

**Reply by the European Commission to the European Ombudsman's recommendation –
How the European Commission dealt with a request for public access to a text message
sent by an EU Head of State to the Commission President concerning the EU-Mercosur
trade negotiations**
Case ref. 2482/2025/4

I. BACKGROUND

On 31 January 2024, the complainant submitted a request for public access under Regulation (EC) No 1049/2001¹ concerning a text message sent by the President of the French Republic to the President of the European Commission concerning the EU-Mercosur trade negotiations. In the absence of an initial decision, the complainant submitted a confirmatory application on 14 May 2025, 15 months later.

In its confirmatory decision of 29 July 2025², the European Commission (hereafter 'the Commission') informed the complainant that it does not hold the requested text message and provided detailed explanations on the search conducted for this message.

II. THE COMPLAINT TO THE EUROPEAN OMBUDSMAN AND THE EUROPEAN OMBUDSMAN'S INQUIRY

In September 2025, the complainant submitted a complaint to the European Ombudsman (hereafter 'the Ombudsman'), challenging the confirmatory decision of 29 July 2025.

In the same month, the Ombudsman opened an inquiry into how the Commission handled the complainant's request for public access to documents.

During the inquiry, the Ombudsman inspected the Commission's file on the request for public access and met with Commission representatives to obtain further information on the case.

III. THE EUROPEAN OMBUDSMAN'S RECOMMENDATION AND SUGGESTIONS FOR IMPROVEMENT

On 3 June 2026, the Ombudsman provided the Commission with its assessment of the case, covering four main points: 'preliminary remarks', 'the timing of the deletion of the text message at issue', 'the delay in handling the public access request', and 'how the Commission stores exchanges with Heads of State or Government'.

Preliminary remarks

In its decision, the Ombudsman notes that, under Article 228 of the Treaty on the Functioning of the European Union (hereafter 'TFEU')³, it may not investigate matters that are or have been the subject of legal proceedings. As proceedings are pending before the General Court on the legality of the Annex to the Commission's Rules of Procedure⁴, the Ombudsman will not take a position on the Annex itself until the Court has delivered its judgment. However, this does not preclude the Ombudsman from examining whether individual confirmatory

¹ 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, pp. 43–48.

² Reference Ares(2025)6166129.

³ OJ C 326, 26.10.2012, pp. 1–12.

⁴ Cases T-146/25 *De Capitani and Others v Commission*, and T-641/25 *Client Earth v Commission*.

decisions comply with Regulation (EC) No 1049/2001, as interpreted by the EU courts, and with the principles of good administration⁵. The Ombudsman therefore continues its assessment on that basis, without, according to the Ombudsman, addressing the legality of the Annex itself.

The timing of the deletion of the text message at issue

The Ombudsman notes that the Commission in this case confirmed that the text message at issue existed, but that it no longer holds it. Therefore, there is no reason to doubt the veracity of the Commission's statement that it is not anymore in its possession. However, the Ombudsman recalls her position⁶ that, where a document is the subject of a request for public access, it should not be deleted until all available review procedures have been completed.

The Ombudsman outlines that it could not determine when the requested message was deleted or when the Commission searched for it. The Ombudsman also considers it possible that the message requested was automatically deleted after the request for public access had been received. According to the Ombudsman, this lack of clarity about the timeline is an issue in itself.

The delay in handling the public access request

The Ombudsman considers that the Commission failed to handle the request for public access diligently, as the request remained unaddressed for 15 months without adequate monitoring or follow-up until the complainant submitted a confirmatory application. The way the Commission handled the complainant's request constituted maladministration.

How the Commission stores exchanges with Heads of State or Government

The Ombudsman acknowledges that the Commission, as any other EU institution, does not have a legal obligation to retain copies of every written text that comes into its possession and that it enjoys a certain discretion in determining which documents it registers. At the same time, the Ombudsman underlines that text and instant messages concerning the Commission's policies, activities and decisions, especially those exchanged between Commissioners and Heads of State or Government, should be retained for a reasonable period in view of their likely significance and to ensure transparency, public access and effective review.

