

Brussels, 7 May 2026  
(OR. en)

8995/26

API 96  
INF 130  
OMBUDS 12  
JUR 342  
INST 211

## COVER NOTE

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From:	Lampros Papadias, Secretary-General of the European Ombudsman
date of receipt:	6 May 2026
To:	Ms Emer Finnegan, Director-General of the Legal Service Council of the European Union

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Subject:	Complaint 2193/2025/MIG (formerly MAS) to the European Ombudsman - Decision
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Delegations will find in the Annex a copy of a letter received from the services of the European Ombudsman on the Complaint 2193/2025/MIG (formerly MAS), concerning confirmatory application No 07/c/01/25.

Personal data have been blanked out.

Further to a complaint by the applicant in confirmatory application No 07/c/01/25, the European Ombudsman concludes that there was no maladministration by the Council of the EU in refusing public access to (the redacted parts of) the documents at issue, based on the need to protect the public interest as regards international relations and the financial policy of the Member States.



Ms Emer Finnegan  
Director-General of the Legal Service  
Council of the European Union

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cc: [jur.ombudsman@consilium.europa.eu](mailto:jur.ombudsman@consilium.europa.eu)

Strasbourg, 06/05/2026

Complaint 2193/2025/MIG

Decision in the above case on the Council of the EU's refusal to give public access to documents concerning the compatibility of the automatic exchange of tax information with EU data protection rules (your reference: 07/c/01/25)

Dear Ms Finnegan,

Please find enclosed the above decision, which has been sent to the complainant.

On the basis of the inquiry into this complaint, the Ombudsman has decided to close it with the following conclusion:

**There was no maladministration by the Council of the EU in refusing public access to (the redacted parts of) the documents at issue, based on the need to protect the public interest as regards international relations and the financial policy of the Member States.**

Yours sincerely,



Lampros Papadias  
Secretary-General

Enclosure: Decision on complaint 2193/2025/MIG

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## Decision

on the Council of the EU's refusal to give public access to documents concerning the compatibility of the automatic exchange of tax information with EU data protection rules (case 2193/2025/MIG)

*The case concerned a request for public access to documents related to the automatic exchange of information for tax purposes between the EU Member States and non-EU countries. The Council provided links to ten documents already in the public domain and granted full access to four further documents. In addition, it refused to give public access to ten documents, in full or in part, relying on the need to protect the public interest as regards international relations and the EU Member States' financial policy. The Council also considered that disclosure would undermine its decision-making. The complainants challenged the use of those exceptions and argued that there is an overriding public interest in disclosure.*

*Based on the inquiry and the inspection of the documents at issue by her inquiry team, the Ombudsman found that it had not been manifestly wrong for the Council to consider that disclosure of the (redacted parts of) the documents at issue would undermine the Member States' international relations and/or their financial policy.*

*Given that those protected public interests cannot be set aside by another public interest that is deemed more important, it was not necessary to consider the Council's application of the decision-making process exception. The Ombudsman therefore closed the inquiry finding no maladministration.*

## Background to the complaint

1. Taxation remains largely a matter of national competence, which means that the EU's role in this area is limited and mainly consists in promoting cooperation and coordination amongst the EU Member States.

2. The EU Member States are part of a global initiative aimed at combating tax evasion and promoting transparency in financial transactions, known as the automatic exchange of information (AEOI). The AEOI enables countries to automatically exchange financial account information to help tax authorities identify and address cross-border tax evasion. It was introduced in 2014 and is based on the Common Reporting Standard (CRS)<sup>1</sup>, a global standard that requires banks and financial institutions to collect information on accounts held by foreign residents.

<sup>1</sup> Available at: [https://www.oecd.org/en/publications/consolidated-text-of-the-common-reporting-standard-2025\\_055884b1-en.html](https://www.oecd.org/en/publications/consolidated-text-of-the-common-reporting-standard-2025_055884b1-en.html).



3. How countries legally share that data with each other is laid down in separate multilateral and bilateral agreements, such as the Multilateral Competent Authority Agreement ('CRS MCAA')<sup>2</sup> or bilateral 'Intergovernmental Agreements' (IGAs) between two countries. The AEOI between the EU Member States is governed by the Council Directive on administrative cooperation in the field of taxation ('DAC').<sup>3</sup>

4. Besides the CRS, there are also national laws that require third countries to report certain information about financial accounts in their territory to the tax authorities of the country of origin of the account holder. One example of such national laws is the US Foreign Account Tax Compliance Act (FATCA) that was adopted in 2010 and is implemented based on IGAs between the US and other countries.

