



## Letter from the Ombudsman to President Juncker concerning information for the public on the upcoming negotiations aimed at reaching agreement on the UK's withdrawal from the EU

Correspondence - 28/02/2017

**Case SI/1/2017/KR - Opened on 28/02/2017 - Decision on 11/02/2019 - Institution concerned** European Commission |

Mr Jean-Claude Juncker

President

European Commission

1049 BRUSSELS

BELGIUM

Strasbourg, 28/02/2017

Re: information for the public on the upcoming negotiations aimed at reaching agreement on the UK's withdrawal from the EU.

Dear Mr President,

The Government of the United Kingdom has announced that it will inform the European Council before April 2017 of its intention to withdraw from the European Union. I recognise and support the important role of the European Commission in protecting the interests of the Union and its citizens during the negotiations that will ensue. As the European Ombudsman was established in the Maastricht Treaty alongside the creation of EU citizenship, I wish to do everything possible to assist in protecting EU citizens' rights. Citizens of other EU Member States residing in the UK are likely to be particularly affected, as are UK citizens residing in other EU Member States.

Based on my mandate, I see two relevant areas of engagement for my Office. **The first concerns transparency and access to documents**. I have already received complaints arising from requests for public access to documents connected to the UK referendum and it is very likely that I will receive and deal with others concerning the forthcoming negotiations



(including documents concerning the preparations). I therefore consider that it would be constructive to contact you now on the question of how the Commission intends dealing with the transparency of the upcoming negotiations, bearing in mind citizens' rights.

I understand that the Union needs to create an appropriate and effective negotiating context for everyone concerned. This may mean keeping confidential certain documents at particular points. However, as the Union has done in the past, it would be helpful to adopt a proactive approach from the outset and give citizens access to relevant information and documents at the appropriate time and without the need to ask for them. This approach would highlight the Union's determination not only to respond to, but also to anticipate, citizens' legitimate need for information on the negotiations.

My staff have already had a constructive first meeting with members of the negotiation Task Force. It is clear that the Commission is already reflecting on how to put in place optimal arrangements to ensure transparency and to secure appropriate stakeholder input throughout this process.

I therefore think it would be helpful if the Commission would set out the arrangements that it envisages putting in place and in particular:

(a) the types of information and documents the Commission intends to publish and when (e.g. timeline for the negotiations, Commission recommendations to the Council referred to in Article 218(3) TFEU, reports on negotiating rounds, negotiating documents disclosed to the UK, etc.);

(b) how the Commission plans to secure and structure the input it needs from stakeholders to inform its negotiating position throughout the process. It would be useful to inform stakeholders in advance that their submissions will be published unless the sender gives justified reasons for confidentiality and provides a non-confidential summary for publication.

Please note that, in a recent meeting with the General Secretariat of the Council of the EU, my staff also discussed public access to Council documents regarding negotiations with the UK.

**The second relevant area relates to questions, complaints and concerns about citizens' rights and obligations arising from the fact that they have exercised their right of free movement** . One might expect these to come from EU citizens from other Member States living in the UK and from UK citizens who have settled in other EU Member States.

While my mandate covers the EU institutions, my colleagues in the European Network of Ombudsmen (ENO) are well placed to address such questions, complaints and concerns. This network includes the UK Parliamentary and Health Service Ombudsman, the Local Government Ombudsman for England, the Scottish Public Service Ombudsman, the Public Services Ombudsman for Wales and the Northern Ireland Public Services Ombudsman. EU citizens from other Member States residing in the UK can contact one of these bodies if they believe they have been treated unjustly, or have not had their rights, including their EU



rights, upheld by the relevant UK authorities. UK citizens living in other Member States equally can generally turn to Ombudsmen in their country of residence about their rights under EU law.

Given the likelihood that ENO members will face an increasing number of questions on these important and sensitive matters, I will be inviting them to avail of the query procedure whereby my office assists Network members by obtaining expert replies on matters of EU law and practice from the Commission and other EU institutions. I expect that the issues raised by ENO members through this query procedure will prove useful to the Commission while also facilitating ENO members in their own work.

I would appreciate it if you would reply with the Commission's views on these matters as soon as possible and by 30 April 2017 if possible. Should you require any further information or clarifications, please contact Rosita Hickey, Head of Unit (02 28 42 542).

Yours sincerely,

Emily O'Reilly