



Afgørelse i sag 1946/2018/KR om Rådets Generalsekretariats oplysning af offentligheden om møder, som formanden for Det Europæiske Råd og medlemmerne af dennes kabinet har med interesserepræsentanter

Afgørelse

Sag 1946/2018/KR - Indledt den 15/11/2018 - Afgørelse af 18/06/2019 - Den vedrørte institution Rådet for Den Europæiske Union (Ikke grund til yderligere undersøgelser) |

Sagen vedrørte en ikkestatslig organisations anmodning til EU-Rådets Generalsekretariat om at offentliggøre oplysninger om alle møder mellem interesserepræsentanter og formanden for Det Europæiske Råd samt medlemmer af dennes kabinet.

Rådets Generalsekretariat svarede klageren, at selv om det ikke er retligt forpligtet til at føre en fortegnelse over formandens eller kabinetsmedlemmernes møder med eksterne interessenter, bestræber det sig på at offentliggøre relevante oplysninger om møder på en struktureret og proaktiv måde.

Under undersøgelsen fandt Ombudsmanden, at oplysninger om møder mellem Det Europæiske Råds formand Donald Tusk og interesserepræsentanter er offentliggjort. Der foreligger imidlertid ingen oplysninger om eventuelle møder mellem formandens kabinet og interesserepræsentanter.

Ombudsmanden afsluttede undersøgelsen og fremsatte en række forslag med henblik på at forbedre de oplysninger, som Rådets Generalsekretariat offentliggør.

Background to the complaint

1. The European Council has an important role in setting the EU's overall political direction, policy agenda and priorities. The General Secretariat of the Council of the EU (GSC) provides administrative assistance to the European Council, including on requests for public access to documents. The complainant is a non-governmental organisation that, among other activities, monitors how the EU institutions interact with interest representatives. On 21 March 2018, the complainant requested the GSC to give it access to: " *a list of all lobby meetings held by President Tusk and/or his Cabinet [[1]] since 1 January 2017. The list should include: name of the official, name of the organisation met and the names of the individuals attending, the date of the meeting, and the topic* ". [2]

2. The GSC replied that no "list" of 'lobby meetings' existed. The GSC also informed the



complainant that all meetings of the President of the European Council are proactively published in his schedule of meetings.

3. On 10 September 2018, the complainant wrote to the GSC complaining about what it perceived as a failure to make available or publish the requested list of meetings

4. On 13 November 2018, the GSC replied to this complaint that "*even though there is no legal provision that requires the Council or the European Council, as institutions, to maintain a record of the meetings of their presidents or the members of their cabinets with external stakeholders, we remain committed to publishing relevant information about meetings in a structured and proactive manner*".

5. On 14 November 2018 the complainant turned to the Ombudsman.

6. On 3 April 2019, a cross-party group of 97 Members of the European Parliament drew attention to the issue of transparency of meetings between interest representatives and the European Council President and his cabinet. In an open letter, they called on the upcoming presidency of the Council of the EU [3] to adopt "*a new, strict transparency and ethics regime, including publication by the President and Cabinet of all meetings held with interest representatives*". [4]

The inquiry

7. The Ombudsman opened an inquiry to assess whether the GSC provides sufficient information to the public about meetings between the President of the European Council and/or his cabinet and interest representatives [5], and whether this information can be accessed easily.

8. In the course of the inquiry, the Ombudsman met with the GSC. The meeting report was shared with the complainant, who submitted comments on it.

Arguments presented to the Ombudsman

9. The GSC informed the Ombudsman that meetings of the President, including those with interest representatives, are proactively published online in the 'Full schedule of the President of the European Council' [6]. This is a public calendar of all the President's meetings. The GSC stated that, given the nature of the President's tasks, he "*[meets] interest representatives only in exceptional and justified cases*". The GSC added that the President meets with interest representatives only if they "*figure on the Transparency Register*" [7].

10. The GSC however clarified that it has no information on meetings between members of the President's cabinet and interest representatives.