5. While the AEOI was seen as a significant step forward in the global fight against tax evasion, it also prompted privacy and data protection concerns. For example, based on a complaint from a group of citizens, the Belgian Data Protection Authority has recently found that the transfer of personal data from Belgium to the US under FATCA is contrary to EU data protection law (the General Data Protection Regulation, 'GDPR')<sup>4</sup>.<sup>5</sup> Following an appeal, the Belgian court dealing with the matter has requested the Court of Justice to provide a preliminary ruling on whether data transfers required under FATCA and implemented via IGAs between the US and EU Member States generally comply with EU data protection law.<sup>6</sup>

6. The European Data Protection Board (EDPB) has issued guidelines for the transfer of personal data between EU and non-EU countries.<sup>7</sup> These guidelines set out a list of minimum safeguards to be included in IGAs to ensure that data subjects whose personal data are transferred outside the EU are afforded a level of protection that is essentially equivalent to the level of protection guaranteed within the EU under the GDPR.

7. In February 2025, the complainants requested<sup>8</sup> from the Council of the EU public access to documents related to:

- *the compatibility of [the] AEOI with EU and [MS] data protection laws and fundamental rights;*
- *the data protection implications of AEOI, in particular with regards to the transfer of personal data to third countries (adequate safeguards, data security, etc.);*
- *the impact of [EU] case law on the above.*

<sup>2</sup> Available at: <https://www.oecd.org/content/dam/oecd/en/topics/policy-issues/tax-transparency-and-international-cooperation/multilateral-competent-authority-agreement.pdf>.

<sup>3</sup> Council Directive 2011/16/EU: <http://data.europa.eu/eli/dir/2011/16/oj>.

<sup>4</sup> Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data ('GDPR'): <http://data.europa.eu/eli/reg/2016/679/oj>.

<sup>5</sup> See Decision 79/2025 of the Autorité de protection des données of 24 April 2025:

<https://www.autoriteprotectiondonnees.be/publications/decision-quant-au-fond-n0-79-2025.pdf>.

<sup>6</sup> Case C-804/25, *Autorité de protection des données*. A summary of the request for a preliminary ruling is available at: <https://infocuria.curia.europa.eu/tabs/document/C/2025/C-0804-25-00000000RP-01-P-01/DDP/317238-EN-1-pdf>.

<sup>7</sup> The latest version of the EDPB's guidelines is available at: [https://www.edpb.europa.eu/system/files/2025-08/edpb\\_guidelines\\_202402\\_article48\\_v2\\_en.pdf](https://www.edpb.europa.eu/system/files/2025-08/edpb_guidelines_202402_article48_v2_en.pdf).

<sup>8</sup> Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents: <http://data.europa.eu/eli/reg/2001/1049/oj>.



8. The Council identified 24 documents as falling within the scope of the complainants' access request. It indicated that ten documents were already publicly available and provided links thereto. It also disclosed four other documents in their entirety. As regards the ten remaining documents, which are described as 'Council working documents', the Council disclosed three documents in part and refused to disclose seven documents, including one document classified as 'RESTREINT UE/EU RESTRICTED', in their entirety. In refusing access, the Council relied on the need to protect the public interest as regards international relations and the Member States' financial policy as well as the need to protect its decision-making.<sup>9</sup>

9. In March 2025, the complainants asked the Council to review its decision (they made a 'confirmatory application'), and the Council subsequently confirmed its position.

10. Dissatisfied, the complainants turned to the European Ombudsman in August 2025.

## The inquiry

11. The Ombudsman opened an inquiry into the Council's decision to refuse to give public access to (part of) the ten documents at issue in the complainants' confirmatory application.

12. In the course of the inquiry, the Ombudsman inquiry team inspected the documents at issue, including the document that is classified as 'RESTREINT UE/EU RESTRICTED'. The inquiry team also met with representatives of the Council to obtain additional explanations as to why access had been refused. The Ombudsman subsequently shared her inspection and meeting reports with the complainants and received their comments.

## Arguments presented

13. In its confirmatory decision, the Council stated that the documents had been drawn up in the context of "*discussions within the Working Party on Tax Questions on the AEOI in tax matters with [non-EU] countries and its interaction with the GDPR. The key objective of these discussions was to examine what appropriate safeguards, taking into account the EDPB guidelines, are already in place as regards the exchange of personal data for tax purposes with [non-EU] countries.*" The Council said that the matter had been discussed on several occasions since 2019, in light of the Member States' responsibility to ensure appropriate safeguards for such transfers of personal data. Following the issuing of guidelines by the EDPB in 2021, it had been considered necessary for Member States to review their relevant IGAs concluded with non-EU countries to determine whether any changes were needed to reflect current EU law and case law on data protection. In this context, several Member States had suggested to exchange views and coordinate on the matter.

