

## **Request for a reply to the European Commission in the Ombudsman's joint inquiry into complaints 194/2017/EA, 334/2017/EA, and 543/2017/EA concerning the handling of Commissioners' post-mandate jobs**

Correspondence - 10/07/2017

**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 ) |

Mr Jean-Claude Juncker

President

European Commission

Strasbourg, 10/07/2017

Joint Inquiry into Complaints 194/2017/EA, 334/2017/EA, and 543/2017/EA

**Subject:** European Commission's handling of post-mandate employment of former Commissioners, a former Commission President and role of the Ad Hoc Ethical Committee

Dear Mr President,

In November 2016, I welcomed your proposal to strengthen the Commissioners' Code of Conduct by extending the 'cooling off' period during which former Commissioners and Commission Presidents must inform the Commission of their intention to take up a new post.

In the period February - March 2017 I received three separate complaints relating to the Commission's handling of issues to do with the post-mandate activities of former Commissioners and of the former Commission President. The complaints raise issues also regarding the role of the Ad Hoc Ethical Committee (AHEC). Because of the similarity in the issues raised, I have decided to inquire into the three complaints together. I have already informed the Commission of two of these complaints (194/2017/EA, 334/2017/EA) and I attach



a copy of the third complaint (543/2017/EA) with this letter.

The complainants contend that the Commission has failed to take sufficient action to ensure that former Commissioners and the former President are complying with their obligations under Article 245 TFEU. The complainants contend that the post-mandate occupational activities of the former Commissioners, and of the former Commission President, do not respect their “*duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits*”. The complainants contend that the provisions of the Code of Conduct for Commissioners (CoC) do not adequately capture the obligations on former Commissioners (including former Presidents) arising from Article 245 TFEU and, indeed, from the principles of good administration more generally.

In the case of the AHEC, the complainants contend that, in general, it is not an adequate mechanism for dealing with issues arising from the post-mandate activities of former Commissioners (including Commission Presidents). More particularly, the complainants contend that two members of the current AHEC are in a conflict of interest situation arising from their positions as Special Advisers at the time of their appointments and for other reasons. I note that, in its recent reply in the context of a separate inquiry on Commission Special Advisers (OI/6/2016/AB), the Commission commented on this matter. This issue will, however, be dealt with in the context of this inquiry.

On 4 April 2017, my inquiry team carried out an inspection of documents which included the Commission file relating to the AHEC opinion in the case of its former President and the Commission files on the other six most recent opinions provided by the AHEC. The inspection report is published on my website. [\[1\] \[Link\]](#)

I have now concluded that it would be useful to obtain the Commission’s written reply in this joint inquiry. I would be grateful if the Commission would reply to the questions and comments set out under three headings below.

i) The functioning of the AHEC

1. Before requesting an opinion from the AHEC, how does the Commission decide on the level of information to be provided by the former Commissioner (or President) in question in order to enable the AHEC to carry out a full assessment? In the Commission’s experience, how does the AHEC determine what further information it requires from former Commissioners, in order to carry out its assessment?

2. Has the Commission considered the need to strengthen, and make fully transparent [\[2\] \[Link\]](#), the role and powers of the AHEC in order to ensure that it is equipped to fully assess each case in full knowledge of the relevant facts? Has the Commission considered providing guidance to the AHEC on the range of documents it is likely to require, and the options open to it (for example, interviewing the former Commissioner/President in question) in order to undertake a full assessment in any particular case?



3. As currently constituted, the AHEC becomes involved only following a specific request for advice from the Commission. In the case of the former Commission President's post-mandate activity, there has been criticism of the fact that the AHEC's advice was requested more than two months after the new appointment became known. Does this suggest that the AHEC should be re-constituted as a standing body with the legal authority to act on its own initiative when it considers it appropriate?

