



Besluit in zaak 2165/2019/MIG over de weigering van de Europese Commissie om twee onkostendeclaraties in verband met een officieel bezoek van de toenmalige voorzitter van de Commissie aan Buenos Aires openbaar te maken

Besluiten

Zaak 2165/2019/MIG - Geopend op 20/12/2019 - Besluit over 04/11/2020 - Betrokken instellingen Europese Commissie (Suggestie(s) aanvaard door de instelling) | Europese Commissie (Oplossing bereikt) |

De zaak betrof een verzoek om toegang van het publiek tot documenten met een specificatie van de uitgaven in verband met een officieel bezoek van de toenmalige voorzitter van de Europese Commissie aan Buenos Aires om de G20-top bij te wonen. De Commissie vond twee declaraties waarop het verzoek betrekking had, maar weigerde toegang te verlenen op grond van de noodzaak persoonsgegevens te beschermen.

De Ombudsman heeft vastgesteld dat het verzoek om toegang kon worden ingewilligd door informatie openbaar te maken over de aard van de uitgaven in kwestie, en heeft een dienovereenkomstige oplossing voorgesteld. De Ombudsman heeft ook voorgesteld dergelijke informatie in bepaalde omstandigheden op proactieve wijze openbaar te maken.

De Commissie heeft het voorstel van de Ombudsman aanvaard en heeft ermee ingestemd in de toekomst proactief informatie te verstrekken over de aard van dergelijke uitgaven.

De Ombudsman heeft zich over het positieve antwoord van de Commissie verheugd en heeft de Commissie geprezen voor de maatregelen die zij reeds heeft genomen voor meer transparantie met betrekking tot uitgaven van leden van de Europese Commissie. Op basis hiervan werd het onderzoek afgesloten.

Background to the complaint

1. The Commission proactively publishes information on the expenses incurred on official trips by Commissioners (so called 'mission costs'). [1]

2. In November 2018, the then President of the Commission went on an official trip to Buenos Aires to attend the G20 summit. In accordance with its proactive publication policy, the Commission disclosed information on the expenses incurred on this trip [2] , including the following breakdown:

- Travel costs EUR 8 929.61



- Accommodation costs EUR 0.00
- Daily allowances EUR 239.53
- Miscellaneous costs EUR 8 320.00

3. On 10 and 11 May 2019, the complainant, the NGO Access Info Europe, requested public access to documents [3] containing details of the miscellaneous expenses of this trip.

4. On 25 June 2019, the Commission refused access based on the need to protect the personal data of individuals. [4]

5. On 16 July 2019, the complainant requested the Commission to review its decision (it made a so-called 'confirmatory application').

6. On 23 September 2019, the Commission informed the complainant that it had identified two invoices and confirmed its decision to refuse public access to them.

7. Dissatisfied with the Commission's response, the complainant turned to the Ombudsman in November 2019.

The Ombudsman's proposal for a solution

8. Following the inspection of the two invoices at issue and a meeting with Commission representatives, the Ombudsman made the following proposal for a solution [5] :

The European Commission should disclose to the complainant information on the nature of the miscellaneous expenses of former President Juncker on his official visit to attend the G20 summit in Buenos Aires in November 2018.

9. The Ombudsman also considered that this case raised broader issues of trust and legitimacy, which can be enhanced by greater transparency. The Ombudsman took the view that where miscellaneous costs exceed a certain amount or a certain percentage of the overall costs of a trip, there is a strong case for proactive disclosure of further details which explains what these costs were for.

10. The Commission agreed [6] that information on the nature of the miscellaneous expenses at issue could be disclosed to the complainant, namely that they related to the standard logistical and security requirements of the President and his team.

11. The Commission also said that it would proactively publish information on miscellaneous expenses of Commissioners' trips in future and that it had already taken the necessary steps to facilitate such disclosure.

