



Letter from the Ombudsman to the Secretary-General of the Council of the EU concerning public information on the UK's withdrawal from the EU (SI/3/2017/KR)

Correspondence - 24/03/2017

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

Mr Jeppe Tranholm-Mikkelsen

Secretary-General

Council of the European Union

1048 Brussels

Belgium

Strasbourg, 24/03/2017

Re: Public Information on the UK's withdrawal from the EU (SI/3/2017/KR).

Dear Mr Secretary-General,

The Government of the United Kingdom has announced that it will inform the European Council on 29 March 2017 of its intention to withdraw from the European Union. I recognise and support the important role of the Council 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 Council 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. It would be a very positive step if the Council were to set out, at this early stage, its overall intentions regarding the transparency of the forthcoming negotiations.

As a starting point, it would be helpful if the European Council were to publish the guidelines, referred to in Article 50(2) TEU, in the light of which the Union shall negotiate and conclude an agreement with the UK.

There will also be public interest in whatever negotiating directives [1] the Council may adopt at the outset of the negotiations, as well as in any amendments or additions made during the overall process. I understand that it may be complex and challenging for the Council to decide definitively to disclose, or not to disclose, a document before the content has been settled. Nevertheless, it would be in the interests of transparency, and in promoting citizen trust in the negotiations, for the Council to commit, in principle, to the earliest possible disclosure of the negotiating directives and of any subsequent amendments or additions. Any exceptional decision not to disclose at a certain point in the negotiations should be duly justified.

The second relevant area relates to questions, complaints and concerns about citizens' rights and obligations in circumstances where many citizens 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. It would undoubtedly be helpful and reassuring for these citizens to have the fullest information possible, at the earliest point possible, on these matters.

I have already written to the President of the Commission on these two relevant areas of engagement for my Office [2] .

I look forward to a positive engagement with the Council on these matters and I would be grateful to have a response from the Council by 31 May 2017, if possible. If any further information is required, please contact Rosita Hickey, Head of Unit (02 28 42 542).

Yours sincerely,

Emily O'Reilly



European Ombudsman

[1] Referred to in the Statement issued following the Informal meeting of the Heads of State or Government of 27 Member States, as well as the Presidents of the European Council and the European Commission, 15 December 2016.

[2]

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/76528/html.bookmark?si-relate>