4. I note, and welcome the fact, that the Commission chose to publish the AHEC opinion in the case of the former Commission President. Following access to documents requests, the Commission has also disclosed the AHEC opinions in other cases. I have already raised this matter with the Commission while clarifying that I do not refer to a *full and automatic publication* of the opinions or the *full disclosure of every detail of the former Commissioners' new professional activities and employment conditions*. [3] [\[Link\]](#) Having had some time to reflect on this matter, is the Commission now willing to publish AHEC opinions as a matter of course but with due regard to the protection of personal data and commercially sensitive information?

ii) The Commission's handling of former Commissioners' cases under Article 245 TFEU, the CoC and the principles of good administration

5. It would be helpful for the Commission to spell out more fully its understanding of the duty, under Article 245 TFEU, of a former Commissioner to behave "*with integrity and discretion*"? What is the Commission's understanding in this regard? It would be helpful for the Commission, based on its own and the AHEC's experience to date, to publish a list of examples of behaviour which it would consider to be a breach of the above duty. Is the Commission willing to do so?

6. Is the Commission willing to clarify what it believes to be its role, under the current rules, following the delivery of an AHEC opinion? For example, will it explain (a) what constitutes a reasonable time period in which to take a decision following receipt of the AHEC opinion and (b) how it should justify its decision in circumstances where it opts not to follow the AHEC opinion?

7. The Commission may refer a case to the Court in the event of **any breach** of a Commissioner's obligations under Article 245 TFEU. Other than seeking the opinion of the AHEC, what procedures does the Commission have in place in order to decide (a) whether, in its view, there has been a breach of a Commissioner's obligations under this Article and (b) what follow-up action to take? If the Commission currently has no such procedures, is it prepared to set out the procedural steps to be followed for these purposes?

iii) The Commission's handling of the case of its former President's post-mandate activity

8. The Commission has said that it "exceptionally" sought the AHEC's advice in the case of its former President. Could the Commission please explain why, in this regard, it did not rely on Article 2.3 of the CoC [\[4\] \[Link\]](#) which allows for consultation with the AHEC on a more general basis? If the Commission considers that Article 2.3 of the CoC is not an appropriate basis on which to request such advice, is it prepared to amend the CoC to provide for a firm basis for the



provision of AHEC opinions in the case of post-mandate activities after the 18-month (or any extended) cooling-off period has ended?

9. The Commission has consulted the AHEC in two cases which did not concern occupational activities which had begun within the 18-month notification period specified in the CoC. However, the Commission has not dealt consistently with its follow-up to the AHEC opinions provided. Following its receipt of the AHEC opinion in the case of the former Commissioner for the Digital Agenda 2010-2014, the Commission gave a formal explicit decision on that case. However, in the case of the former Commission President, and even though it had received the opinion of the AHEC, the Commission did not give any decision. Could the Commission please explain why it issued a decision in the case of the former Commissioner but not in the case of the former Commission President?

I would be grateful to receive the Commission's reply to these questions and any other comments by 29 September 2017 . Please note that I am likely to forward your reply and related enclosures to the complainants for comments. If you wish to submit documents or information that you consider to be confidential, and which should not be disclosed to the complainants, please include them in a separate annex marked 'Confidential'.

Should your staff have any queries concerning this inquiry, they may contact Ms Rosita Hickey (+32 2 284 25 42) or Ms Elpida Apostolidou (+32 2 284 18 76) in my Office.

Yours sincerely,

Emily O'Reilly

European Ombudsman

Enclosure: Complaint 543/2017/EA

[1] [Link]

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/80345/html.bookmark>  
[Link]

[2] [Link] This might be included in a revised Code of Conduct for Commissioners.

[3] [Link]



<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/61417/html.bookmark>  
[Link]

[4] [Link] Article 2.3: “In addition to being asked to deliver opinions on certain post term-of-office activities of former Members of the Commission, as referred to in point 1.2 above, the Ad Hoc Ethical Committee may be requested by the President to deliver opinions on any general ethical question concerning the interpretation of this Code of Conduct.”