12. The complainant welcomed the update of the Commission's proactive transparency policy. However, it said that it was not satisfied with the disclosure of the nature of the miscellaneous expenses at issue. In particular, the complainant reiterated its arguments that the two invoices which the Commission had identified as falling within the scope of its request could not constitute personal data in their entirety. Rather, it said, personal data such as names and signatures that might be included in the invoices should be redacted and



partial access to the invoices should be granted. The complainant also reiterated its argument that disclosure of the invoices would ensure that the public can scrutinise the spending of taxpayers' money, thus allowing organisations such as the complainant to fulfil their roles as a 'watchdog'.

The Ombudsman's assessment after the proposal for a solution

13. The Ombudsman welcomes the Commission's acceptance of her proposal for a solution. For the reasons set out below, she considers that the complaint has been successfully resolved, despite some of the complainant's outstanding concerns.

14. The Ombudsman notes that the concept of 'personal data' under the EU's rules on data protection [7] encompasses not only names and signatures of individuals. Rather, personal data is *any* information relating to an identified or identifiable individual (the 'data subject'). Thus, as the data subjects in this case have either been identified (the then Commission President) or are identifiable (the team accompanying the then President on his trip), all information included in the invoices at issue constitutes personal data.

15. The EU's data protection rules require that a person seeking access to personal data must demonstrate a specific need in the public interest that would be met by obtaining such access. [8] Even if such a need can be shown, the personal data cannot be disclosed if the data subject has a legitimate interest in non-disclosure which outweighs this need. Finally, even if that test is met, disclosure of the personal data can occur only if it is the most appropriate means of attaining the purpose pursued by the person seeking access. If an alternative means of achieving the same purpose exists, this must be used instead.

16. While, for the purpose of assessing whether certain information constitutes personal data, it is irrelevant who the data subject is, this can be relevant for the purpose of establishing a necessity for obtaining access to the personal data. In this case, one of the data subjects was the then President of the Commission. The Ombudsman therefore agreed that disclosure of information on the nature of the expenses at issue was necessary to inform the public how taxpayers' money is spent by the administration. The Ombudsman also considered that disclosing this information would not undermine the privacy and integrity of the former President.

17. However, the Ombudsman found that there was an alternative means of achieving the purpose put forward by the complainant, namely disclosing the *information* which the complainant was seeking rather than the two invoices identified by the Commission. As this information has now been disclosed, the Ombudsman considers that there is no longer a need in the public interest for disclosing the invoices at issue that could reasonably outbalance the interest of the data subjects concerned.

18. The Ombudsman also commends the Commission for its willingness to reflect on and adjust its policy on the proactive transparency of Commissioners' mission expenses. She notes that the Commission has already implemented the suggested adjustments and now provides details on miscellaneous costs when publishing Commissioners' travel related expenses. The Ombudsman considers this to be good administrative practice.



19. Finally, the Ombudsman regrets the delay that the Commission incurred in this case, both at the initial and the confirmatory stage of the access procedure. She calls on the Commission to make efforts to ensure better compliance with the prescribed time limits as regards requests for public access to documents in future.

Conclusion

Based on the inquiry, the Ombudsman closes this case with the following conclusion:

The European Commission has accepted the Ombudsman's proposal for a solution.

The complainant and the Commission will be informed of this decision .

Emily O'Reilly European Ombudsman

Strasbourg, 04/11/2020

[1] For the travel expenses of the Juncker Commission, visit:
https://ec.europa.eu/info/former-colleges-commissioners/transparency-pages-juncker-commission_en
. The travel expenses of the von der Leyen Commission can be found on the respective webpage of each Commissioner under 'transparency':
https://ec.europa.eu/commission/commissioners/2019-2024_en .

[2] See
<https://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=829436d0-1850-424f-aebe-6dd76>
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[3] Under Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents, available at:
<https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32001R1049> .

[4] In accordance with Article 4(1)(b) of Regulation 1049/2001.

[5] The full text of the Ombudsman's proposal for a solution is available at:

<https://www.ombudsman.europa.eu/en/solution/en/134335> .

[6] The full text of the Commission's reply to the Ombudsman's proposal for a solution is available at: <https://www.ombudsman.europa.eu/en/correspondence/en/134336> .

[7] Regulation 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018R1725> .



[8] Article 9(1)(b) of Regulation 2018/1725.