable to the general budget of the Union, (hereafter Regulation (EU, Euratom) 2018/1046)<sup>2</sup>), and one relating to the audit activities after that date.<sup>3</sup>

The European Ombudsman explicitly underlined that the European Commission was right to refuse access to the requested document, in so far as the information relating to the activities after 2 August 2018 are concerned. Indeed, the European Ombudsman confirmed that ‘[...] revealing [this information], [...] could undermine the [European] Commission’s ability to complete its audits effectively’.<sup>4</sup>

On the other hand, in the European Ombudsman’s view, granting access to the information relating to the activities prior to 2 August 2018 would not undermine the audit investigations. In particular, the European Ombudsman noted that ‘[the first full paragraph on page 3 of the requested document] describes, very generally, the legal framework requiring Member States to have control systems aimed at ensuring the proper implementation of the [European Union] budget. [...] The [second full paragraph on page 3] states that the [European Commission] will launch audits to review those control systems’. The European Ombudsman considers that disclosure of these two paragraphs constitutes a meaningful partial access.<sup>5</sup>

Moreover, partial access should also be granted to the first two paragraphs of the letter and the final paragraph of the letter. According to the European Ombudsman, granting access to these paragraphs would aid the public in understanding the context and the importance of the letter, without compromising the ongoing audits.<sup>6</sup>

### **III. THE REPLY OF THE EUROPEAN COMMISSION TO THE PROPOSAL FOR A SOLUTION OF THE EUROPEAN OMBUDSMAN**

The European Commission welcomes the European Ombudsman’s conclusion that the refusal to grant public access to the details of the ongoing audit was justified and that access to the parts of the document concerning the period after the entry into force, on 2 August 2018, of Regulation (EU, Euratom) 2018/1046, could undermine the ability of the institution to complete its audit effectively. The European Ombudsman also acknowledged the European Commission’s efforts in conducting its audit activities with appropriate standards of transparency and public accountability.

As regards the information related to the period prior to 2 August 2018, the European Commission has reassessed the parts of the document that should be disclosed in the European Ombudsman’s view.

Following this assessment and given the exceptional circumstances of this case, the European Commission has concluded that access may be granted to the paragraphs concerned, namely the first and second full paragraphs on page 3. The European Commission also agrees with the disclosure of the first two paragraphs and the final paragraph of the letter.

---

<sup>2</sup> OJ L 193, 30.7.2018, p. 1.

<sup>3</sup> Point 23 of the European Ombudsman proposal for a solution in case 724/2019/MIG (hereafter ‘the European Ombudsman proposal’).

<sup>4</sup> Point 26 of the European Ombudsman proposal.

<sup>5</sup> Points 27-29 of the European Ombudsman proposal.

<sup>6</sup> Point 30 of the European Ombudsman proposal.

Therefore, please find attached the requested document with the corresponding parts unredacted.

The European Commission understands that the European Ombudsman will communicate the present reply to the complainant and hereby agrees with the transmission to the applicant of the document with the above-mentioned paragraphs unredacted.

Done at Brussels, 29.01.2020

*For the Commission*

*Ursula VON DER LEYEN*  
*The President*