

Report on Meetings and Inspection of Documents – Joint Complaints 488/2018/KR and 514/2018/KR on the European Commission's Appointment of a new Secretary-General

Correspondence - 19/07/2018

Case 488/2018/KR - Opened on 08/05/2018 - Recommendation on 31/08/2018 - Decision on 11/02/2019 - Institutions concerned European Commission (Maladministration found) | European Commission (Recommendation rejected) |

Complaints 488/2018/KR and 514/2018/KR

Title:

- European Commission's appointment of a new Secretary-General

Dates:

- 6, 21, 22, 27, 28, 29 June 2018
- 2, 3, 4, 5, 10, 12 July 2018

Locations:

- Directorate-General for Human Resources, Brussels
- Meeting on July 12th took place at the Berlaymont building, Brussels

Inspection carried out by:

- Mr Fergal O'Regan, Head of Coordination of Public Interest Inquiries
- Ms Tanja Ehnert, Strategic Inquiries
- Mr Koen Roovers, Strategic Inquiries (as of 2 July)

Purpose of the inspection meetings

The objective of the inspection and meetings was for the Ombudsman to inquire into the appointment of the new Secretary-General of the European Commission on 21 February 2018, and related issues.

Inspection meeting of 6 June 2018

The Ombudsman representatives introduced themselves, thanked the Commission representatives for their cooperation and set out the objective and purpose of the inspection within the context of the Ombudsman's inquiry into the Commission's appointment of a new Secretary-General.



In particular, the Ombudsman representatives outlined the legal framework which applies to the Ombudsman's office when carrying out inspections and informed the Commission staff that, if they identified any documents to be confidential, the applicable rules provide that no access may be granted without the Commission's prior agreement, neither to the complainants nor to any other person outside the Ombudsman's office. Information and documents of this kind will be deleted from the Ombudsman's files shortly after the inquiry has ended. The Ombudsman representatives further explained that a report on the inspection would be prepared, sent to the Commission, to the complainants, and be published on the Ombudsman's website.

The Ombudsman representatives were then granted access to two folders and one additional document. The Commission representatives explained the structure and nature of the documents shown to the Ombudsman representatives.

1. Folder

The first folder contained mainly the minutes of the meetings of the *chefs de cabinet* of 19 February 2018 and the minutes of the meeting of the Commission of 21 February 2018, as well as several email exchanges between the Commission's spokespersons and journalists.

In detail, this folder contained:

- Demande de publication d'un avis de vacance of 31 January 2018, PERS(2018) 6
- Décisions administratives et budgétaires prises par la Commission lors de sa 2241ème réunion du 31 janvier 2018, 31 January 2018
- Note à l'attention des membres de la Commission, Résultats de la réunion hebdomadaire des chefs de cabinet du 19 février 2018, 20 February 2018, RCC(2018) 2244 (*confidential*)
- Décisions administratives et budgétaires prises par la Commission lors de sa 2244ème réunion du 21 février 2018, 21 February 2018
- Email exchanges between a Commission spokesperson and a journalist, dated 10 October 2017 to 26 February 2018 (*confidential*)
- Email exchange between a Commission spokesperson and a journalist, dated 27 February 2018 (*confidential*)
- Minutes of the meeting of the Commission held in Brussels on Wednesday 21 February 2018, 7 March 2018, PV(2018) 2244 final
- Email exchange between a Commission spokesperson and a journalist, dated 5 March 2018 to 7 March 2018 (*confidential*)
- Email exchange between a Commission spokesperson and a journalist, dated 14 March 2018 (*confidential*)
- Email exchange between a Commission spokesperson and a journalist, dated 14/15 March 2018 (*confidential*)
- Email exchange between a Commission spokesperson and a journalist, dated 15 March 2018 (*confidential*)
- Email exchange between a Commission spokesperson and a journalist, dated 29 March 2018 (*confidential*)
- Email exchange between a Commission spokesperson and a journalist, dated 20 March 2018 to 8 April 2018 (*confidential*)
- Email exchanges between two Commission spokespersons and a journalist, dated 20 March 2018 to 13 April 2018 (*confidential*)



- Email exchange between a Commission spokesperson and a journalist, dated 16/17 April 2018 (*confidential*)
- Email exchange between a Commission spokesperson and a journalist, dated 18 April 2018 (*confidential*)
- European Commission, Memo, Appointment of the Secretary-General of the European Commission - Questions and Answers, 27 February 2018 (*confidential*)
- European Commission, Memo, European Commission confirms: Appointment of Mr Selmayr as Secretary-General decided in full compliance with all legal rules - Questions and Answers, 25 March 2018
- European Commission, Memo, European Commission replies to follow-up questions of the European Parliament's Budgetary Control Committee on the appointment of its new Secretary-General - Questions and answers, 4 April 2018

The Ombudsman representatives obtained copies of the documents contained in the folder. The Commission staff stated that, for the purposes of the inspection, the documents marked above as '*confidential*' were confidential. The applicable rules provide that no access may be granted to those documents by the Ombudsman. This is without prejudice to the right of citizens to request the Commission to grant public access to these documents in accordance with Regulation 1049/2001.

2. Folder

The second folder consisted mainly of the file held by the Directorate-General for Human Resources and Security ('DG HR') on the selection procedure for the vacancy of Deputy Secretary-General (COM/2018/292).

