



## **Report on the inspection of documents in the Ombudsman's inquiry into complaints 194/2017/EA & 334/2017/EA concerning the Commission's alleged insufficient action with respect to its former President's compliance with Treaty obligations**

Correspondence - 14/06/2017

**Case 194/2017/EA - Opened on 24/02/2017 - Recommendation on 06/03/2018 - Decision on 20/07/2018 - Institution concerned** European Commission ( Maladministration found )  
|

### **COMPLAINTS: 194/2017/EA & 334/2017/EA**

**Case title: The Commission's alleged insufficient action with respect to its former President's compliance with Treaty obligations**

**Date and time: Tuesday, 04 April 2017, 14.00-16.00**

**Location: BERL, Rue de la Loi 200, 1040 Brussels**

#### **The Ombudsman represented by:**

Ms Rosita Hickey, Head of Strategic Inquiries Unit

Mr Lambros Papadias, Head of Inquiries Unit 3

Mr Antonios Antoniadis, Inquiries Unit 3

Ms Elpida Apostolidou, Strategic Inquiries Unit

#### **The Commission represented by:**

3 persons (SG)

1. Introduction and procedural information

The Ombudsman representatives introduced themselves and presented the purpose of the inquiry into complaints 194/2017/EA and 334/2017/EA concerning the Commission's alleged insufficient action with respect to its former President's compliance with Treaty obligations. The inquiry was opened to examine the Commission's action in this particular case and,



more generally, the way the Commission handles post-mandate activities and other issues relating to former Commissioners which may raise questions of incompatibility with Article 245 TFEU and the Code of Conduct for Commissioners (CoC).

The Ombudsman representatives explained that the meeting had a two-fold purpose: (i) to serve as an inspection of certain documents and (ii) to get a better understanding of the Commission's role in the case of the former Commission President, as well as of how the Ad Hoc Ethical Committee (AHEC) generally conducts its work. [1]

The Ombudsman representatives outlined the legal framework applicable to the inspection, notably that the Ombudsman will not disclose any information or documents identified by the Commission as confidential without the prior agreement of the institution. [2] The Ombudsman representatives also informed the Commission that the Ombudsman will publish this report on her website, in order to allow anyone interested to read it.

## 2. Information and documents inspected

The Commission representatives provided full access to the Ombudsman representatives to the requested files. Besides the Commission file relating to the AHEC opinion in the case of the former Commission President, the documents made available by the Commission included the Commission files on the other six most recent opinions adopted by the AHEC.

The Commission representatives also provided general information about the Commission's handling of former Commissioners' cases in which the AHEC was consulted and how the AHEC independently conducts its work in those cases.

The Ombudsman representatives inspected all documents made available by the Commission.

The Ombudsman representatives received copies of the documents in the file concerning the post-mandate activity of the former Commission President:

(i) Letter of the Commission Secretary-General to former President Barroso of 9 September 2016 (*confidential*)

(ii) Letter of President Juncker to the President of the European Parliament of 9 September 2016

(iii) Letter of former President Barroso to President Juncker of 13 September 2016

(iv) Note of the Commission Secretary-General to the AHEC of 15 September 2016 and its annexes

(v) Opinion of the AHEC of 26 October 2016

(vi) E-mail of the Commission Secretary-General to the members of the AHEC of 28 October 2016 on the publication of the AHEC opinion (*confidential*)



(vii) Replies of the members of the AHEC to the Commission Secretary-General's email  
(*confidential*)

(viii) Letter of President Juncker to former President Barroso of 31 October 2016  
(*confidential*)

(ix) Commission Decision PV (2016) 2190 final of 22 November 2016 point 11.3

(x) Letter of the European Ombudsman to President Juncker of 5 September 2016

(xi) Letter of President Juncker to the European Ombudsman of 9 September 2016

The Ombudsman representatives also received copies of all documents in three files relating to other Commissioners to help shed light on how the procedure works in practice.

Moreover, they requested and received copies of additional documents regarding cases where the AHEC asked the Commission to provide further information and/or documents to carry out its work and related correspondence by the Commission. The complementary requests for information were addressed by the AHEC to the Commission in the context of its assessment of the envisaged post-mandate activities of five former Commissioners.

The Commission representatives identified several of the inspected documents as 'confidential', in accordance with Article 4(8) of the European Ombudsman's Implementing Provisions. The copies of the relevant documents were marked 'confidential' and signed by a representative of the Commission and a representative of the Ombudsman.

The Ombudsman will not disclose any information or documents identified by the Commission as confidential without the prior agreement of the Commission.

The Ombudsman's case team expressed their gratitude for the good cooperation of the Commission representatives involved and present. The meeting then ended.

Brussels, 14/06/2017

Ms Rosita Hickey Ms Elpida Apostolidou

[1] The letter opening the inquiry is available here:  
<https://www.ombudsman.europa.eu/cases/correspondence.faces/en/76363/html.bookmark>

[2] Article 4(8) of the European Ombudsman's Implementing Provisions

