

Proposal of the European Ombudsman for a solution in case 2165/2019/MIG on the European Commission's refusal to make public two invoices for expenses relating to an official visit to Buenos Aires by the then President of the Commission

Solution - 17/06/2020

Case 2165/2019/MIG - Opened on 20/12/2019 - Decision on 04/11/2020 - Institutions concerned European Commission (Suggestion(s) accepted by the institution) | European Commission (Solution achieved) |

Made in accordance with Article 3(5) of the Statute of the European Ombudsman [1]

Background to the complaint

1. Since 2018, when its new Code of Conduct for Commissioners [2] (the 'Code of Conduct') entered into force, the European Commission has proactively published, every two months, information on the expenses incurred on official trips by Commissioners (so called 'mission costs'). [3]

2. In November 2018, the President of the Commission went on an official trip to Buenos Aires to attend the G20 summit. In accordance with its proactive publication policy, the Commission disclosed information on the expenses incurred on this trip [4] , including the following breakdown:

- Travel costs EUR 8 929.61
- Accommodation costs EUR 0.00
- Daily allowances EUR 239.53
- Miscellaneous costs EUR 8 320.00

3. On 10 May 2019, the complainant, the NGO Access Info Europe, requested public access to documents [5] containing *details of the miscellaneous travel expenses of Commission President Jean-Claude Juncker on his mission to Buenos Aires from 28 November to 2 December 2018 (total amount EUR 8 320.00)* .

4. The Commission refused access to this information based on the need to protect the personal data of individuals. [6]



5. In July 2019, the complainant requested the Commission to review its decision (it made a so-called ‘confirmatory application’). It also asked the Commission to verify whether the relevant information, that is, the nature of the miscellaneous costs at issue, had been entered in the Commission’s Mission Processing System (MIPS) [7] . MIPS is the Commission’s software programme which staff use to declare their expenses when they return from official trips. The Commission then checks the expenses claim and reimburses the expenses.

6. On 23 September 2019, the Commission informed the complainant that it had identified two invoices and confirmed its decision to refuse public access to them. The Commission also explained that the MIPS database does not contain information on the nature of the miscellaneous expenses at issue.

7. Dissatisfied with the Commission’s response, the complainant turned to the Ombudsman in November 2019.

The inquiry

8. The Ombudsman opened an inquiry into the complainant’s concerns that the Commission had failed:

- (i) to record and publish details of the miscellaneous expenses at issue, and
- (ii) to grant access to the requested documents (and to process the access request in a timely manner).

9. In the course of the inquiry, the Ombudsman’s inquiry team inspected the two invoices falling within the scope of the complainant’s request and met with the Commission’s representatives to obtain clarification on certain aspects of the case. [8]

Arguments presented to the Ombudsman

On the registration and proactive publication of travel related expenses

10. The complainant stated that, according to the Commission’s reply to its confirmatory application, the data available in MIPS on the trip to the G20 summit “ *does not contain details allowing to identify further subcategories of miscellaneous costs* ”. The complainant argued that Commissioners are obliged to enter information concerning their travel-related expenses in MIPS. Accordingly, the nature of President Juncker’s miscellaneous expenses should have been recorded in MIPS.

11. The Commission explained that staff members, including Commissioners, declare their work-related expenses in MIPS. They are subsequently reimbursed for these expenses by the



Commission. If they incur and pay for miscellaneous expenses, the details of these expenses are included in MIPS. However, there may be travel-related costs paid by the Commission directly. The person travelling therefore does not declare these expenses in MIPS. As a result, the invoices relating to those costs are not registered in MIPS, but rather in another system, known as ARES [9] .

12. The requested documents in this case are two invoices which were sent directly to the Commission by the service provider. The Commission therefore registered and processed those invoices in the ARES database, not in MIPS.

13. However, while the invoices were not registered in MIPS, the total amounts spent were noted as 'miscellaneous costs' in MIPS in order to ensure that there was a record in MIPS of the full cost of the trip. The total amounts were then published by the Commission on its website.

On the refusal to grant access to two invoices

14. As regards the Commission's refusal to grant public access to the invoices, the complainant argued that the invoices were not, in their entirety, 'personal data'. In the complainant's view, it should have been possible to redact any personal data from the documents. It said that it was only interested in obtaining certain information contained in the invoices, namely the nature of the miscellaneous costs. This information does not, it argued, constitute personal data.

15. The complainant added that, in any event, the personal data of senior staff (Commissioners), who have a higher level of responsibility, should not be protected in the same way as the personal data of junior staff.

16. The complainant also stated that there was a specific purpose, in the public interest, for disclosing the data at issue. In its view, the nature of the miscellaneous expenses should be disclosed so as to ensure that the public could scrutinise the spending of taxpayers' money. In this context, public access would allow organisations such as the complainant to fulfil their role as a 'watchdog'.

17. Finally, the complainant doubted whether President Juncker's personal integrity could have been prejudiced by the release of the two invoices at issue.

18. The Commission pointed out that, under EU data protection rules [10] , personal data is *"any information relating to an identified or identifiable natural person (...)"*. In its view, the nature of President Juncker's expenses constitutes personal data, even though this information concerns his professional activity, and not his private life.