11. The GSC stated that the EU Staff Regulations [8] set out the rules that apply to members of the President's cabinet, and include the obligation to act with independence and impartiality. The Council has furthermore adopted a 'Code of good administrative behaviour for the GSC and its staff in their professional relations with the public' [9], as well as a Guide



to Ethics and Conduct [10] .

12. The complainant is of the view that the online schedule of meetings of the President, which is searchable by date only, is not user-friendly. The majority of the meetings are with the leaders of governments, the heads of EU institutions and presidents of international organisations. It is difficult to find the infrequent meetings with interest representatives. The online schedule is also lacking in key information, such as details on the issues discussed during the meetings.

13. The complainant argued that the GSC should record the meetings of the European Council President and/or members of his cabinet with interest representatives in a specific list. As these meetings are limited to “ *exceptional and justified cases*”, this should not pose a substantial administrative burden. Listing these meetings and making this information public would facilitate public scrutiny.

14. The complainant finds that the two sets of ethics rules to which the GSC refers are inadequate, as neither deals with how to interact with interest representatives in particular, nor do they refer to the ‘Transparency Register’.

15. The complainant drew attention to the different approach to transparency taken by the European Commission. Contrary to Commissioners and their cabinets, the European Council President and his cabinet do not pro-actively publish a list of the interest representatives they met with.

The Ombudsman's assessment

16. People working in the EU institutions should be open to meeting individuals and organisations to ensure, to the extent possible, that policy-making takes into account the diverse views and needs present in society. [11] Discussing policy issues with interest representatives is therefore an important and necessary part of any public service role, including at senior level. [12] As such interacting with interest representatives should not, in itself, raise concerns. However, providing proper transparency about such meetings can help mitigate any possible public concern. This clearly also applies to the President of the European Council and his cabinet, given that they support the European Council in its policy-setting role, and help define the EU's overall political direction and priorities.

17. At the same time, there is a legitimate expectation from the public that EU institutions be open about the contact they have with interest representatives. Misunderstanding, or worse, mistrust, could spread should the public record on interactions with interest representatives not be clear, comprehensive, easily accessible and conducive to public scrutiny. It is in the interest of the EU institutions to provide this information, which helps to build public trust. The Ombudsman has engaged with a number of EU institutions on this important issue, including with the President of the European Council. [13]

18. The Ombudsman has also issued practical recommendations for EU civil servants to



consult if and when they are interacting with interest representatives. [14] These recommendations have been endorsed and applied by a range of EU institutions, including the Commission.

19. The Ombudsman welcomes the commitment of the GSC to publish relevant information about meetings with interest representatives in a structured and proactive manner. In order to do this, the GSC should keep a record of any meetings held between interest representatives and the President of the European Council and/or members of his cabinet. This would allow the GSC to ensure that its publication policy is supported by a practice of record keeping that captures all the relevant information.

20. The information recorded should include the meeting date and location, the names of participants and organisations - and, where applicable, their clients - and the issues discussed. This information should be recorded in Council's official file management system. Recording this information, and making it public to the extent possible, would improve the public's understanding of who and what informs the overall political direction and priorities of the EU.

21. The GSC provides information proactively about meetings of the European Council's President with interest representatives. No significant details about such meetings seem to be recorded by the GSC, however. For example, the names of the organisations and persons attending, and the topic of the meeting are not always included in the documentation made public by the GSC. The Ombudsman is of the view that the names of the persons and organisations attending - and, where applicable, their clients - as well as the issues discussed, should be recorded and made public to the extent possible.

22. If cabinet members of the European Council President meet with interest representatives, it would be good administrative practice for the GSC to make information public. At a minimum, this information should include the date and location of the meeting, the names of the persons and organisations - and, where applicable, their clients - attending, as well as the issues discussed.

23. The Ombudsman appreciates that the President of the European Council meets with interest representatives only if they are registered in the Transparency Register. If members of his cabinet meet with interest representatives, they should also check whether interest representatives are registered in the Transparency Register before meeting them or accepting an invitation to an event.

24. It would also be helpful if, in the information that is made public about the meetings with interest representatives, the GSC would provide a link to the interest representative's entry in the Transparency Register.

