



## European Ombudsman

**Emily O'Reilly**  
European Ombudsman

Ms Ursula von der Leyen  
President  
European Commission

Strasbourg, 29/07/2020

SI/4/2020/PL

Subject: Transparency of the EU response to the COVID-19 crisis

Dear President,

I am writing to you as a follow up to my letter of 20 April 2020.

Once again, I would like to recognise the enormous efforts that the European Commission has made, and continues to make, to tackle the COVID-19 crisis. The Commission has put in place different measures, such as mechanisms to support EU Member States' public health sectors and measures to mitigate the social and economic impact of the crisis.

I have been particularly impressed by the speed at which the Commission has acted under extremely challenging circumstances. These efforts, that rely on the personal and professional commitment of you and all Commission staff, are key to enabling the EU to deal with the crisis.

As I set out in my earlier letter, it is my role to ensure that the EU administration is working in a transparent, efficient and independent manner and that it adheres to the principles of good administration. I have therefore been monitoring the EU administration during this period and, in particular, the EU institutions, bodies and agencies on the front line.

Based on this, I have now identified certain matters on which I would like to have the Commission's views. I have set out questions to this end in the annex to this letter.



I would appreciate it if you would reply with the Commission's views on these matters by 30 September 2020 if possible. Should any further information or clarifications be required, Commission staff can contact Patricia Lopez Martin, ([patricia.lopez@ombudsman.europa.eu](mailto:patricia.lopez@ombudsman.europa.eu); +32 (0) 2 283 47 31) or Vieri Biondi ([vieri.biondi@ombudsman.europa.eu](mailto:vieri.biondi@ombudsman.europa.eu); +32 (0) 2 283 34 38).

Yours sincerely,

Emily O'Reilly  
European Ombudsman

Enclosure:

- Annex



## **Annex**

### **1. Transparency of the Commission's interaction with interest representatives**

Lobbying transparency is an important safeguard for the integrity and legitimacy of the EU's decision-making process. Particularly in exceptional circumstances, such as this crisis, transparency around lobbying activities can help maintain a high level of public trust in EU decision making.

In June 2017, I published practical recommendations for public officials' interaction with interest representatives<sup>1</sup>. The Commission welcomed these practical recommendations and included them as part of the ethics training it provides for EU civil servants.

It appears that, during the past months, when many people were working from home, there has been some confusion as to which meetings with interest representatives should be recorded and published. I have noted longer delays in reporting meetings and fewer meetings being reported. Moreover, some meetings seem to have taken place with interest representatives who were at the time not signed up to the transparency register.

- a) What has the Commission done to ensure transparency surrounding lobbying activities during the period of the COVID-19 crisis?
- b) When issues have arisen, how has the Commission responded, notably in terms of guidance to Members of the Commission and to staff?
- c) In view of the changing circumstances, is the Commission planning to update its transparency policy? For instance, could the Commission clarify which 'encounters' with organisations and self-employed individuals are recorded in the transparency register?

### **2. Decision making related to emergency public procurement**

The COVID-19 crisis has required public authorities to procure products and services with unprecedented urgency. I appreciate that quick decision making, including on resource allocation, is essential during an emergency. However, the integrity of public procurement procedures should not be compromised, and rules intended to prevent corruption, avoid conflicts of interest, and ensure propriety must be upheld.

Transparency helps ensure integrity in public procurement and to maintain public trust. The need for swift decision making should not come at the expense of transparency and compliance with public procurement rules.

The Commission is coordinating the Joint Procurement Agreement to procure medical countermeasures (JPA). In this context, the Commission has an important role in ensuring the maximum level of transparency, so that the integrity of the related procurement procedures is guaranteed.

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<sup>1</sup> See: <https://www.ombudsman.europa.eu/en/correspondence/en/79435>.



- d) Could the Commission clarify how it is ensuring the overall transparency of the JPA? For example, how is the Commission ensuring transparency regarding the appointment of the members of the different committees and how does it ensure that they are independent?

On 1 April 2020, the Commission released guidance for Member States on using the EU public procurement framework during the COVID-19 crisis.<sup>2</sup> This document explains how general deadlines can be substantially reduced in urgent cases, and how to carry out public procurement without publishing calls for tenders. The Commission acknowledges in this document that Member States authorities may “*derogate in this case from the basic principle of (...) transparency*”.

The use of certain procedures may increase the risk of situations of actual, apparent or potential conflicts of interest arising in the award of public contracts. As the Commission itself has acknowledged, the use of negotiated procedures should thus remain exceptional.<sup>3</sup>

- e) How is the Commission monitoring the application by Member States of such exceptional measures?

### 3. Transparency and independence of scientific advice

The Commission set up an advisory panel on COVID-19 under exceptional circumstances. It announced that, given the urgency, it was not possible to organise a public call for applications, and that the members of the panel would be appointed immediately, drawing on persons identified by the Commission with acknowledged expertise. I fully appreciate the need to act speedily in this context.

In light of the suggestions I made to the Commission in the context of my inquiry on the Commission’s expert groups (OI/6/2014/NF), I would however like to clarify certain issues related to the procedure followed in the appointment of this advisory panel:

- f) Is the Commission planning to make further information on this selection process publicly available? For instance, based on what ‘objectively verifiable’ criteria were the seven experts selected?<sup>4</sup>
- g) Is the Commission planning to publish on the expert groups’ register the declarations of interests of the members of the panel?<sup>5</sup>

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<sup>2</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2020.108.01.0001.01.ENG#ntc5-CI2020108EN.01000101-E0005>

<sup>3</sup> See point 2.3 of the Communication: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.CI.2020.108.01.0001.01.ENG#ntc5-CI2020108EN.01000101-E0005>: “As contracting authorities derogate in this case from the basic principle of the Treaty concerning transparency, the European Court of Justice requires that the use of this procedure remains exceptional.”

<sup>4</sup> The rules on expert groups require that the criteria used should be objectively verifiable and published on the Register of expert groups (Article 10.4 of the Commission Decision of 30 May 2016 establishing horizontal rules on the creation and operation of Commission expert groups, C(2016) 3301 final).

<sup>5</sup> Article 11 of the rules on expert groups (see previous footnote).