On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendation:

- 'The Commission should review and improve the way public access requests are handled when the Cabinet of the President - or of any Commissioner - is involved. The Commission should also actively and closely monitor the progress of these requests to avoid undue delays' (hereafter 'the Ombudsman's recommendation').

⁵ Paragraph 30 of the Ombudsman's closing decision in case 1405/2024/OAM, available at: <https://www.ombudsman.europa.eu/en/decision/en/213196>.

⁶ European Ombudsman's Decision on how the European Commission dealt with a request for public access to emails from its representatives based in Greece concerning the migration situation in two hotspots (case 211/2022/TM), paragraph 24, available at: <https://www.ombudsman.europa.eu/en/decision/en/157768>.

Furthermore, the Ombudsman made the following suggestions for improvement:

- 'The Commission should adapt its internal rules to require that a document is preserved as soon as a request for public access to that document is received and until any process of challenging a refusal to grant access is completed, irrespective of the service ultimately responsible for dealing with the substance of it and of whether it fulfils the Commission's document registration criteria' (hereafter 'the first suggestion for improvement').
- The Commission should ensure that all text and instant messages relating to the Commission's policies, activities and decisions exchanged between Heads of State or Government, or ministers, and Members of the Commission, including those subject to automatic deletion after a certain time interval, are duly preserved for a reasonable period' (hereafter 'the second suggestion for improvement').

IV. THE COMMISSION'S REPLY TO THE OMBUDSMAN'S RECOMMENDATION AND SUGGESTIONS FOR IMPROVEMENT

The Commission will address below each of the issues examined by the Ombudsman, together with the corresponding recommendation and suggestions for improvement.

The delay in handling the public access request and the Ombudsman's recommendation

The Commission regrets the Ombudsman's conclusion that the complainant's request for public access was not handled with the diligence required and accepts the recommendation to improve the handling of such requests where the Cabinet of the President, or of any Commissioner, is involved.

In this regard, the Commission is pleased to inform the Ombudsman that the President's Cabinet and the Commission's Secretariat-General have put in place a regular monitoring practice for requests for public access to documents. This is intended to ensure closer cooperation, more systematic follow-up and earlier identification of potential delays.

In addition, following the Ombudsman's decision in this case, the Secretariat-General has drawn the attention of Commission services to the need of timely handling of requests for access to documents concerning all Commissioners' Cabinets, as for any request submitted under Regulation (EC) No 1049/2001.

The Commission regrets that, in this case, the complainant did not receive an initial reply due to a lack of reminder and monitoring. At the same time, the Commission takes the view that not every administrative oversight constitutes an instance of maladministration. In this regard, Regulation (EC) No 1049/2001 provides for a specific practical consequence in case the deadline for replying to the initial request for public access to documents is not met.

In such situation, the institution handling the request is deemed to have adopted an implied negative decision after 15 working days. In accordance with Article 7(4) of Regulation (EC) No 1049/2001, 'failure by the institution to reply within the prescribed time-limit shall entitle the applicant to make a confirmatory application'. The Commission notes that, in this case, the complainant did not submit a confirmatory request for more than 15 months, although that legal remedy was available throughout that period.

Finally, the Commission considers that the strengthened monitoring and coordination now in place constitutes an appropriate response to the recommendation and will help to prevent similar delays from occurring in the future.

The timing of the deletion of the text message and the first suggestion for improvement

The Ombudsman's observations on the timing of the deletion of the text message must be examined in light of the Commission's general rules governing the use, registration and retention of text messages on corporate mobile phones.

Under Article 5(4) of the Annex to the Rules of Procedure of the Commission⁷, '[t]ext messaging applications on corporate mobile phones shall not be used for important information that is not short-lived, unless where this is strictly required in the interest of the service. Text messaging applications shall comply with the Commission's information technology security recommendations for the automatic disappearance of messages'.

That provision reflects the Commission's framework for document management and retention⁸, which is designed to ensure that documents containing important information that is not short-lived are appropriately preserved, according to clear, consistent rules, in line with Regulation (EC) No 1049/2001.

The Commission notes that the Ombudsman does not take a position on the legality of the Annex to the Commission's Rules of Procedure, and in particular its Article 5(4), as this matter is currently subject to court proceedings.