25. The Ombudsman will make suggestions to this end below.

Conclusion

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



The Ombudsman welcomes the commitment of the General Secretariat of the Council of the EU (GSC) to publish information about meetings with interest representatives in a structured and proactive manner.

Suggestions

The GSC should keep a full record of any meetings held between interest representatives and the President of the European Council and/or members of his cabinet. This information should be recorded in the Council's official file management system and made public.

Where the public schedule of meetings of the President of the European Council lists meetings with interest representatives, it should include the names of the persons and organisations present - and, where applicable, their clients - as well as the issues discussed.

If cabinet members of the European Council President interact with interest representatives, the GSC should, at a minimum, make public the following information: the date and location, the names of the persons and organisations present - and, where applicable, their clients - as well as the issues discussed.

Members of the President's cabinet should only meet with, or attend events organised by, interest representatives that are registered in the Transparency Register.

The information that the GSC makes public regarding the meetings with interest representatives should include links to the entries of the interest representatives in the Transparency Register.

Emily O'Reilly European Ombudsman

Strasbourg, 18/06/2019

[1] The French term 'cabinet' is frequently used to describe the private office of the head of an EU institution. The private office of the President of the European Council consists of over 30 EU civil servants that advise and support the President in carrying out his functions. For more details, see: <https://www.consilium.europa.eu/nl/european-council/president/cabinet/> .

[2] See: https://www.asktheeu.org/en/request/european_council_list_of_lobby_m#incoming-17506 .



[3] The presidency of the Council rotates among the EU member states every six months. During this six-month period, the presidency chairs meetings at every level in the Council, helping to ensure the continuity of the EU's work in the Council.

[4] See:

<https://corporateeurope.org/sites/default/files/2019-04/MEP%20letter%20FINAL%20FINAL.pdf>

[5] For the purpose of the inquiry the Ombudsman defines 'interest representatives' as those whose activities are carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions. Interest representatives are sometimes referred to as lobbyists.

[6] See:

<https://www.consilium.europa.eu/en/european-council/president/calendar/?StartDate=2019%2f04%2f27>

[7] The Transparency Register is a database that lists organisations that try to influence the law-making and policy implementation process of the EU institutions. The register makes visible what interests are being pursued, by whom and with what budgets. In this way, the register allows for public scrutiny, giving citizens and other interest groups the possibility to track the activities of lobbyists. See:

<https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency/t>

[8] See:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> .

[9] Decision of the Secretary-General of the Council/High Representative for Common Foreign and Security Policy of 25 June 2001 on a code of good administrative behaviour for the General Secretariat of the Council of the European Union and its staff in their professional relations with the public; OJ C 189 , 5.7.2001, p. 1. See:
[https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001D0705\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001D0705(01)&from=EN) .

[10] See: <https://www.consilium.europa.eu/media/29592/gsc-guide-conduct-en.pdf> .

[11] This is also in accordance with Article 11(1) and (2) of the Treaty on European Union (TEU) that says the institutions must, by appropriate means, give citizens and representative organisations the opportunity to make known and publicly exchange their views in all areas of EU action. The institutions are also required to maintain open, transparent and regular dialogue with representative organisations and civil society.

[12] An exception to this general approach would be interaction with interest representatives of the tobacco industry. The EU is a signatory and strong supporter of the 'Framework Convention on Tobacco Control' of the World Health Organisation (UN), which, says in Article 5.3 that: "*In setting and implementing their public health policies with respect to*



tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law ." The guidelines that flow from this Article are based on 'Guiding Principles', the first of which reads: "*There is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interest. [...] The tobacco industry produces and promotes a product that has been proven scientifically to be addictive, to cause disease and death and to give rise to a variety of social ills, including increased poverty. Therefore, Parties should protect the formulation and implementation of public health policies for tobacco control from the tobacco industry to the greatest extent possible.*"

[13] See the Ombudsman's letter of 15 December 2017:

<https://www.ombudsman.europa.eu/en/correspondence/en/87521> and the reply from the President of the European Council of 23 April 2018:

<https://www.ombudsman.europa.eu/en/correspondence/en/96370>

[14] See: <https://www.ombudsman.europa.eu/en/correspondence/en/79435> .