

Subject: Reply of the European Commission on a letter to the European Commission President Ms Ursula Von der Leyen from the European Ombudsman as regards how the European Commission dealt with a request for public access to the draft EU-Mercosur additional Instrument. Complaint 1336/2023/PVV

Dear Mrs. O' Reilly

I wish to thank you for your letter dated 12 September 2023 as regards a complaint from a civil society organisation about the European Commission's refusal (Commission reference: EASE 2023/2355) to disclose the EU-Mercosur draft additional instrument.

The complaint was not preceded by the appropriate administrative approaches to the European Commission in the sense of the statute of the European Ombudsman,¹ as the applicant decided not to submit a confirmatory application against the initial reply of the European Commission dated 8 June 2023 in accordance with Article 7(2) Regulation (EC) No 1049/2001². Therefore, the present reply will be circumscribed to addressing your comments in relation to the proactive publication of the EU-Mercosur draft additional instrument and should be understood without prejudice to the European Commission's position as regards the applicant's request for public access, as reflected in the initial reply of 8 June 2023.

At the outset, I would like to confirm and reassure you that transparency continues to apply to all stages of EU trade negotiations, in line with the commitments reinstated in the Trade Policy Review 'An Open, Sustainable and Assertive Trade Policy'³. Accordingly, the Commission publishes negotiating round reports, EU initial textual proposals, and the text of agreements as soon as negotiators have finished their work and before the legal revision is completed. In addition, the Commission publishes explanatory material on the content of the agreements and how they can be used in practice. The Commission has ensured this level of transparency also as regards the negotiations with the Mercosur countries.⁴ However, the EU's draft proposal for an additional instrument did not correspond to any of these categories.

Indeed, when the EU transmitted the draft additional instrument to the Mercosur countries on 28 February 2023, the negotiations had already been concluded and the draft additional instrument did not qualify as an EU initial negotiating proposal in the way chapters of the agreement do.

In your letter of 12 September 2023, you refer to the Commission's Communication on 'The power of trade partnerships – together for green and just economic growth', and the

¹ Article 2(3) Regulation (EU, Euratom) 2021/1163 of the European Parliament of 24 June 2021 laying down the regulations and general conditions governing the performance of the Ombudsman's duties (Statute of the European Ombudsman) and repealing Decision 94/262/ECSC, EC, Euratom ([OJ L 253, 16.7.2021, p. 1](#)).

² Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ([OJ L 145, 31.5.2001, p. 43](#)).

³ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Trade Policy Review - An Open, Sustainable and Assertive Trade Policy (18.2.2021 COM(2021) 66 final), available at: https://eur-lex.europa.eu/resource.html?uri=cellar:5bf4e9d0-71d2-11eb-9ac9-01aa75ed71a1.0001.02/DOC_1&format=PDF

⁴ See Commission's website at https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercotur/eu-mercotur-agreement_en.

commitment to seek input from civil society as essential to help set priorities during the negotiation process and anticipate possible key questions related to the implementation. Indeed, the Commission has regularly sought input from civil society throughout the negotiations with the Mercosur countries and continues to do so.

As part of the second Sustainability Impact Assessment (SIA) that was carried out, the contractor *Trade Consulting Hub @ LSE Consulting* organised four roundtables in Brussels on selected sectors and a range of sustainability issues (20 March 2018, 21 March 2018, 21 March 2018 and 22 March 2018). The events were open to public registration and representatives across all four sectors were invited to each meeting. In addition, the contractor organised two consultation events in the Mercosur countries, namely in São Paulo (Brazil) on 13 March 2018 and in Buenos Aires (Argentina) on 16 March 2018. Civil Society Dialogue meetings were organised following the publication of the draft inception report (13 October 2017), the draft interim report (15 October 2019) and draft final report (22 July 2020). The state of play of negotiations with Mercosur was also covered in the Civil Society Dialogue meeting on 15 December 2022 on EU-Latin America trade relations. In addition, the Commission services have been available to meet civil society representatives upon request on a regular basis throughout the negotiations to discuss the EU's trade relations with Mercosur countries.

As regards the SIA that was commissioned to accompany the negotiations more generally, your concerns were addressed in the context of your investigation under reference 1026/2020/MAS.

Therefore, the Commission ensures a high level of transparency in EU trade negotiations and will continue to do so. In this spirit, DG TRADE decided to publish the text of the EU-Mercosur draft additional instrument, which is available on the Commission's website at:

https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercotur/eu-mercotur-agreement/documents_en.

I am confident that this response will reassure you of the Commission's determination to strike the right balance between its prerogatives as EU trade negotiator and its strong commitment to transparency in trade negotiations.

For the Commission

Valdis DOMBROVSKIS
Executive Vice-President

