



European Ombudsman

Inadmissible, no ground(s) or dropped before inquiry complaint summary

COMPLAINT: 331/2015/PMC
NO GROUNDS

CONFIDENTIAL: ☐ YES; ☒ NO

If confidential, please state reason:

☐ Confidential at request of complainant, or

☐ Confidential following EO decision (Implementing Provisions, Article 10(1)):

☐ To protect the interests of the complainant

☐ To protect the interests of a third party

Please explain:

1. INSTITUTION, BODY, OFFICE, OR AGENCY COMPLAINED AGAINST:

☒ European Commission

☐ EPSO

☐ European Parliament

☐ Council of the European Union

☐ Court of Justice of the European Union

☐ Court of Auditors

☐ Other (please specify):

Concerning:

The handling of the complainant's public access to documents request

Main facts:

On 2 November 2014, the complainant requested, through the online portal 'asktheeu' and in accordance with Regulation 1049/2001, public access to metadata concerning all ARES documents registered between 1 and 31 October 2014, and classified under the heading codes '02.02.03.005 ('Processing of requests for access to documents') ' or '01.05.03.020.020 ('Ombudsman')', including under the relevant sub-codes. The complainant asked to receive the documents in an electronic format which could be further processed, such as MS Word.

On 10 November 2014, the Commission acknowledged receipt of his access request, which was registered under the reference Gestdem 2014/5303. The Commission informed the complainant that the deadline to reply to his initial application expires on 1 December 2014.

On 4 December 2014, the complainant submitted a confirmatory application, given that the Commission had not replied to his initial application within the deadline.



On 5 December 2014, the Commission informed the complainant that it had to postpone the deadline for replying to his initial application by an additional 15 working days, that is, to 22 December 2014.

On 7 December 2014, the complainant contested what in his view constituted certain administrative shortcomings in the Commission's handling of his access request, including the fact that the Commission had informed him of the need to extend the deadline to reply only after the relevant deadline had already ended.

On 19 December 2014, the Commission informed the complainant that, following his previous correspondence constituting a confirmatory application, the necessity to provide a reply to his initial application became redundant. The Commission also provided some general information concerning the documents requested by the complainant and the administrative steps needed to reply to his request. It further stated that **the handling of his request would represent a disproportionate workload** for the Commission services. **The Commission thus requested the complainant to further clarify his request, in accordance with Article 6(2) of Regulation 1049/2001. It attached a list of documents which it had identified as falling within the complainant's access request.**

On 10 January 2015, the **complainant challenged the Commission's view** that his request was disproportionate, justifying the limiting of the processing of his application.

On 27 January 2015, the Commission stated that even though the complainant had not provided the requested clarifications, it considered his last message as the basis on which it would further handle his access request and also as the basis in relation to which it had to calculate the applicable deadline (2 February 2015).

On 18 February 2015, the Commission replied to the complainant's confirmatory application, explaining that due to the need to conduct inter-service consultations, it was unable to reply to the complainant's initial application within the relevant deadline. It stated that, on 5 December 2014, it had sent him a letter postponing the deadline until 22 December 2014. However, given that the complainant had in the meantime submitted a confirmatory application which overlapped with the Commission's letter, the Commission **decided directly to deal with the complainant's confirmatory application instead of first replying to his initial request.** The Commission then referred to its letter of 19 December 2014, in which it had asked the complainant to clarify his access request. It explained that without prejudice to the question of whether metadata in Ares constitute single documents within the meaning of Regulation 1049/2001, the principles of **the Court's ruling in case *Dufour v ECB* apply, that is, that it must be possible to extract metadata through a normal and routine search in the database**, without having to develop a new software or to establish of a new classification system. The Commission then **disclosed the documents** classified under Ares code '**01.05.03.020.020 ('Ombudsman')**' for the entire month of October 2014. It added that it **did not grant access to the relevant personal data**, since the complainant had failed to provide arguments justifying the need to receive them. Finally, the



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Commission informed the complainant about the remedies available to him in relation to its decision.

On 22 February 2015, dissatisfied with the above confirmatory decision, the complainant turned to the Ombudsman.

In his complaint, the complainant put forward the following allegation and claim:

Allegation

The Commission failed properly to handle the complainant's request for public access to documents.

In support of his allegation, the complainant put forward the following arguments.