14. The Council stated that these discussions had been ongoing at the time of the confirmatory decision and were of relevance to ongoing and future negotiations of IGAs on tax information exchanges between the Member States and non-EU countries. The

<sup>9</sup> In accordance with Articles 4(1)(a), third and fourth indent, and 4(3), first subparagraph of Regulation 1049/2001 respectively.



Council argued that disclosure would reveal internal exchanges and evolving approaches in terms of the EU's negotiating strategy and could thus seriously undermine the EU's negotiation position and "*its ability to effectively conduct its international relations*"<sup>10</sup>.

15. The Council added that the documents reflect key issues concerning the options and methodology to achieve an appropriate level of safeguards for the protection of personal data, while, at the same time, ensuring an efficient exchange of tax information, in line with international standards, that facilitates the fight of tax fraud. In this regard, the Council emphasised that tax fraud, tax evasion and tax avoidance represent a major challenge for the EU and globally, and that the automatic exchange of tax information plays a pivotal role in the fight against such practices. The Council contended that disclosure might prompt unwarranted and undesirable behaviour by economic operators or prevent the AEOI between the Member States and non-EU countries, which would also undermine the Member States' fiscal policy.

16. Finally, the Council took the view that, due to the political sensitivity of the documents, disclosure would undermine its decision-making process within the working party concerned.

17. The complainants, noting that the exceptions set out under Article 4(1)(a) of Regulation 1049/2001 should be interpreted restrictively, considered that the documents at issue are not covered by the exceptions invoked by the Council.

18. Specifically, concerning the public interest as regards international relations, the complainants argued that there is no evidence of any substantive negotiations with the OECD and/or non-EU countries to address data protection issues and that the Member States have already signed bilateral agreements with more than 100 non-EU countries.

19. As regards the US, the complainants added that the US authorities would in any way not be willing to modify the FATCA, and therefore, the Council's reliance on the exception for the protection of international relations was legally unsound, at least as far as the FATCA was concerned.

20. In relation to the CRS, the complainants contended that the OECD had not been ready to engage in a genuine dialogue with the EU in the context of earlier attempts to resolve any data protection issues in terms of the AEOI for tax purposes.

21. The complainants also noted that the European Parliament had criticised the European Commission in the past for putting the relations with the US before the interests of EU citizens.<sup>11</sup>

22. Finally, noting that several documents concern the revision of the DAC, the complainants contend that the exception for the protection of international relations does not apply, given that the DAC forms part of EU legislation that applies only to the

<sup>10</sup> Emphasis added.

<sup>11</sup> See European Parliament resolution of 20 May 2021 on the ruling of the CJEU of 16 July 2020 - Data Protection Commissioner v Facebook Ireland Limited and Maximilian Schrems ('Schrems II'), Case C-311/18 (2020/2789(RSP)): [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0256\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0256_EN.pdf).



exchange of personal data between the Member States and not between the Member States and non-EU countries.

23. As regards the protection of the financial policy of the Member States, the complainants argued that the EU and its Member States do not *receive* information from the US under the FATCA.

24. The complainants also considered that there is an overriding public interest in disclosure. In particular, they argued that it was clear by now<sup>12</sup> that the mass exchange of tax information with non-EU countries, in general, and the FATCA in particular, are contrary to the GDPR (namely, with the principles of proportionality and necessity) and that this affects millions of EU citizens whose personal data is shared with the US tax authorities without any indication for tax evasion or any other wrongdoing. In fact, there has been a lack of action by the EU institutions and the Member States who have been failing to resolve the matter for years.<sup>13</sup> In addition, the complainants referred to concerns raised by the public as regards the level of safeguards applicable to personal data collected and handled by the US tax authorities. For the complainants, the non-disclosure of the documents at issue prevents citizens from scrutinising the work of the EU institutions in an area that has a direct impact on their fundamental rights and from holding their administration to account.

25. Throughout the inquiry, the complainants provided the Ombudsman with additional information as to why they considered that EU citizens' personal data should not be shared with US tax authorities due to data protection concerns.

26. In the meeting with the Ombudsman inquiry team, the Council argued that the different decision-making procedures to which the documents relate were interlinked, which means that all documents had been drawn up in the same context.

27. As regards the need to protect international relations, the Council clarified that it was the *Member States'* international relations with non-EU countries (rather than the *EU's* international relations) that were at stake in this case. It provided detailed confidential information as to why it considered that disclosure could have jeopardised the Member States' interest in the automatic exchange of tax information with non-EU countries, and thus why disclosure would also have undermined the public interest as regards their financial policy (and how the two mandatory exceptions are interconnected).

