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## The time the European Commission takes to deal with requests for public access to documents

European Parliament resolution of 14 March 2024 on the time the European Commission takes to deal with requests for public access to documents (2023/2941(RSP))

(C/2024/6560)

*The European Parliament,*

- having regard to the Treaty on European Union (TEU), in particular Articles 1, 9, 10, 11 and 16 thereof,
  - having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 15 and 228 thereof,
  - having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 41 and 42 thereof,
  - having regard to 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 <sup>(1)</sup>,
  - having regard to 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 <sup>(2)</sup>,
  - having regard to the decision of the European Ombudsman of 18 September 2023 on the time the European Commission takes to deal with requests for public access to documents (strategic inquiry OI/2/2022/OAM),
  - having regard to the special report of the European Ombudsman of 21 September 2023 in her strategic inquiry concerning the time the European Commission takes to deal with requests for public access to documents (OI/2/2022/OAM),
  - having regard to the case-law of the Court of Justice of the European Union and the European Court of Human Rights,
  - having regard to its resolution of 13 July 2023 on public access to documents – annual reports for the years 2019-2021 <sup>(3)</sup>,
  - having regard to Rule 132(2) of its Rules of Procedure,
- A. whereas public access to the documents that the EU institutions hold is a fundamental right protected by the Charter of Fundamental Rights of the EU and the Treaties; whereas citizens must be able to exercise this right in a proactive way, as it enables them to effectively exercise their right to scrutinise the work and activities of the EU institutions, bodies, offices and agencies, in particular the legislative process; whereas the EU institutions, bodies, offices and agencies must strive for the highest possible standards of good governance, accountability, openness, integrity and transparency in their functioning and the decision-making process; whereas these standards are a precondition for citizens' trust in the EU institutions;
- B. whereas the purpose of Regulation (EC) No 1049/2001 is to confer on the public the broadest possible right of access to the documents of the institutions in order to allow them to effectively exercise their right to scrutinise the work and activities of the EU institutions; whereas there is a need to ensure scrutiny methods that combine democratic oversight, control and monitoring activities; whereas the Commission is legally obliged to disclose documents promptly and in line with the clear time limits set out in Regulation (EC) No 1049/2001;

<sup>(1)</sup> OJ L 145, 31.5.2001, p. 43.

<sup>(2)</sup> OJ L 253, 16.7.2021, p. 1.

<sup>(3)</sup> Texts adopted, P9\_TA(2023)0295.

- C. whereas Article 228 TFEU and Article 3 of the Statute of the European Ombudsman mandate the Ombudsman to conduct inquiries when she finds grounds to do so, either on the basis of a complaint or on her own initiative, in particular in repeated, systemic or particularly serious instances of maladministration; whereas Article 4(3) of the Statute mandates the Ombudsman to forward a report to the European Parliament when the nature or the scale of the instance of the maladministration uncovered necessitates it;
- D. whereas numerous complaints received by the Ombudsman reveal that there have been significant delays before the Commission has decided on requests for public access to documents and has failed to comply with the time limits laid down by the relevant legislation; whereas the Ombudsman's special report in her strategic inquiry concerning the time the Commission takes to deal with requests for public access to documents shows that her suggestions have not been systematically implemented in practice and that the Commission has failed to implement the necessary changes to adhere to this demand; whereas on 28 November 2023, the Ombudsman presented her special report and assessment of the situation to the Committee on Civil Liberties, Justice and Home Affairs;
- E. whereas the Commission's response suggests that it processes access-to-document requests without any major issues; whereas in the Commission's reply <sup>(4)</sup> concerning the Ombudsman's request for information on the time the Commission takes to deal with requests for public access to documents, it acknowledges the importance of handling requests in a timely manner and referred to the many challenges posed by the increase in the number of requests and their complexity; whereas the new Electronic Access to Commission Documents portal is clearly a positive step in terms of the Commission's interactions with those requesting access and of the publishing of all disclosed documents;

### ***Access to the Commission's documents***

1. Recalls that the right of public to access documents held by the EU institutions is set out in the Treaties and the Charter of Fundamental Rights and that it plays a crucial role in ensuring that the EU institutions operate in a transparent manner, which improves the legitimacy of and public trust in the EU, as well as its credibility;
2. Insists that the EU institutions, including the Commission, are obliged to implement Article 15(3) TFEU in line with democratic principles, in particular those laid down in Article 10(3) TEU and Article 42 of the Charter of Fundamental Rights; emphasises that transparency is fundamental to ensuring the accountability and democratic scrutiny of the EU institutions;
3. Welcomes the Ombudsman's practical recommendations on how to record text and instant messages sent or received by staff members in their professional capacity <sup>(5)</sup>; recognises that work-related text and instant messages are 'documents' within the meaning of Regulation (EC) No 1049/2001 on public access to documents and invites the other EU institutions, bodies, offices and agencies to recognise this, to follow the Ombudsman's recommendations accordingly and to make this follow-up public;
4. Recalls that an application for access to a document must be handled promptly; reiterates its concern that many of the complaints received by the Ombudsman are about delays in gaining access to requested documents and that the delayed access occurs in cases of significant public interest; deeply regrets the findings in the Ombudsman's special report of systemic and significant delays in access to Commission documents, in particular the fact that, in 85 % of the reviewed cases, the Commission did not take a decision within the legal time limits and that, in 60 % of the cases, the delay amounted to more than 60 working days; regrets that the Commission failed to comply with Regulation (EC) No 1049/2001 through its systematic breaching of the legal time limits for public access to documents and its failure to communicate its decision to the requesters in a timely manner, as shown in the Ombudsman's special report; underlines that, in line with the Ombudsman's assessment, these delays amount to maladministration by the Commission;

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<sup>(4)</sup> Reply of the Commission of 28 March 2023 on a request for information from the European Ombudsman on the time taken by the European Commission to deal with requests for public access to documents.