1. The documents disclosed by the Commission on 18 February 2015 were not provided in an electronic format which could be further processed, as requested by the complainant.
2. The Commission wrongly dealt only with one part of the complainant's access request, as it had disclosed only documents related to one heading code. However, the complainant had requested access to documents classified under the heading codes '02.02.03.005 ('Processing of requests for access to documents') ' **or** '01.05.03.020.020 ('Ombudsman')', where 'or' needs to be interpreted not as implying a choice as regards the two, but rather as a logical 'and'.
3. The Commission's request addressed to the complainant to clarify his access request was unjustified, as Article 6 of Regulation 1049/2001 does not allow the Commission to limit an application one-sidedly.
4. The Commission failed to provide a substantive reply to the complainant's messages of 7 December 2014 and 10 January 2015.

Claim

The Commission should grant full access to the requested documents or properly justify its decision not to do so.

3. ANALYSIS

3.1 If inadmissible, tick one or more of the following reasons:

- ☐ Complainant not identified (Art. 2.3)
- ☐ Object not identified (Art. 2.3)
- ☐ Being dealt with or already dealt with by a court (Arts. 1.3 and 2.7)
- ☐ Time limit exceeded (2 years limit) (Art. 2.4)
- ☐ No prior administrative approaches made (Art. 2.4)
- ☐ Internal remedies not exhausted in staff cases (Art. 2.8)



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- ☐ 'Unauthorised' complainant who complains against EU institution (Art. 2.2)
- ☐ It is separately proposed to open a related own initiative inquiry
- ☐ It is **not** proposed to separately open a related own initiative inquiry, **for the following reasons:**

3.2 If no grounds (Art. 228), tick one of the following:

- ☐ Dealt with or being considered by another competent body (please specify):
- ☐ PETI Committee (EP); ☐ OLAF; ☐ EDPS; ☐ Other body (specify):
- ☒ Other reasons for not opening an inquiry (specify):

The Commission's position as regards the complainant's access to documents requests is reasonable. Moreover, the complainant did not bring forward any valid arguments challenging it.

(1) According to Article 10(1) of Regulation 1049/2001, the applicant shall have access to documents either by consulting them on the spot or by receiving a copy, including, *where available*, an electronic copy, according to the applicant's preference. In its letter of 18 February 2015, the Commission also correctly referred to the Court's ruling in *Dufour v ECB*. The Commission cannot be reproached for not holding the relevant documents in the format requested by the complainant.

(2) It was reasonable for the Commission to interpret the 'or' as an 'or' and not an 'and'.

(3) The Commission justifiably requested clarifications from the complainant.

(4) The Commission sufficiently addressed the points which the complainant had raised in his correspondence of 7 December 2014 and 10 January 2015 in its letters of 19 December 2014 and 27 January 2015, respectively.

In view of the above, there are insufficient grounds to open an inquiry into the Commission's refusal to grant access to the requested documents.

3.3. Dropped by complainant before inquiry ☐

4. PROPOSAL FOR ACTION

Proposal: *To close the case in line with the above reasoning*

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Information/advice?☐ YES - What? [SELECT FROM LIST]

More detail(s), if needed:

☐ NO - Please state reason(s):**Transferred?** (Tick only, if transferred)☐ YES - Where? [SELECT FROM LIST]

More detail(s), if needed:

5. APPROVAL CIRCUIT (For LOs to fill out. A copy of the email approving the final version should be included in the signataire for dispatch.)**If inadmissible or dropped before inquiry:**

HCIU: [SELECT FROM LIST]

Date:

SG: ☐

Date:

If no grounds or unauthorised complainant (note: only no ground decisions require language check):

HCIU: [SELECT FROM LIST]

Date:

Director: [SELECT FROM LIST]

Date:

Language: ☐

Date:

SG: ☐

Date:

☐ YES, this summary has been saved in the relevant complaints' summaries folder on the common drive. (This allows the document to be searched on SISTEO. It should be done as soon as possible after the necessary approval(s) have been given and before the signataire is handed to the Registry).

