



Council of the European Union
The President

Brussels, 15. 11. 2021

LT 248/21



Médiateur européen

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Date d'arrivée

Ms Emily O'REILLY
The European Ombudsman
Avenue du Président Robert Schuman, 1
CS 30403
67001 STRASBOURG Cedex
FRANCE

Subject: Your letter of 28 September 2021 proposing a solution in case 717/2021/DL

Madam,

Thank you for your letter of 28 September 2021 entailing your proposal for a solution in case 717/2021/DL regarding the Council of the European Union's refusal to give public access to the opinion of its Legal Service on the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part (hereafter referred to as "TCA").

It is true that the internal procedures for the adoption of the decision of the Council to conclude the TCA is now terminated. However, the subject-matter of the legal opinion at issue is and remains sensitive in the context of the opening, negotiation and conclusion of other agreements whether with the United Kingdom or with other third countries, to be concluded under Article 217 TFEU and reveals a strategy that was employed vis-à-vis this particular agreement that could also be applicable for other agreements. The sensitivity of the document is not automatically removed simply because the internal procedures in the Council have been concluded in relation to one specific agreement, when that legal advice is relevant in the context of other agreements for which the exception related to the protection of the public interest as regards international relations equally applies.

Therefore, the exceptions invoked by the Council under the third indent of Article 4(1)(a) (protection of the public interest as regards international relations) and the second indent of Article 4(2) (protection of legal advice) still justify the non-disclosure of that legal opinion.

Consequently, notwithstanding your own assessment and conclusion on the sensitivity of that document, further public access to the legal opinion cannot be granted.

As for your invitation to indicate, if any, parts of your proposal's document that the Council considers as confidential, I confirm that paragraphs 22, 23 (first and second sentences), 28 (second and third sentences) and 31 are of a confidential nature as they directly or indirectly release the very operational conclusion of the legal opinion at issue and shall therefore remain confidential vis-à-vis both the complainant and the public. The same applies to the third paragraph of this letter as regards ongoing negotiations whose content shall equally remain confidential.

Yours faithfully,



J. PODGORŠEK