



Brussels, 20 March 2015

Emily O'Reilly
European Ombudsman
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B. P. 403
F-67001 STRASBOURG Cedex

Dear Ms O'Reilly,

Joined complaints ref. 2077/2012/TN and 1853/2013/TN

Thank you for sending the Commission's response to your draft recommendation. The complainants in the case Corporate Europe Observatory, Friends of the Earth Europe, Greenpeace EU Unit, LobbyControl and Spinwatch are pleased to send the following comments below.

Ombudsman recommendation a) Analyse fully each individual application to work outside the Commission and set out that analysis in well-reasoned and well-documented decisions

The Commission says "it is open to giving further explanations in these cases (positive decisions)". This is potentially welcome although we are not clear that this constitutes a firm decision to do so. The Commission should clarify that it will do this, without exception.

Ombudsman recommendation b) Properly record that it has analysed whether the information provided by the official regarding the proposed outside work is sufficiently detailed to allow the Commission to carry out a full analysis of that outside work

The Commission says that it "agrees to include an additional statement, in the form of a check-list to be completed and included in the file, that the information provided by the applicant is sufficient to allow for a thorough analysis of the file."

This sounds like a good way forward and we urge the Commission to implement this immediately and to make the check-list as detailed as practically possible. We think the Commission should be open to revising the article 16 authorisation form so that the

applicant is asked to provide comprehensive information at the start of the process.¹ Information which the Commission should consider collecting and which could feature on the check-list includes: formal job description; details about specific tasks to be undertaken; information about organisational clients, policy areas and specific EU dossiers, as well as those that the individual concerned will work on; details of EU lobby register registration of new employer; length of proposed contract; details of contacts between Commission and new employer in last three years; specific details of any EU lobbying likely to occur as part of the new role: dossiers, targets; information about any other 'revolving door' cases involving the employer in past three years; contact person at proposed employer who will answer further questions etc. We realise that not all of this information will be relevant for all posts. Some of this information would need to be compiled with the help of the new employer.

A timeline for the implementation of this should be set out and a copy of the check-list sent to the Ombudsman.

Ombudsman recommendation (c) Properly record and analyse comments made by other Commission services, particularly when the eventual position of the Commission deviates from those comments

The Commission says that it “will again take this opportunity to further reflect on whether further improvements are possible”. This is vague. The Commission should clarify that it will do implement the recommendation and a timeline set out with an update sent to the Ombudsman accordingly.

Ombudsman recommendation (d) Take all the necessary steps to ensure that the Commission applies the rules on conflicts of interests consistently across the Commission, including by alerting DGs whenever inconsistencies as regards the imposition of conditions are identified

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Ombudsman suggestion (m) Put in place a centralised register of staff applications to work outside the Commission and for conflict of interest assessments of incoming staff

For the complainants, a central register (suggestion m) is essential to ensure consistency across DGs (recommendation d) because such a register would allow the easy comparison of similar and / or recent cases.

The Commission says it “has a central internal tool which allows for the processing of the assessments of ethics requests and the subsequent decisions which are to be placed in the personal file of the applicant. This central processing tool is gradually being expanded to embrace all ethics requests and can be considered equivalent to a register. Further developments are foreseen in the context of increasing transparency and accountability.”

In its response to recommendation d, the Commission implies that this is ensured because the same staff and services look at every file. But considering the volume of cases

¹ We had hoped to see a current copy of the article 16 authorisation form before completing this submission, but at the time of writing, our access to document request had been delayed and remained unanswered.

assessed, it does not seem to us that reliance on staff recall is sufficient to ensure full consistency. The fact that the central internal tool is not mentioned in the Commission's reply to recommendation d also makes it clear that this internal tool is not used for monitoring purposes.² This is further confirmed by the Commission stating that ultimately the “subsequent decisions ... are to be placed in the personal file of the applicant.”

We remain of the firm view that the Commission should set up a central register which should be used to ensure consistency of assessments and decision-making. As of May 2014, the Commission was unable to provide any data on decision-making under article 16 of the staff regulations because it does not collect the data centrally, including numbers of cases assessed, authorised, rejected etc. This seems to be a ridiculous state of affairs for a Commission committed to transparency.¹

The Commission also says that it “will also consider whether developing guidelines for services could improve consistency further”. This is vague. A timeline should be set out and an update sent to the Ombudsman.

Ombudsman recommendation (e) Ensure that the assessment of applications is carried out by staff who have not had any direct professional connections with the official concerned. It is particularly important to pay close attention to this requirement as regards senior officials

In its response the Commission appears to interpret this recommendation as solely concerning the DG of origin. However, we think this is far too limited. Our suggestion is that all officials, outside the DG of origin, who are asked to comment on a particular file should provide information on any direct connection with the official (or the new employer) concerned as a matter of course. Where a specific connection is found, that individual should step back from the process. As the Ombudsman notes, it is particularly important to pay close attention to this with senior officials who are likely to have come into contact with members of the secretariat general, the legal service or other DGs.

Ombudsman recommendation (f) Inform staff that they remain bound always to behave with integrity and discretion as regards the acceptance of certain appointments or benefits, remind them that this obligation is not limited in time, and take all possible measures vis-à-vis any former staff who ignore this obligation by accepting any problematic employment offer

The Commission implies in its response that it is in full agreement with the European Ombudsman on this point. If this is indeed the case, the Commission should ensure that all of its guidance is absolutely clear about this. It is not clear to us that this is currently the case. Former officials need to be notified very clearly and explicitly what their responsibilities are beyond the two years mentioned in the Staff Regulations. Guidance should indicate that if, after two years, an official remains unclear about their ongoing obligations or about the appropriateness of a new job, the official should apply to the Commission immediately for advice and / or authorisation.