CONFIDENTIAL: ☐ YES; ☒ NO

Complaint date:	22 Feb 15	Complainant's name:	Mr Guido Strack
Date registered:		Represented by (if applicable):	
Summary date(s):	5 March 15	Country of address:	DE
Language:	DE	Nationality:	DE

KIND OF COMPLAINANT**Physical person:** ☒ ManIf applicable, ☐ MEP☐ WomanIf applicable, ☐ EU staff**Legal Person:** ☐ Company; ☐ Lawyer's office; ☐ Association/ Non-profit/ NGO☐ Other (specify):

TRANSMISSION



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☒ Directly; ☐ by MEP; ☐ by PETI Committee; ☐ other (specify):

KEYWORDS

Keyword(s) 1- Eurovoc:

<input type="checkbox"/> Object not identified - only use for inadmissible/outside mandate (not in the official EUROVOC list) <input type="checkbox"/> Administrative competition [Institution/Agency/Body] <input checked="" type="checkbox"/> Administrative transparency <input type="checkbox"/> Adoption law <input type="checkbox"/> Aid to agriculture <input type="checkbox"/> Air transport <input type="checkbox"/> Banking system <input type="checkbox"/> Border control <input type="checkbox"/> Child protection <input type="checkbox"/> Climate <input type="checkbox"/> Competition law <input type="checkbox"/> Construction policy <input type="checkbox"/> Consumer protection <input type="checkbox"/> Cooperation policies <input type="checkbox"/> Corruption <input type="checkbox"/> Courts and tribunals <input type="checkbox"/> Data protection <input type="checkbox"/> Disabled person <input type="checkbox"/> Disciplinary proceedings <input type="checkbox"/> Divorce <input type="checkbox"/> Driving licence <input type="checkbox"/> Duties and rights of civil servants <input type="checkbox"/> Employment <input type="checkbox"/> Environmental policy <input type="checkbox"/> Equal treatment <input type="checkbox"/> EU charter of fundamental rights <input type="checkbox"/> European citizenship <input type="checkbox"/> ECHR	<input type="checkbox"/> European School <input type="checkbox"/> European symbol <input type="checkbox"/> Europol <input type="checkbox"/> Extradition <input type="checkbox"/> Foreign policy <input type="checkbox"/> Fraud <input type="checkbox"/> Free movement of capital <input type="checkbox"/> Free movement of goods <input type="checkbox"/> Free movement of persons <input type="checkbox"/> Freedom to provide services <input type="checkbox"/> Grant <input type="checkbox"/> Health care <input type="checkbox"/> Health policy <input type="checkbox"/> Humanitarian aid <input type="checkbox"/> Immigration <input type="checkbox"/> Insurance <input type="checkbox"/> Intellectual property <input type="checkbox"/> Leave <input type="checkbox"/> Libel and slander <input type="checkbox"/> Member of Parliament <input type="checkbox"/> Migrations <input type="checkbox"/> National implementing measure <input type="checkbox"/> National/Regional Ombudsmen and similar bodies (not in the official EUROVOC list) <input type="checkbox"/> OLAF <input type="checkbox"/> Organisation of elections <input type="checkbox"/> Pay <input type="checkbox"/> Payment <input type="checkbox"/> Pensions <input type="checkbox"/> Petitions <input type="checkbox"/> Police	<input type="checkbox"/> Political parties <input type="checkbox"/> Pollution <input type="checkbox"/> Press <input type="checkbox"/> Prices <input type="checkbox"/> Prisons <input type="checkbox"/> Promotion <input type="checkbox"/> Protection of animals <input type="checkbox"/> Psychological harassment <input type="checkbox"/> Public services <input type="checkbox"/> Racism and xenophobia <input type="checkbox"/> Rail transport <input type="checkbox"/> Real property <input type="checkbox"/> Recognition of diplomas <input type="checkbox"/> Refugee <input type="checkbox"/> Research <input type="checkbox"/> Road transport <input type="checkbox"/> Sea transport <input type="checkbox"/> Sexual harassment <input type="checkbox"/> Social policy <input type="checkbox"/> Social security <input type="checkbox"/> Structural funds <input type="checkbox"/> Subsidy <input type="checkbox"/> Supervision of medicinal products <input type="checkbox"/> Taxation <input type="checkbox"/> Telecommunications <input type="checkbox"/> Terrorism <input type="checkbox"/> Trans-European networks <input type="checkbox"/> Unemployment <input type="checkbox"/> Use of languages <input type="checkbox"/> Visa policy <input type="checkbox"/> Waste <input type="checkbox"/> Working time
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NOTE: Keywords "2", "3" and "4" are only necessary for no grounds complaints. It is possible to select several key words in each list.

