



Council of the
European Union

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COVER NOTE

From: Ms Emily O'Reilly, European Ombudsman
date of receipt: 3 June 2022
To: Secretary-General of the Council of the European Union

Subject: European Ombudsman's Strategic inquiry SI/3/2022/LDS concerning
transparency as regards documents on sanctions

Delegations will find in the Annex a copy of the letters sent by the services of the European Ombudsman to the Council concerning strategic inquiry SI/3/2022/LDS.



Emily O'Reilly
—
European Ombudsman

Mr Jeppe Tranholm-Mikkelsen
Secretary-General
Council of the European Union
1048 BRUSSELS
BELGIQUE

jur.ombudsman@consilium.europa.eu

Strasbourg, 03/06/2022

SI reference number: SI/3/2022/LDS

Dear Mr Tranholm-Mikkelsen,

The European Union and its institutions have condemned Russia's military aggression against Ukraine as well as the alleged war crimes committed by the Russian armed forces. The Union has recognised that Russia targets not only Ukraine and the stability of the international peace order, but also the values that Europe stands for. The EU is taking wide-ranging and unprecedented measures to hinder Russia's ability to finance its aggression.

There is a strong and legitimate public interest in the sanctions that are being adopted by the Council, which are aimed at putting an end to this unjustified aggression. Transparency in this area can also help maintain public support for such sanctions, during this difficult time.

The Council's "EU Sanctions Map" is one useful tool to provide up-to-date information on sanctions adopted by the EU.¹ The Council is also making significant efforts to explain to the public what these sanctions mean in practice and how the EU is working to implement them.²

The public can access the relevant Council Regulations and Council Decisions on which the restrictive measures are based via the Council's public register. Other key documents related to the adoption of sanctions are, however, not proactively disclosed. These other key documents include:

¹ <https://sanctionsmap.eu/#/main>.

² <https://www.consilium.europa.eu/en/policies/sanctions/restrictive-measures-against-russia-over-ukraine/history-restrictive-measures-against-russia-over-ukraine/>.

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- the proposals of the EU High Representative for Foreign Affairs and Security Policy for the adoption of Council decisions,
- the joint proposals of the Commission and the High Representative for the adoption of Council Regulations, and
- the notes on the written procedure preceding the adoption of Council Decisions and Regulations.

While the public can make requests for access to these documents, I am not sure that this ensures adequate transparency given the specific circumstances of today. In light of the major consequences of these essential measures, the public should - to the fullest extent possible - be able to trace the decision-making process and to understand how the final decision came about. While the Council decisions and regulations in question are not EU legislative acts as such, the documents in question are 'legislative documents' within the meaning of Regulation 1049/2001 in that they are drawn up or received in the course of procedures for the adoption of acts which are legally binding in or for the Member States.

While I recognise the political sensitivity of sanctions and their adoption process, I would like to ask the Council to consider whether if possible there are any additional documents which could be made proactively available to the public.

I would be grateful to receive your reply by 15 July 2022, which I intend to publish on our website.

Should the Council require any further information about this initiative, the responsible inquiries officer is DELETED

Yours sincerely,

DELETED

Emily O'Reilly
European Ombudsman



Emily O'Reilly

European Ombudsman

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Council of the European Union
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Strasbourg, 05/07/2022

SI/3/2022/LDS

Subject: How the Council ensures transparency of the process leading to the adoption of sanctions

Dear Madam, dear Sir,

I take note of the Council's request for an extension of the timeline to reply to my letter in the above strategic initiative, and I am now expecting the Council's reply by 30 September 2022.

In the meantime, we have had the opportunity to look further into the nature of the documents subject to this initiative and, in particular, of those mentioned in my letter of 3 June. While I had stated that the Council decisions and regulations in question are not EU legislative acts as such, I acknowledge that documents drawn up or received in the process of adopting restrictive measures are not 'legislative documents' within the meaning of Regulation 1049/2001. This position takes into account the particular rules and procedures the *Common Foreign and Security Policy* is subject to, and the fact that the Treaties explicitly exclude the adoption of legislative acts in that area.

This, of course, has no bearing on the importance of the documents in question and that the public should - to the fullest extent possible - be able to trace the decision-making process and to understand how the final decision came about.

I am looking forward to the Council's reply on the possibility of a wider proactive disclosure on this matter of major public interest.

Yours sincerely,

DELETED

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