



Council of the European Union
General Secretariat
The Secretary-General

SGS17/07104

Brussels, 27 -07- 2017

Ms Beate Gminder
Secretary-General of the European Ombudsman
By email: Registry@ombudsman.europa.eu

Subject: Information provided to the public in relation to the "EU-Turkey Statement" -
SI/4/2017/EA

Dear Ms Gminder,

Thank you for your letter of 12 June 2017 concerning the information provided by the General Secretariat of the Council to the public on what is commonly referred the "EU-Turkey Statement".

In your letter, you made reference to the recent orders of the General Court in cases T-192/16, T-193/16 and T-257/16 and in particular to the fact that the General Court has incidentally made certain considerations on the terms used by the Secretariat General of the Council in the press release on the "EU-Turkey Statement". You concluded your letter by suggesting that, for the sake of an accurate information to the public, the Council should take action to review the wording of the on-line press release.

The Secretariat General of the Council remains committed to provide the public with an objective, impartial and complete information and its Press Service strives to deliver just that.

However, as you have opportunely pointed out in your letter, the orders referred above are not final and are currently under appeal. The appeals focus in particular on the findings of the General Court as regards the legal nature of the "EU-Turkey Statement". In such a context, the qualification by the General Court of the terms used in the press release at issue will inevitably be at the core of the proceedings. The findings on the point by the Court of Justice will be relevant for deciding the merits of the case.

In such circumstances, the Council considers that making any change or addition to the text of the press release would be inappropriate at this moment in time. Any modification of the press release

could be construed as an endorsement or acquiescence and affect the position of interested parties before the Court. It could affect the serenity of the ongoing judicial proceedings and undermine the right of effective defence of all parties involved in the case. Finally it would anticipate or pre-empt the findings of the Court of Justice on the matter and therefore would fall short of the spirit of respect and sincere cooperation that the Institutions are required to have towards the judicial function.

Let me also stress that it does not appear opportune for the General Secretariat to retroactively modify a press release in light of the obligations that it has to keep an orderly, objective and complete record of the institutional memory of the institutions it assists.

As for the possibility to add a mere reference to the existence of pending judicial proceedings to the press release, after careful consideration, I concluded that such a move would establish a negative precedent. A number of judicial actions are introduced every year against acts of the Council (and to a lesser extent of the European Council). They often are unfounded and, in any event, till a final decision of the EU judicature is taken, the legality of the acts of the Institutions has to be presumed. It follows that it is not appropriate nor proportionate to require the General Secretariat to systematically refer to pending proceedings. Nor would it be justified to do so in one particular instance only.

For the reasons set out above, I am unfortunately not in a position to follow up to your suggestion at this moment in time. However, please rest reassured that once a final judgment will be rendered by the Court of Justice on the issue, and depending on its findings, the Council is committed to take all measures that will be necessary to provide the public with complete and objective information about the "EU-Turkey Statement".

Yours sincerely,

Jeppé TRANHOLM-MIKKELSEN