Keyword(s) 2 - Field of law:

<input type="checkbox"/> Agriculture <input type="checkbox"/> Area of freedom, security and justice	<input type="checkbox"/> Energy <input type="checkbox"/> Environment, consumers and health protection	<input type="checkbox"/> Law relating to undertakings <input type="checkbox"/> People's Europe <input type="checkbox"/> Regional policy and
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<input type="checkbox"/> Common Foreign and Security Policy <input type="checkbox"/> Competition policy <input type="checkbox"/> Customs Union and free movement of goods <input type="checkbox"/> Economic and monetary policy and free movement of capital	<input type="checkbox"/> External relations <input type="checkbox"/> Freedom of movement for workers and social policy <input type="checkbox"/> Fisheries <input checked="" type="checkbox"/> General, financial and institutional matters <input type="checkbox"/> Industrial policy and internal market	coordination of structural instruments <input type="checkbox"/> Right of establishment and freedom to provide services <input type="checkbox"/> Science, information, education and culture <input type="checkbox"/> Taxation <input type="checkbox"/> Transport policy
If useful, legal act(s):		
Keyword(s) 3 - Type(s) of (mal)administration:		
<input type="checkbox"/> Lawfulness (incorrect application of substantive and/or procedural rules) [Article 4 ECGAB] <input type="checkbox"/> Absence of discrimination [Article 5 ECGAB] <input type="checkbox"/> Proportionality [Article 6 ECGAB] <input type="checkbox"/> Absence of abuse of power [Article 7 ECGAB] <input type="checkbox"/> Impartiality, independence and objectivity [Articles 8 and 9 ECGAB] <input type="checkbox"/> Legitimate expectations, consistency and advice [Article 10 ECGAB] <input type="checkbox"/> Fairness [Article 11 ECGAB] <input type="checkbox"/> Courtesy [Article 12 ECGAB]	<input type="checkbox"/> Reply to letters in the language of the citizen, indicating the competent official [Articles 13 and 14 ECGAB] <input type="checkbox"/> Obligation to transfer to the competent service of the Institution [Article 15 ECGAB] <input type="checkbox"/> Right to be heard and to make statements [Article 16 ECGAB] <input type="checkbox"/> Reasonable time-limit for taking decisions [Article 17 ECGAB] <input type="checkbox"/> Duty to state the grounds of decisions and the possibilities of appeal [Articles 18 and 19 ECGAB] <input type="checkbox"/> Notification of the decision [Article 20 ECGAB]	<input type="checkbox"/> Data protection (includes failure to grant access to one's file) [Article 21 ECGAB] <input type="checkbox"/> Requests for information [Article 22 ECGAB] <input checked="" type="checkbox"/> Requests for public access to documents [Article 23 ECGAB] (OBLIGATORY and only used for complaints concerning the application of Regulation 1049/2001) <input type="checkbox"/> Duty of care <input type="checkbox"/> Other rights and duties resulting from the Staff Regulations and not covered by the above list <input type="checkbox"/> Other rights and duties resulting from the Charter of Fundamental Rights and not covered by the above list
Keyword(s) 4 - Subject matter of the case:		
<input type="checkbox"/> The Commission as Guardian of the treaties: Article 258 of the TFEU (ex Article 226 of the EC Treaty) <input checked="" type="checkbox"/> Dealing with requests for information and access to documents (Transparency) <input type="checkbox"/> Award of tenders or grants <input type="checkbox"/> Execution of contracts <input type="checkbox"/> Competition and selection procedures (including trainees) <input type="checkbox"/> Administration and Staff Regulations <input type="checkbox"/> Institutional and policy matters		



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TRANSMISSION DATA:

ANNEX(ES): [If applicable, please insert here the reference(s) of document(s) enclosed with the outgoing letter(s). This information is needed by the Registry. Also specify what exact pages are concerned, where applicable.]

☐ Letter of inadmissibility

Attachment(s): ☐ EO leaflet

☐ Committee on Petitions of the European Parliament leaflet

☐ Other:

☐ Original complaint (copy the complaint for the EO's file - Send by registered post)

☒ No grounds decision/simple letter

☐ Original Decision to the complainant

☐ Letter to President of the Institution

☐ Copy of the decision in EN

☐ (cc:)

☐ Transfer of a complaint

☐ Letter to Institution + Original of the complaint (send **by registered post**)

☐ Letter to inform the complainant

☐ (Copy the complaint for the EO's file)