

Reply of the European Commission to a suggestion for improvement from the European Ombudsman

- Complaint by Mr [REDACTED], ref. 763/2020/DL

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

In December 2019, the complainant submitted five access to documents requests to the Commission, asking for access to all confirmatory decisions adopted between 2014 and 2018.

In January 2020, the Commission issued its initial decision, in which it limited the scope of the requests and granted (partial) access to 30 confirmatory decisions¹.

The complainant was dissatisfied with how the Commission had handled his requests and, in February 2020, asked it to review its decision. The complainant considered that the Commission should revise its publication policy concerning confirmatory decisions ‘by making, such decisions, future and past, directly downloadable, or at the very minimum visible, through its online register at the earliest possible moment’. The complainant reiterated that proactive disclosure would have made his requests (and the related administrative burden) unnecessary.

The Commission adopted its confirmatory decision in April 2020, refusing further access. It took note of the complainant’s arguments concerning proactive publication, but said that it could not take the issue into account in the context of the complainant’s request.

Dissatisfied with the Commission’s response, the complainant turned to the Ombudsman in May 2020 and the Ombudsman opened an inquiry into the Commission’s failure to publish its confirmatory decisions proactively.

II. OMBUDSMAN CLOSING DECISION

In the course of the inquiry, the Commission said it was considering the proactive publication of its confirmatory decisions. It also committed to disclosing additional information on its new online ‘access to documents portal’, to facilitate how users can search for documents that have already been disclosed. In light of these commitments, the Ombudsman decided to close the case. However, she is making two suggestions for the Commission to consider, with a view to improving the ‘access to documents portal’ over time:

‘1. The Commission should reflect on how it could make public its ‘confirmatory decisions’. The Commission could consider amending its procedural requirements if necessary, or making redactions of personal data and other sensitive information a standardised operation.

¹ The Ombudsman dealt with the specific issue of how the Commission dealt with the complainant’s requests in her decision in case 787/2020/DL, available at: <https://www.ombudsman.europa.eu/en/opening-summary/en/128651>.

2. The Commission should publish on its online access to documents portal a complete set of metadata of all requests for access to documents, including reference numbers, the relevant dates, the origin and type of applicant, whether access was granted or refused, as well as the documents identified on the basis of these requests. This should be published in open data format’.

III. COMMISSION COMMENTS AS REGARDS THE OMBUDSMAN’S SUGGESTION

As a preliminary remark, the Commission would like to update the Ombudsman on the status of two major projects in the field of access to documents.

The aim of the project ‘New Register of Commission Documents’ is to improve the existing Register of Commission Documents (hereafter ‘RegDoc’)², the official register of Commission documents set up in 2001. Thanks to this project, RegDoc will get new and improved user interface and search functionalities. In addition, documents currently published on a number of Commission registers will be searchable also via RegDoc. The first such integration is planned for the second half of 2021 and concerns the Register of Delegated and Implementing Acts.

All this will allow RegDoc to become a single entry point for the Commission documents, which, in turn, will allow citizens to find documents already publicly available in an easier way.

The Commission will also gradually start publishing new document types on RegDoc. Certain document types published today on RegDoc only as document metadata (i.e. without the files), will be published together with the files as of 2022. For example, this concerns so-called JOIN documents (documents adopted jointly by the Commission and High Representative).

The new RegDoc went live on 17 May 2021.

The second project is EASE (‘Electronic Access to Commission Documents’), the aim of which is to develop two new modules:

- Online portal allowing citizens to learn more about access to documents, submit initial and confirmatory requests for access to documents and receive Commission replies, have overview of their previous and ongoing requests and search for documents disclosed to other applicants;
- Internal IT system allowing the Commission staff to handle such requests.

The Commission is currently finalising this project and both modules are expected to go live in the second half of 2021.

The Commission and the Ombudsman services have been regularly in touch concerning the EASE project and the Commission would like to thank you once again for showing

² [European Commission - Register of Commission documents \(europa.eu\)](https://european-commission-register-of-commission-documents.europa.eu)

your interest and support for this project. The Commission would like to repeat once again that, among other improvements, the new public portal will allow the publication of documents partially and fully disclosed following initial and confirmatory requests for access to documents, along with their metadata (title, date of disclosure, type of access, exception used etc.). These metadata will be available in an open data format, allowing an easy search and extraction.

Now the Commission would like to respond to the two recommendations made by the Ombudsman:

The Ombudsman recommends that *‘the Commission should reflect on how it could make public its ‘confirmatory decisions’. The Commission could consider amending its procedural requirements if necessary, or making redactions of personal data and other sensitive information a standardised operation’*.

The Commission welcomes this suggestion and will take necessary steps to publish its confirmatory decisions. The confirmatory decisions are today published on RegDoc but only as document metadata (title, date, author, identifier and document type), that is, without the files. The main reason is that the personal data of the applicant are present on the first page of the confirmatory decision (and potentially in the body of the decision). According to the Commission procedural rules, the personal data of the decision addressee need to be on the first page of the decision. Proactive publication of confirmatory decisions on RegDoc will require manual redaction of personal data contained in each confirmatory decision. This will be done after its adoption but prior to its publication. However, as a first step, the Commission will need to make developments in its IT tool managing the adoption and publication of the Commission decisions. The Commission has already started its analysis in this regard and will schedule their rollout as soon as all elements of interaction between its IT tools have been clarified.

The Ombudsman also recommended that *‘the Commission should publish on its online access to documents portal a complete set of metadata of all requests for access to documents, including reference numbers, the relevant dates, the origin and type of applicant, whether access was granted or refused, as well as the documents identified on the basis of these requests. This should be published in open data format’*.

As a preliminary remark, the Commission would like to highlight that the Commission publishes its annual reports on access to documents³. Among other information, these reports contain the statistics concerning the requests for access to documents in the previous year, which includes information about the country and profile of the applicants, number of requests, type of access given, exceptions used etc. With the new EASE tool, the Commission should be able to extract many additional parameters and include them in the annual report for 2022. Since they refer to the previous year, the data in the annual reports is stable enough at the time of their publication. This would not be the case if such data were published in ‘real-time’, i.e. following each request. In other words, the Commission would run the risk of publishing data that may differ from statistical data

³ https://ec.europa.eu/info/publications/reports-public-access-european-parliament-council-and-commission-documents_en

published in the annual report. This is especially the case since the new EASE portal will allow the applicants to manage their own personal data and update them at any time (even for past requests).

Nevertheless, the Commission will consider publishing the data from the annual reports in an Excel file, which would allow its easier later reuse by interested parties.

Concerning the publication of metadata of documents that have been identified but not disclosed, this functionality was not considered when developing the EASE project. As mentioned above, the EASE public portal will allow the publication of documents partially and fully disclosed following initial and confirmatory requests for access to documents, along with their metadata (title, date of disclosure, type of access, exception used etc.).

The project team is now fully dedicated to successfully launching the first release of the new EASE system that will bring a number of improvements and additional functionalities. After that, it will be necessary to implement a number of high priority change requests (e.g. electronic notification of confirmatory decisions, instead of the current postal notification). The Commission is grateful for the good cooperation and recommendations of the Ombudsman. However, at this stage and before any new developments are planned and taken on board, the focus remains to ensure the successful putting in production of the functionalities within the current scope of the EASE project.

For the Commission
Johannes Hahn
Member of the Commissio

