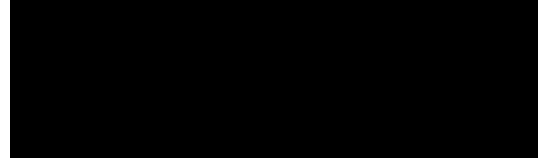




## European Ombudsman

**Emily O'Reilly**  
European Ombudsman



Strasbourg, 27/08/2018

Complaint 2006/2017 [REDACTED]

Dear [REDACTED],

I refer to your complaint of 14 November 2017 against the European Court of Justice.

On 22 February and 20 March 2018, you submitted updated versions of your complaint, and on 21 June 2018 you provided a USB key containing 189 documents that were given to you by the Court in its confirmatory decision of 24 May 2017 on your request for public access to documents. All of these submissions and documents have been taken into account in the analysis below. In addition, all of the information on the file of your complaint of 15 December 2016 (1852/2016 [REDACTED]), which you withdrew on 14 November 2017, has been treated as part of the inquiry file.

On 14 December 2017, I informed you that your complaint is admissible, except for those aspects that are or have been subject to judicial proceedings, in accordance with Article 228 of the Treaty on the Functioning of the European Union. I did however reserve the right to revisit the question of admissibility following a more in-depth analysis of the many allegations raised in your complaint.

I note that you have yourself classified the issues raised under the following five Headings: A. Management, B. Regulatory, C. Legislative, D. Ethical measures, and E. Transparency and access to documents.



Following a careful examination of the file, I consider that the following issues fall within my mandate and, at first sight, merit inquiry. These are:

1. Transparency and access to documents;
2. The Code of Conduct for members and former members of the Court of Justice, both as regards (a) the general issue of the Code's scope, origin and application, and (b) its specific application in the disciplinary proceedings against Judge [REDACTED], and the presumed convocation of the Consultative Committee on the application of the Code of Conduct concerning yourself;
3. The lack of efficiency in the parallel development and use of different and overlapping IT systems;
4. The wasteful use of the judges' drivers at the CJEU;
5. Appointments of senior officials without a proper procedure or transparency, and in particular:
  - (i) the role of the former President of the Court of Justice in selection procedures in which his close associates were candidates;
  - ii) the appointment of former judge [REDACTED] as a special adviser on Brexit without any selection procedure;
6. The Court's participation in the revision of the Treaties and in the special legislative procedure concerning the reform of its Statute;
7. The alleged conflict of interests concerning the role of the President of the General Court as President of the University of Luxembourg.

I note that, overall, your complaint has two main aspects: first, requests for information and access to documents (transparency allegations), and second, other alleged instances of maladministration (substantive allegations). Where the substantive allegations concern facts that can objectively be expected to have come to your attention more than two years before lodging your first complaint, I consider that it would not be in line with the letter or the spirit of the European Ombudsman's Statute for me to inquire into them<sup>1</sup>.

The **first issue** (transparency) concerns , specifically, the Court's replies to your confirmatory applications for public access to documents (the Court's confirmatory decisions of 18 May 2017, 22 May 2017, 27 May 2017 and 16 November 2017). I note that the confirmatory decisions of 18 May 2017 and 22 May 2017 are the subject of your action for annulment pending before the General Court<sup>2</sup>. Accordingly, your complaint is inadmissible in so far as it concerns the Court's confirmatory decisions of 18 May 2017 and 22 May 2017 (Article 228(1)(2) of the Treaty on the Functioning of the European Union and Article 2(7) of the European Ombudsman Statute).

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<sup>1</sup> Article 2(4) of the European Ombudsman's Statute.

<sup>2</sup> [REDACTED]



However, the complaint is admissible in so far as it concerns the Court's confirmatory decisions of 27 May 2017 and 16 November 2017. I consider that there are grounds to inquire into this issue and I have contacted the Court in order to arrange for an inspection of the relevant documents.

Regarding the **second issue (Code of Conduct - general)**, I note that the scope of the Code of Conduct for members and former members of the Court of Justice was extended on 1 January 2017 to include administrative matters as well as judicial matters. I consider that it is important to ascertain the scope and origin of this amendment the broad application of which could have a negative impact on the possibility of scrutinising the Court's administrative activities. I have decided therefore that this issue should be also included in the inquiry.

Regarding the **second issue (Code of Conduct - specific)**, I note that the issue of the Consultative Committee having met in order to discuss the statements made by you, without informing you or respecting your right of defence, is included in your action for damages pending before the General Court. Consequently, this issue is inadmissible in accordance with Article 228(1)(2) TFEU and Article 2(7) of the European Ombudsman Statute. Regarding the application of the Code of Conduct in the case of Judge [REDACTED] as the judge himself has not raised this issue with my Office, I consider that an inquiry by my Office is not justified.

