

Reply of the European Commission to the proposal for a solution from the European Ombudsman

- Complaint by Ms [REDACTED], ref. 2165/2019/MIG

I. BACKGROUND/SUMMARY OF THE FACTS/HISTORY

The inquiry by the European Ombudsman concerns ‘miscellaneous costs’ that have been incurred on a mission by the former President of the European Commission, Mr Jean-Claude Juncker, and his team to attend the G20 summit in Buenos Aires in November 2018. These costs were proactively published on the President’s website, in accordance with the Code of Conduct for the Members of the Commission¹.

The published mission costs encompassed the expenses that the President personally incurred during the mission, notably travel costs of EUR 8 929.61, and ‘miscellaneous costs’ of EUR 8 320.00 which – without that being specified – referred to standard logistical and security requirements of the President and his whole team, as invoiced by the service provider.

These ‘miscellaneous costs’ triggered a request by Ms [REDACTED], on behalf of the association ‘Access Info Europe’. In her initial application for access to documents of 11 May 2019, Ms [REDACTED] requested ‘access to documents that provide details on expenditure listed as ‘miscellaneous costs’ of Euros 8320 for the mission by Commission President Jean Claude Juncker to Buenos Aires between 28 November and 2 December 2018 as published here

http://ec.europa.eu/transparencyinitiative/meetings/mission.do?host=829436d0-1850-424f-aebe-6dd76c793be2&missionsperiod=2018_5’.

In its initial reply of 25 June 2019, Directorate C ‘Transparency, Efficiency & Resources’ of the Secretariat-General refused access to the invoices relating to the miscellaneous costs, based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001.

On 16 July 2019, Ms [REDACTED] lodged a confirmatory application. She argued notably that the requested documents did not, or at least not in their entirety, contain personal data, and that there was a strong interest by the public and Access Info Europe in receiving them.

In its confirmatory reply of 23 September 2019, the European Commission confirmed the earlier initial reply of the Secretariat-General which refused access to the documents falling within the scope of the request, based on the exception of Article 4(1)(b) (protection of privacy and the integrity of the individual) of Regulation (EC) No 1049/2001. The European Commission explained in the confirmatory reply, underpinned by relevant case law, the broad notion of personal data, which encompasses all kinds of information that relates to the data subject, and that no partial access was possible without undermining the protection of privacy and the integrity of the individual. The

¹ Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission, C/2018/0700.

Commission also laid out that general considerations of transparency could not, in themselves, establish the need for the transfer of the personal data in question.

II. THE COMPLAINT TO THE EUROPEAN OMBUDSMAN

In November 2019, Ms ██████ submitted a complaint to the European Ombudsman. The complainant considered that the Commission had incorrectly failed to grant access to the requested documents containing the details of the miscellaneous costs at issue.

III. THE INQUIRY BY THE EUROPEAN OMBUDSMAN AND THE PROPOSAL FOR A SOLUTION

The European Ombudsman opened the present inquiry and looked into the documents requested by Ms ██████. An inspection meeting was held between representatives of the European Ombudsman and the European Commission on 10 February 2020. The European Ombudsman inquiry team concluded in view of the invoices and further explanations by the Commission services, as noted in the inspection report, that ‘the costs appear to be entirely legitimate and indeed entirely expected given the nature of the mission and the normal logistical and security requirement of the President and his team.’ However, at the same time, the European Ombudsman inquiry team suggested that the Commission might consider disclosing some basic information about the nature of the relevant costs, to avoid any speculations.

On 17 June 2020, the European Ombudsman issued a proposal for solution, in which she suggested, in that line, that the European Commission should disclose to the complainant information on the nature of the miscellaneous expenses of former President Juncker on his mission to Buenos Aires in November 2018.

In addition, the European Ombudsman added that, on a general basis, she was considering a suggestion for improvement regarding the proactive transparency of miscellaneous costs in mission expenses of Commissioners and awaited the Commission’s views on the matter.

IV. THE REPLY OF THE EUROPEAN COMMISSION TO THE PROPOSAL FOR A SOLUTION OF THE EUROPEAN OMBUDSMAN

The European Commission welcomes the European Ombudsman’s conclusion, as outlined in the inspection report, that ‘the costs appear to be entirely legitimate and indeed entirely expected given the nature of the mission and the normal logistical and security requirement of the President and his team.’

The European Ombudsman suggested that the European Commission should disclose to the complainant information on the nature of the miscellaneous expenses of former President Juncker on his mission to Buenos Aires in November 2018.

As explained in the confirmatory reply, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access to the invoices themselves cannot be granted, as the need to obtain access thereto for a purpose in the public interest has not been substantiated. Furthermore, there was no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by the disclosure of the personal data concerned. These legal considerations are still valid and are not contested by the European Ombudsman.

Concerning information about the nature of the miscellaneous costs at issue, the European Commission reiterates, as it explained to the European Ombudsman during the inquiry, that the miscellaneous costs related to the standard logistical and security requirements of the President and his whole team, as invoiced by the service provider. The Commission trusts that this information allows the complainant to have a more concrete idea of the nature of the miscellaneous costs at issue. The European Ombudsman may convey this information to the complainant.

More generally, the European Commission is also open for the European Ombudsman's request to proactively publish information concerning miscellaneous costs of missions in future cases. It has adjusted the electronic tool for the publication of missions to allow for such disclosure.

V. CONCLUSIONS

The European Commission considers that its confirmatory decision, which refuses access to the requested documents for reasons of protection of privacy and the integrity of the individual and which has become final in the absence of any legal challenge before the European Union Court, was fully in line with the applicable legislation and the relevant case-law on access to documents.

However, the European Commission can accept the proposal for a solution by the European Ombudsman. It accepts that the European Ombudsman discloses to the complainant information on the nature of the miscellaneous costs in question, by reasserting that these costs refer to standard logistical and security requirements of the President and his team.

*For the Commission
Maroš ŠEFČOVIČ
Vice-President*