In this regard, it should be noted that, in January 2026, the President of the General Court confirmed that the Commission's rules for registration of documents comply with EU law, including the obligation to retain important information that is not short-lived. This also covers text messages, as confirmed in Order T-784/25 R⁹.

Against this background, the decisive point in the present case is not, in the Commission's view, whether the message ceased to exist before or after the request was submitted, but whether there was, at any time, a legal obligation to retain and register it. As explained in the confirmatory decision of 29 July 2025 and in accordance with Commission Decision 2021/2121 and the Detailed Rules, there was no such obligation in respect of the message requested.

For that reason, the exact timing of the deletion does not affect the legal assessment under Regulation (EC) No 1049/2001. If a message is not subject to any registration obligation under the Commission's document management rules, the mere submission of an application for access to documents cannot retroactively create such an obligation.

⁷ Commission Decision (EU) 2024/3080 of 4 December 2024 establishing the Rules of Procedure of the Commission and amending Decision C(2000) 3614 (OJ L, 2024/3080, 5.12.2024, ELI: <http://data.europa.eu/eli/dec/2024/3080/oj>).

⁸ Detailed rules for the application of Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (referred to above, and Commission Decision (EU) 2021/2121 of 6 July 2020 on records management and archives, C/2020/4482, OJ L 430, 2.12.2021, pp. 30–41, available at: <https://eur-lex.europa.eu/eli/dec/2021/2121/oj/eng>).

⁹ See points 21 to 30 of the Order of the General Court of 25 March 2026, *Wölken v Commission*, Case T-784/25 R.

This is particularly important in the institutional context in which the Commission operates. Limitations on registration and preservation duties are necessary to enable the practical application of the rules on access to documents in an institution such as the Commission, which produces and receives a very large number of documents every day¹⁰. The registration and preservation of every written text would not only go beyond the system established by Regulation (EC) No 1049/2001 and by the Commission's Detailed Rules, but also be disproportionate and impractical.

How the Commission stores exchanges with Heads of State or Government and the second suggestion for improvement

The EU-Mercosur trade agreement was a significant and complex trade negotiation, bringing together the EU and the Mercosur countries in an effort to create a large, rule-based partnership covering trade, investment and sustainable development.

In this context, the President of the Commission and the Heads of State and Government need to have the possibility to exchange in an atmosphere of mutual trust and confidentiality. These exchanges lay the ground for being able to agree, when necessary and appropriate, formal positions, as expressed in joint common statements and summit conclusions, which are all publicly available documents¹¹. The same applies to ministers and Commissioners.

At the same time, by their very nature, pursuant to said Article 5(4) of the Annex to the Rules of Procedure of the Commission, these exchanges in principle cannot be stored in general, unless they comply with the requirements for registration under Article 7(1) of Decision 2021/2121. In this connection, the Commission gives high priority to security and follows IT guidance including automatic deletion rules.

In the Commission's view, the wish to preserve certain messages for as long as any process of challenging a refusal to grant public access remains open – which, in the case of complaints lodged with the European Ombudsman, may last up to two years – cannot be reconciled with the necessary cybersecurity measures, including specific recommendations issued by the interinstitutional cybersecurity body that supports EU institutions, bodies, offices and agencies (CERT EU Security Guidance 22-002¹²).

V. CONCLUSIONS

The Commission regrets the Ombudsman's finding of maladministration in this case. The Commission has enhanced its monitoring and closer coordination between the President's Cabinet and the Secretariat-General to reduce the risk of delays in the handling of requests for public access to documents.

Furthermore, the Commission's rules on registering documents ensure that only those documents that are important and not short-lived are kept according to clear, consistent rules, in line with Regulation (EC) No 1049/2001 and the Detailed Rules annexed to the Commission's Rule of Procedures.

¹⁰ As an example, around three million e-mails are received by Commission staff every day. Approximately 2.5 million of those e-mails are internal.

¹¹ https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercotur/eu-mercotur-agreement_en.

¹² Security Guidance 22-002 - Hardening Signal, 3 March 2022, available at: <https://cert.europa.eu/publications/security-guidance/security-guidance-22-002---hardening-signal/>.