Regarding the **third issue** (the lack of efficiency in the parallel development and use of different IT systems), you take issue with the fact that the Court appears to have adopted and implemented several similar IT applications and tools and that this duplication offends against the principles of sound financial management and administrative efficiency. I consider that the European Court of Auditors is better placed to deal with this matter and that, accordingly, an inquiry by my Office is not justified.

Regarding the **fourth issue** (the wasteful use of the judges' drivers at the CJEU), as with the question of IT systems, this boils down to a question of efficiency in the allocation of funds for the judges' drivers and, as such, it is an issue that the European Court of Auditors is better placed to look into. Accordingly, I consider that an inquiry into the matter by my Office is not justified.

The **fifth issue** (appointments of senior officials without a proper procedure or transparency) concerns, specifically, the appointment of members of Cabinet of the former President of the Court to other senior positions. Other than media reports, no documentary evidence has been provided concerning the appointment of members of Cabinet of the former President of the Court of Justice to other senior posts. The only procedure that is well documented is that concerning the recruitment of the Legal Adviser for Administrative matters (AD14-15). An examination of the documents that have been partially disclosed to you, does not raise any concern about a possible irregularity in the procedure followed. Regarding the appointment, without a selection procedure, of former judge [REDACTED] as a special adviser on Brexit, on the basis of the documents disclosed by the Court to you, I note that the appointment was



made under Article 123(2) of the Conditions of Employment of Other Servants (CEOS) that govern Special Advisers. Given the particular role which the CEOS has recognised in the case of special advisers - a position to which the standard recruitment procedures do not apply - I find that there are no grounds to inquire into this issue.

Regarding the **sixth issue** (the Court's participation in (a) the revision of the Treaties and (b) the special legislative procedure concerning the reform of its Statute), it is questionable whether either activity falls within the mandate of the Ombudsman. Regarding (a), I consider that this issue is inadmissible as it may be safely presumed that the matter was known to you for more than two years and a complaint must be made to my Office within two years of the complainant becoming aware of the matter in question. In any case I consider that this issue concerns simply technical changes to the Treaties and therefore does not reveal any maladministration. Regarding (b), it is clear that you disagree with the reform of the General Court, leading to a gradual doubling of the number of judges. However, the decision on this was essentially legislative rather than administrative and, accordingly, not one which could be considered in terms of maladministration. Consequently, there are no grounds for inquiries into this issue.

Regarding the **seventh issue** (the alleged conflict of interests concerning the role of the President of the General Court in the University of Luxembourg from 2011 to 2016), I note that you object to a) the procedure under which Mr ██████ obtained authorisation from the Court, and b) the Court's inertia concerning possible conflict of interests situations. Regarding a), it is clear that Mr ██████ applied for permission to become a member of the Board of Directors of the University of Luxembourg (the President of the Board of Directors clearly being a member of that Board) and that such permission was given by the Court on 21 December 2011. Regarding (b), taking into account the specific function of Mr ██████ at the University of Luxembourg, I am not aware of any convincing arguments as to why heading an academic institution gave rise to a conflict of interest. I note your allegations that Mr ██████ may have used that position in the context of the Luxleaks case or to exert influence on judicial proceedings under way. These are very general statements, not supported by any evidence. It follows that there are no grounds for an inquiry into this issue either.

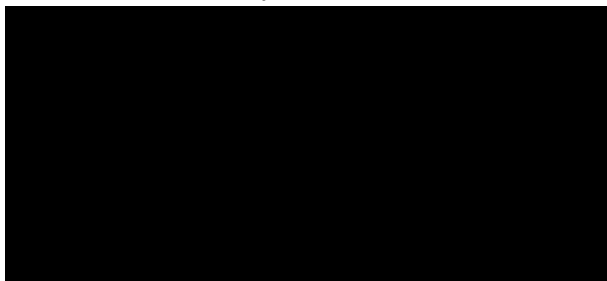
For the purposes of my **inquiry into the first and second issues**, I have decided that it is necessary to inspect the relevant documents in the Court's file relating to the handling of its confirmatory decisions of 27 May and 16 November 2017, and also the documents related to the amendment of the Code of Conduct for members and former members of the Court of Justice. In order to obtain greater clarity about this complaint, I have asked the Court to arrange, in the context of our inspection of these documents, that my inquiry team meets also with the relevant officials of the Court.

Once the inspection and meeting have taken place, we will send you a copy of the inspection/meeting report for your information.



If you have any questions, please feel free to contact Mr Lambros Papadias, Head of Inquiries Unit 3 at the following telephone number: 0032 2 284 [REDACTED], or the case handler responsible for this case, Mr [REDACTED] (until 31/8) at 0032 2 283 [REDACTED] or (from 1/9) Ms [REDACTED] at 0032 2 28 [REDACTED] .

Yours sincerely,



Emily O'Reilly  
European Ombudsman