

Reply of the European Commission to the proposal for a solution from the European Ombudsman

- Complaint by [REDACTED], ref. 2022/1998/MIG - How the European Commission dealt with a request for public access to documents concerning the US-EU Energy Security Task Force

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

On 24 May 2022, the complainant submitted an application¹ for access to documents which contain the following information related to the joint Task Force on Energy Security announced by the President of the European Commission, Ursula von der Leyen, and the President of the United States of America, Joe Biden, on 25 March 2022²:

- ‘The list of Task Force [on Energy Security] Members;
- The topics discussed during meetings;
- The involvement of the Task Force [on Energy Security] - notably through emitting recommendations - in any EU legislation or decision’.

The application was dealt with by the Directorate-General for Energy (‘DG ENER’) at initial stage.

On 12 July 2022, the applicant submitted a confirmatory application for lack of initial reply within the statutory deadlines.

In the initial reply of 21 September 2022, DG ENER provided several clarifications about the composition and the work of the Task Force. With regard to the topics discussed during its meetings, DG ENER indicated that the outcome of the two high-level meetings that took place on 28 April and on 22 June 2022 are available online. Furthermore, the European Commission department identified five documents as falling within the scope of this part of the request, pertaining to the topics discussed during meetings. It provided full access to two of these documents and partial access to the remaining three documents, arguing that parts of these latter documents are covered by the exceptions provided in Article 4(1)(a), third indent (protection of public interest as regards international relations) and Article 4(2), first indent (protection of commercial interests of a natural or legal person) of Regulation (EC) No 1049/2001.

On the same day, 21 September 2022, the applicant submitted a confirmatory request asking the European Commission to review the initial reply provided by DG ENER.

On 8 November 2022, in the absence of a reply to the above-mentioned confirmatory application within the statutory deadline expiring on 7 November 2022, the complainant turned to the European Ombudsman. In his complaint, the applicant considers that the European Commission ‘should disclose the identity of task force members and the content of the meetings’.

On 22 May 2023, the European Commission provided the applicant with the final decision

¹ Registered under the reference EASE 2022/3924.

² Available at: https://ec.europa.eu/commission/presscorner/detail/en/statement_22_2041.

(C(2023)3438), together with its annexes, in relation to the confirmatory application.

III. EUROPEAN OMBUDSMAN'S INQUIRY AND PROPOSAL FOR A SOLUTION

The European Ombudsman opened an inquiry into the European Commission's refusal to give public access to parts of the three technical convening agendas.

In the course of the inquiry, the European Ombudsman's services reviewed the three technical convening agendas at issue in the complainant's request and delivered the present proposal for a solution.

In its proposal, the European Ombudsman indicated that it 'does not find the Commission's argument that disclosure of the companies' names would undermine the EU's international relations sufficiently substantiated'. The European Ombudsman also pointed out that 'it remains unclear how specifically and actually the competitive position of the entities concerned could be affected by disclosing their participation in the meetings'.

The European Ombudsman furthermore mentioned that the 'companies with whom high-ranking EU officials meet on EU policy-related issues should usually be recorded on the EU Transparency Register and their identity should be disclosed to the public by the EU administration. Companies who engage with the EU on policy matters should therefore expect their names to be disclosed'. The proposal for a solution indicates that 'the Commission's refusal to disclose the names of the companies concerned seems at odds with its commitment to transparency as regards its meetings with interest representatives' and that, '[i]n a democratic society, it is (...) of utmost importance that the public is aware of who these companies are'. The European Ombudsman also noted that 'several companies have said publicly that they were involved in the work of the Task Force.'

In the view of the above, the European Ombudsman took the view that 'that the European Commission should re-assess its position to refuse disclosure of parts of the three "technical convening agendas" at issue, with a view to giving significantly increased, if not full, public access to these documents'.

IV. THE REPLY OF THE EUROPEAN COMMISSION TO THE EUROPEAN OMBUDSMAN'S PROPOSAL FOR A SOLUTION

The assessment performed at confirmatory stage by the Secretariat-General shows that the three technical convening agendas – that were partially disclosed at initial stage and which formed the subject matter of the present European Ombudsman inquiry – can be disclosed in full.

The European Commission's confirmatory decision C(2023)3438 final grants full access to the three technical convening agendas falling under the scope of the access to documents request submitted by the complainant. The subject matter of the complaint to the European Ombudsman is therefore settled in the European Commission's view.

List of enclosures [14]

- Commission Decision C(2023) 3438 final of 21 May 2023
- 01 US-EU Task Force technical convening invitation 20.04.2022_Redacted
- 02 Briefing DJJ TaskForce 20.04_Redacted
- 03 US-EU Task Force Flash Report 20.04.2022_Redacted
- 04 US-EU Task Force technical convening invitation 25.04.2022_Redacted
- 05 Briefing DJJ Task Force 25.04_Redacted
- 06 US-EU Task Force Flash Report 25.04.2022_Redacted
- 07 Briefing DJJ Washington visit_Redacted
- 08 US-EU Task Force technical convening invitation 30.06.2022_Redacted
- 09 US-EU Task Force technical convening invitation 30.06.2022 annex_Redacted
- 10 Briefing DJJ Task Force 30.06_Redacted
- US-EU Task force_technical convening_agenda_20.04.2022
- US-EU Task Force_technical convening_agenda_25.04.2022
- US-EU Task Force_technical convening_agenda_30.06.2022