In detail, this folder contained:

- The file of the selection procedure for the post of Deputy Secretary-General (COM/2018/292), including applications and withdrawal, assessment centre reports containing the conclusions of the evaluators of the assessment centre and the opinion of the Consultative Committee on Appointments
- Internal preparatory documents for College meeting 2244, 21 February 2018
- Mr Italianer's note of 21 February 2018 concerning his retirement (Ares(2018)1038134)
- Act notifying to Mr Selmayr the decision of the European Commission of 21 February 2018 concerning his appointment as Deputy Secretary-General
- Act notifying to Mr Selmayr the decision of the European Commission of 21 February 2018 concerning his transfer to the function of Secretary-General
- Email exchanges between DG HR and SG Registry dated 21/2/2018-27/2/2018 concerning the drafting of the summary and minutes of the Commission meeting of 21 February 2018.
- Minutes of Commission meeting of 11 April 2018.

The Ombudsman representatives did not obtain copies of the documents contained in the folder. However, the documents were made available to the Ombudsman services in a secure reading room at DG HR throughout the inspection.

The Commission stated that the entirety of the selection file was confidential.

3. Additional document



The additional document that was presented to the Ombudsman staff concerned the special *procès-verbal* of the meeting of the Commission of 11 April 2018.

The Ombudsman representatives did not obtain a copy of the document, marked '*confidential*', but inspected the document.

Follow up to first inspection meeting

Following the inspection of the documents provided by the Commission, the Ombudsman's staff clarified in writing the scope of the inspection request that had been sent to the Commission on 8 May 2018. Therein, the Ombudsman stated that she had decided that it was necessary to inspect "*[a]ll documents , whether in electronic or paper format, including correspondence, notes, memos, emails, and all legal advice , from 1 September 2017 until 18 April 2018, relating to the appointment of the new Secretary-General*" (emphasis in original).

The Ombudsman representatives explained that this request was meant to encompass all documents relating to the appointment of the new Secretary-General, as opposed to only those documents directly linked to the recruitment procedure. In particular, it was meant to include correspondence, notes, memos, emails, and advice within the different Commission services and from the different Commission services to the Commissioners and their cabinets, as well as between the Commissioners and within their cabinets, relating to the appointment of the Commission's new Secretary-General. The Ombudsman representatives reminded the Commission that the timeline expected was up until 18 April 2018, the day of the European Parliament resolution.

In light of these clarifications, it was decided to continue the inspection meeting at a later date.

The inspection was then suspended until the Commission could gather the relevant documentation.

Inspection meeting of 21 June 2018

The inspection continued on 21 June 2018. Upon clarification of the scope of the Ombudsman's inspection request, the Ombudsman representatives were granted access to **17 additional folders of documents** .

The Commission representatives explained the structure and nature of the 17 folders presented to the Ombudsman representatives.

- 15 folders were compiled by the Directorate-General for Human Resources (eight folders containing emails and documents from the Head of Unit "*Senior Management and CCA*" and seven folders containing emails and documents from the Director "*Talent Management and Diversity - Executive Staff*"); and
- Two folders were compiled by the Commission's Legal Service.

The Commission representatives further clarified that:

- All requests from the Ombudsman's office were transmitted to the relevant services and



cabinets and that all documents received were handed over. These include correspondence between and within the Cabinets, the Spokesperson's Service and the Legal Service to the extent that this correspondence was also copied to the Directorate-General for Human Resources and/or the Legal Service.

- The documents contained in the 17 folders all date from 21 February 2018 onwards.
- There are no additional documents from the Cabinets of Commissioner Oettinger, President Juncker, First Vice-President Timmermans or the Spokesperson's Service falling within the scope of the Ombudsman's request, other than those documents already contained in the 17 above-mentioned folders.
- There are no additional documents relating to the retirement of Mr Italianer, other than those documents inspected by the Ombudsman's staff on 6 June 2018.
- There is no formal legal opinion on the appointment of the new Secretary-General. However, the Legal Service was consulted (and gave its comments) on the draft answers to the questions asked by Parliament. These consultations are contained in the above-mentioned two folders.

The Commission representatives provided, upon request of the Ombudsman representatives, additional specific documents and clarified various points:

- First Vice-President Timmermans was consulted on the proposal to appoint Mr Martin Selmayr as a new Secretary-General on 20 February 2018 during lunchtime.
- The current practice of the Commission is not to transfer Principal Advisers to Director-General/Secretary-General positions, under Article 7 of the Staff Regulations.

It was agreed that the Ombudsman representatives would not obtain copies of the documents in the 17 folders, but would inspect the documents at the Commission's premises.

Throughout the inspection, the Ombudsman's services were requested to leave their electronic devices (telephones) in a secure container. A Commission security guard was present at all times.

Inspection meetings of 22, 27, 28 and 29 June 2018 and 2, 3, 4, 5 and 10 July 2018

Given the very extensive files to be reviewed, the inspection continued on 22, 27, 28 and 29 June 2018 and 2, 3, 4, 5 and 10 July 2018.

During these meetings, the Ombudsman representatives inspected the 17 folders at the Commission's premises, in presence of the security guard from DG HR.

It is estimated that **the Ombudsman's staff inspected between 8500 and 11000 pages**, including various drafts of the Commission's answers to the Parliament's questionnaires. Given the huge amount of documents, it was not possible for the Ombudsman's staff to draw up a comprehensive list of all documents inspected.

Inspection meeting of 12 July 2018

The Ombudsman representatives met with the Commission's staff for a final meeting on 12 July 2018, in order to clarify remaining questions that had arisen during the inspection of documents.

In view of the fact that the Ombudsman representatives did not obtain copies of the documents in the 17 folders, it was agreed that the Ombudsman's staff could inspect any of the documents



again at the Commission's premises, if needed for the purposes of the inquiry.

The Ombudsman representatives thanked the Commission for their cooperation, and the meeting ended.

Brussels, 19/07/2018

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