19. In addition, the Commission said, the invoices contain handwritten comments and the signature of a staff member, which is personal data of the staff member concerned.

20. Thus, the Commission concluded, the two invoices at issue are 'personal data', in their



entirety.

21. Consequently, the Commission argued that the rules on granting access to personal data required the complainant to establish a 'specific purpose' 'in the public interest' to justify disclosing the invoices.

22. According to the Commission, the purpose the complainant had put forward, namely transparency, was not a specific purpose but was very general. Furthermore, it was for this purpose that the Commission had a proactive publication policy as regards Commissioners' expenses, which it had applied here.

23. The Commission also stated that, in its view, there is a real and non-hypothetical risk that public disclosure of the invoices would harm the privacy of President Juncker by revealing information about arrangements for his security.

The Ombudsman's assessment

24. Regarding the registration and publication of President Juncker's travel-related expenses in MIPS, the Ombudsman finds that the explanations provided by the Commission are reasonable.

25. In particular, the Ombudsman accepts that MIPS is a system that commissioners and staff use to register the travel related expenses *they incur* in order to have them reimbursed. The Ombudsman has obtained copies of the two invoices and has verified that they were directly paid by the Commission. Therefore they were not processed through MIPS.

26. Concerning the proactive publication of the expenses related to President Juncker's trip to the G 20 summit in Buenos Aires, the Commission's Code of Conduct requires the Commission to publish an "*overview of mission expenses*". In line with this rule, the Commission did publish an overview of President Juncker's expenses, namely the amounts spent on travel, accommodation, daily allowances and other expenses not covered by the first three categories ("miscellaneous costs").

27. The Ombudsman notes that the complainant is seeking access to *information* about the nature of the miscellaneous expenses to better understand how taxpayers' money was spent, and to communicate this to the wider public. The complainant requested access to the invoices only because the Commission's decision confirmed that there were no details of the miscellaneous expenses in the MIPS database. Therefore, access to the invoices appeared to be the only way for them to get to know what the EUR 8 320 was spent on.

28. These miscellaneous expenses amount to a significant sum and account for a large part of the overall costs of the trip. It is understandable and could be anticipated that the public would require some information on the nature of these costs.

29. The Ombudsman also considers that publishing general information about the nature of



these expenses would not undermine the privacy and integrity of the former President. Rather, having examined the invoices relating to the trip, the Ombudsman considers that disclosure of this general information would not only be in the public interest but would also be in the former President's own interest. Not releasing this type of information might give rise to speculation which could be unfair and inaccurate.

30. Accordingly, the Ombudsman will make a proposal for a solution below.

31. The Ombudsman also considers that the present case raises broader issues of trust and legitimacy, which can be enhanced by greater transparency. She has previously welcomed and supported the Commission's steps towards the regular proactive publication of expenditure incurred by the Commission in the course of Commissioners' official duties.

32. The Ombudsman also considers that it is also good administrative practice for an EU institution regularly to reflect on and, if necessary adjust its policies based on experience and feedback received from the public.

33. The Ombudsman's inquiry into this complaint has shown that strict adherence to the limits of an existing policy may result in the appropriate disclosure of miscellaneous travel expenses in the public interest being missed. The Ombudsman considers that where such miscellaneous costs exceed a certain amount or a certain percentage of the overall costs of a mission, there is a strong case for proactive disclosure of further details which explains what these costs were for.

34. The Ombudsman will therefore consider making a suggestion for improvement along these lines in her closing decision in this inquiry, after the Commission has had the opportunity to provide her with its views on the matter.

The proposal for a solution

The Ombudsman proposes that the European Commission should disclose to the complainant information on the nature of the miscellaneous expenses of former President Juncker on his official visit to attend the G20 summit in Buenos Aires in November 2018.

The Commission is invited to inform the Ombudsman by Monday, 17 August 2020 of any action it has taken in relation to the above solution proposal.

Emily O'Reilly European Ombudsman

Strasbourg, 17/06/2020



[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p.

[2] Commission Decision 2018/C 65/06 ('Code of Conduct for the Members of the European Commission'), available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018D0221%2802%29> [Link].

[3] For the travel expenses of the Juncker Commission, visit:
https://ec.europa.eu/info/former-colleges-commissioners/transparency-pages-juncker-commission_en [Link]. The travel expenses of the von der Leyen Commission can be found on the respective webpage of each Commissioner under 'transparency':
https://ec.europa.eu/commission/commissioners/2019-2024_en [Link].

[4] See
<https://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=829436d0-1850-424f-aebe-6dd76c793be2&m> [Link].

[5] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, available at:
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049> [Link].

[6] In accordance with Article 4(1)(b) of Regulation 1049/2001.

[7] Commission Decision C(2017) 5323 final ('Guide to missions and authorised travel'), available at:

<https://ec.europa.eu/transparency/regdoc/?fuseaction=list&coteId=3&year=2017&number=5323&version=ALL&lang> [Link].

[8] The meeting report is available at: <https://www.ombudsman.europa.eu/en/report/en/128904> [Link].

[9] They are registered in the Commission's 'Advanced Records System' ('ARES').

[10] Regulation 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725> [Link].