



Council of the  
European Union

Brussels, 27 March 2024  
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## COVER NOTE

From:	Ms Emily O'REILLY, European Ombudsman
date of receipt:	20 March 2024
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union
No. prev. doc.:	13836/23; 15494/23
Subject:	Own initiative inquiry OI/4/2023/MIK from the European Ombudsman

Delegations will find in the Annex a copy of a letter from the European Ombudsman to the Secretary-General of the Council of the European Union concerning the own initiative inquiry OI/4/2023/MIK.

Personal data have been redacted.



Emily O'Reilly

European Ombudsman

Thérèse Blanchet  
Secretary-General  
Council of the European Union

[REDACTED]

CC: [REDACTED]

Strasbourg, 20/03/2024

OI/4/2023/MIK

**Subject:** How the European Parliament, the Council of the European Union and the European Commission handle requests for public access to legislative documents

Dear Ms Blanchet,

Thank you for the Council's reply of 6 December 2023 to my request for information regarding the handling of applications for public access to legislative documents.<sup>1</sup>

The Council informed us that it received 101 initial applications for public access to documents related to the three legislative files listed in my request.<sup>2</sup> In response to these applications, the Council refused access to 43 documents; it granted partial access to 47 documents; and it granted full access to 325 documents.<sup>3</sup> Moreover, the Council received three confirmatory applications that, however, have already been subject to my inquiries.<sup>4</sup>

To assess how the Council applies the exceptions to public access<sup>5</sup> and the extensive body of EU case law that establishes a particularly high standard of transparency for EU legislative documents,<sup>6</sup> as well as the time taken to reply to the requests, I have

<sup>1</sup> <https://www.ombudsman.europa.eu/en/doc/correspondence/en/175889>

<sup>2</sup> That is, the Digital Markets Act, the Revision of Emissions Trading Scheme, and the Minimum Wage Directive.

<sup>3</sup> The same document could be requested several times. Each time a document was requested it was counted separately.

<sup>4</sup> Case 1499/2021/SF, <https://www.ombudsman.europa.eu/en/decision/en/157727>; Case 788/2022/SF, <https://www.ombudsman.europa.eu/en/case/en/61556>; Case 1834/2022/NH, <https://www.ombudsman.europa.eu/en/decision/en/175664>.

<sup>5</sup> Under Regulation 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 145/43, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32001R1049>

<sup>6</sup> See for instance, judgment of the Court of Justice of 8 June 2023, Council v Pech, Case C-408/21 P, <https://curia.europa.eu/juris/document/document.jsf?text=&docid=274436&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=792014>

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decided that it is now necessary to inspect a sample of decisions issued by the Council. The sample that I would like to inspect should consist of all the initial decisions<sup>7</sup> from the above set in which the Council granted partial access and/or refused access to documents, as well as 15 decisions<sup>8</sup> in which the Council granted full access to all the requested documents.

I would be grateful to receive copies of these documents, preferably in an electronic format, by 27 March 2024.<sup>9</sup> In case of any questions, or issues in meeting this timeline, your staff can contact the inquiries officer responsible for this case, [REDACTED], [REDACTED] [REDACTED].

At a later stage of this inquiry, it may be necessary to inspect the full files related to some of the decisions.

Yours sincerely,



Emily O'Reilly  
European Ombudsman

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<sup>7</sup> "Decision" refers to the Council's reply to an application for public access, independently from how many documents this reply relates to.

<sup>8</sup> If there are less than 15 such decisions, the Council should provide us with all initial decisions granting full public access to all the requested documents.

<sup>9</sup> As the replies sent to the applicants are, by definition, public documents, I do not expect to receive any confidential documents. However, information or documents that your institution considers to be confidential will not be disclosed to any third parties without the prior agreement of the Council. Please clearly mark such material 'Confidential'. Encrypted emails can be sent to our dedicated mailbox [REDACTED]. Please contact [REDACTED] beforehand. Information and documents of this kind will be deleted from the European Ombudsman's files shortly after the inquiry has ended.