## The Ombudsman's assessment

28. The EU institutions, bodies, offices and agencies enjoy a wide margin of discretion when determining whether disclosing a document would undermine the protection of the public interests listed in Article 4(1)(a) of Regulation 1049/2001, which include the public interest as regards international relations and as regards the financial policy of the

<sup>12</sup> Amongst other things, the complainants referred to the recent decision by the Belgian Data Protection Authority and the related request for a preliminary ruling by a Belgian court addressed to the CJEU (see footnotes 5 and 6 above).

<sup>13</sup> The complainants also referred to a 2022 study on FATCA by the European Parliament, available at: [https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/734785/IPOL\\_IDA\(2022\)734785\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2022/734785/IPOL_IDA(2022)734785_EN.pdf).



Member States.<sup>14</sup> As such, the Ombudsman's inquiry sought first to examine if there was a manifest error in the Council's assessment on which it based its decision to refuse public access to the document at issue.

29. The exception for the protection of international relations can be invoked if disclosure could harm the EU's or the Member States' international relations with non-EU countries or international organisations.<sup>15</sup> It is formulated in very general terms and is therefore not limited to documents related to international negotiations or to a dialogue with the authorities of a non-EU country relating to the development of a public policy.<sup>16</sup>

30. It is thus not a precondition for the applicability of this exception that the documents concerned relate to ongoing negotiations or discussions with non-EU countries and/or an international organisation such as the OECD, as argued by the complainant. The exception may also prevent disclosure of internal exchanges between the Member States or between the Member States and EU institutions on how to deal with matters concerning non-EU countries such as the AEOI for tax purposes. This can include discussions on whether a re-negotiation of already concluded agreements is needed or how Member States are to fulfil their obligations under international law.

31. However, the risk that disclosure would undermine the EU's international relations with non-EU countries must be reasonably foreseeable and not purely hypothetical and be based on a concrete assessment of the content of the document to which public access is denied.<sup>17</sup>

32. In refusing access, the Council referred to the political sensitivity of the subject matter discussed and contended that the different procedures, to which the documents relate, some of which were ongoing at the time, are interlinked, so that similar considerations applied. In the course of the inquiry, the Council also clarified that it had refused access as disclosure would undermine *the Member States'* international relations. In addition, the Council was of the view that disclosure would undermine the financial policy of the Member States, as a consequence of the expected deterioration of their international relations with non-EU countries and because it might lead to unwanted behaviour by economic operators.

33. Based on the inspection conducted by the Ombudsman inquiry team and the additional - in part confidential - information provided by the Council, the Ombudsman finds that it was not manifestly wrong for the Council to argue that disclosing (the redacted parts of) the documents at issue would undermine the Member States' international relations with non-EU countries and/or their financial policy. In addition, given the sensitive nature of the information at issue, the Ombudsman considers that the Council provided the complainant with sufficient reasons for its decision to refuse access based on these two exceptions.

<sup>14</sup> See, for example, judgment of the General Court of 11 July 2018, *ClientEarth v Commission*, case T-644/16, paragraphs 23 to 25: <https://curia.europa.eu/juris/liste.jsf?num=T-644/16&language=en>.

<sup>15</sup> Judgment of the Court of First Instance of 7 February 2002, *Kuijper v Council of the EU*, T-211/00, paragraphs 61 ff.: <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62000TJ0211>.

<sup>16</sup> Judgment of the General Court of 10 September 2025, *Smart Kid S.A v European Commission*, T-337/24, paragraph 41: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62024TJ0337>.

<sup>17</sup> Judgment of the Court of Justice of 3 July 2014, *Council of the EU v In 't Veld*, C-350/12 P, paragraph 64: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:62012CJ0350>.



34. While the complainant appears to be particularly concerned about the level of data protection safeguards in place in a third country (the US), the Ombudsman also notes that the documents in question are not limited to the rules in place of that or another specific country.

35. The public interests protected under Article 4(1)(a) of Regulation 1049/2001 cannot be superseded by another public interest that is deemed more important. This means that, if an institution considers that any of these interests could be undermined by disclosure, they must refuse to give access. Therefore, the complainant's arguments on the possible existence of an overriding public interest in disclosure cannot not be taken into account in this context.

36. Since the inquiry found that it had not been manifestly wrong for the Council to rely on the exceptions for the protection of the public interest as regards international relations and as regards the financial policy of the Member States, it is not necessary to assess the applicability of the exception for the protection of a decision-making process that the Council also invoked.

37. In light of the above, the Ombudsman finds that the Council was justified in refusing to grant public access to (the relevant parts of) the documents at issue.

## Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

**There was no maladministration by the Council of the EU in refusing public access to (the redacted parts of) the documents at issue, based on the need to protect the public interest as regards international relations and the financial policy of the Member States.**

The complainants and the Council will be informed of this decision.



Teresa Anjinho  
European Ombudsman

Strasbourg, 06/05/2026