<sup>(5)</sup> European Ombudsman, 'Closing note on the strategic initiative on how EU institutions, bodies, offices and agencies record text and instant messages sent/received by staff members in their professional capacity (SI/4/2021/MIG)', 13 July 2022.

5. Underlines that the European Ombudsman plays an important role in facilitating citizens' access to documents, in particular when that access has been partially or completely refused by an EU institution, agency or body; strongly supports the Ombudsman's recommendations to the Commission on correcting this situation as a matter of priority;

6. Recalls with great concern that, in 2021, following a request for public access to text messages between Commission President Ursula von der Leyen and the CEO of a pharmaceutical company regarding the Commission's purchase of COVID-19 vaccines, the Commission refused to acknowledge that such text messages fall within the definition of a 'document' under Regulation (EC) No 1049/2001; recalls that the registration of a document is a consequence of, not a prerequisite for, that document's existence; takes note of the Ombudsman's finding of maladministration by the Commission in this case; is concerned by the fact that the Commission has failed to follow up on the Ombudsman's recommendation following her inquiry to conduct another search for relevant text messages; calls on the Commission to conduct a full search without delay; expresses deep concern about the growing distance between citizens and the EU institutions, which this situation has worsened;

7. Notes with great concern that the Ombudsman has received many citizens' complaints about extreme delays in gaining access to requested documents; supports the Ombudsman's views that access delayed is effectively access denied and that administrative processes should be streamlined to ensure that citizens receive access to documents in a timely manner;

8. Recalls that, according to the European Ombudsman, restrictions on access to documents, particularly legislative documents, should be exceptional and limited to what is absolutely necessary; recalls further that any decision denying public access to documents must be based on clearly and strictly defined legal exemptions, accompanied by a reasoned and specific justification, to enable citizens to understand the denial of access and make effective use of the legal remedies available; considers that a more proactive approach would help ensure effective transparency and prevent costly and burdensome legal disputes between citizens and institutions;

9. Stresses the need to ensure that citizens are able to follow, understand and participate in the EU's decision-making processes; emphasises that the Commission, as the largest EU institution, should lead by example when it comes to access to documents; underlines that delays in granting access may undermine citizens' ability to participate in the democratic process, as the documents and information sought are often time sensitive and can lose relevance to the requester if delays occur; emphasises that delays may also result in a dissuasive effect, such that individuals opt not to exercise their fundamental right to access documents based on the assumption that it will take too long; underlines that the increasing volume and complexity of access-to-documents requests cannot justify the systemic delays on the Commission's side;

10. Is convinced that the proactive publication of documents in the register is the best solution to lower the number of access-to-documents requests and to avoid delays; stresses that a more proactive approach would help ensure effective transparency and prevent unnecessary legal disputes that could result in unnecessary costs and burdens for both citizens and the EU institutions;

### **Recommendations**

11. Urges the Commission to correct its systematic and significant delays in processing requests for public access to documents;

12. Requests the immediate and full publication of all contracts for the purchase of COVID-19 vaccines financed wholly or partially with public funds;

13. Calls on the Commission to implement the recommendation and all suggestions from the Ombudsman's special report, in particular on the need for more proactive transparency, more dedicated human resources to deal with confirmatory applications and a more open and constructive attitude towards requesters;

14. Calls for the Commission to reform its management of public access to documents in order to tackle the major issue of delays and its failure to respect time limits set out by the relevant legislation;

15. Calls on the Commission to be proactive in publishing documents and statistics on how it handles document-access requests, including information on compliance with the deadlines set by EU law, as such information is vital to strengthening the EU's democratic processes;

16. Calls on the Commission to finally and immediately publish the text messages that the President of the Commission and the CEO of the pharmaceutical company Pfizer exchanged during the negotiations on the procurement of 1.8 billion doses of COVID-19 vaccines, particularly in the light of the unexplained 25 % increase of the price per dose, which resulted in a total cost of EUR 35 billion in public money;

17. Stresses that, if the Commission does not address the systematic and significant delays in its processing of requests for public access to documents by the time the new College of Commissioners is established, Parliament will consider using all available parliamentary instruments to address the matter; recalls that Parliament has the right to bring action against the Commission before the Court of Justice of the EU on the grounds of infringement of the Treaties, including Article 15(3) TFEU on the right of EU citizens and residents to access documents;

18. Requests that the Commission inform Parliament about how it plans to comply with the time limits laid down in the relevant EU legislation;

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19. Instructs its President to forward this resolution to the Commission.

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