² We had hoped to understand more about the central internal tool referred to before completing this submission, but at the time of writing, our access to document request had been delayed and remained unanswered.

We state this because we are aware of additional cases, since we first made our original submission to you in October 2012, of recently-departed officials who have not followed the article 16 rules. We consider therefore that the risk of non-compliance *beyond* the two year period could be high.

Ombudsman suggestion (g) Identify those DGs that should have codes on ethics and integrity and make sure that such codes are put in place

We agree that this would be helpful, notwithstanding the different nature of the DGs.

Ombudsman suggestion (h) Where applicable, also analyse applications to work outside the Commission on the basis of DG-specific Codes of ethics and integrity

We agree that this would be a useful practice for the Commission to adopt. Alongside the central register referred to above, such an approach may well help to identify patterns, issues, concerns relating to revolving door moves by former staff from a particular DG that could be addressed by an enhanced ethics code, staff training, work with the ethics correspondents etc.

Ombudsman suggestion (i) Improve the Ethics and conduct website of the Commission

We endorse this suggestion. If this is the site for the current Commission ethics page: http://ec.europa.eu/civil_service/admin/ethic/index_en.htm we note that it has not been updated since December 2013 and that there is far more information that could be hosted here eg. the IDOC annual reports.

Ombudsman suggestion (j) Publish online DG-specific codes or guidelines

We see no reason as to why such codes are not placed on the Commission's ethics webpage: http://ec.europa.eu/civil_service/admin/ethic/index_en.htm as well as on the respective DG's homepage and we do not understand why the Commission has not implemented this suggestion immediately.

Ombudsman suggestion (k) Publish online, in respect of decisions to approve requests to work outside the Commission from senior officials, (i) the name of the senior official concerned, (ii) details of the duties carried out in the Commission by that senior official, (iii) details of the duties to be carried out in the new activities, and (iv) the Commission's detailed assessment and conclusions (including any conditions) in respect of any potential conflict of interest

We warmly welcome this suggestion by the Ombudsman and consider it to be one of the most important. We were surprised by the Commission's response that it "is currently in the process of reflecting on the appropriate format, scope and content to be given to the annual information to be contained in the publication which is foreseen under Article 16 (4)

of the Staff Regulations.” This requirement has been in place since 1 January 2014 and we are disappointed that the Commission is still “reflecting” rather than implementing this.

The Commission, and indeed other parties subject to the Staff Regulations, should implement this suggestion as set out by the Ombudsman (perhaps with the inclusion of relevant dates). We appreciate your further efforts to press the case for this transparency with Commissioner Georgieva via your letter dated 25 February 2015. We hope that you will continue to monitor this situation as part of your work to assess the implementation of the revised Staff Regulations.

Ombudsman suggestion (l) Inform the Ombudsman of each case where exceptional and compelling privacy reasons prevent the publication referred to in point (k) above. The Ombudsman will then inspect and assess the file on the decision taken to allow that senior official to work outside the Commission

The Commission says it “takes note of the position of the Ombudsman and will consider the feasibility of this when designing its system for publishing information.”

Yet, unless the Commission implements this suggestion and provides the information to the Ombudsman on unpublished cases, the Ombudsman may not learn about such cases and thus be able to “decide to examine a file in the context of an inquiry”.

We strongly urge the Ombudsman to reiterate this suggestion to the Commission and to demand a positive response.

Ombudsman suggestion (n) Use the Ombudsman’s recommendation set out in points (a) to (f) as guidelines when assessing possible conflicts of interest of incoming staff

It is right that the Ombudsman refers to the importance of tackling conflicts of interest regarding incoming, as well as outgoing, staff. The Commission says: “For all the Commission staff, training and awareness raising activities reminds staff regularly about their obligations.” This is positive; however, we think a specific reminder should be sent to all staff who change jobs within the Commission, as a job change can involve a change in possible conflicts of interest too.

Ombudsman suggestion (o) Use the Ombudsman’s recommendation set out in points (a) to (f) above when analysing whether the prohibition on senior staff leaving the Commission from engaging in lobbying or advocacy vis-à-vis the Commission is complied with

The Commission response is unclear on this point. The Ombudsman's suggestion makes clear that it expects the Commission to carry out monitoring of the lobby ban on former senior staff. Yet in its reply, the Commission has not given any indication that it recognises the need to do post-decision monitoring. We have long advocated that it should and we urge the Ombudsman to further press the Commission on this point.

Ombudsman suggestion (p) Take the necessary steps to ensure that all future cases reflect the policy that commitments offered by the officials, aimed at eliminating conflicts of interest, are expressly referred to and analysed in the file

We suggest the Commission could go further on this point. It says that it has confirmed that such commitments will be referred to in the file; the Ombudsman's suggestion says they should also be "analysed". This analysis is important to ensure that such commitments do not end up distracting decision-makers from applying more stringent conditions.

Finally, we were disappointed that the Commission chose to write in its response: "The Commission therefore questions whether it is correct to speak of 'systemic maladministration'." We strongly concur with your original finding and urge you to remain firm in this conclusion.

Our conclusion

While there are some commitments in the Commission's response, and many warm words, our conclusion is that the Commission has so far failed to take on board some of the most important recommendations and suggestions that the Ombudsman has made. In too many areas, the Commission's responses are vague, non-committal or miss out a key element.

We look forward to reading your final opinion on this important topic and would like to thank you and your staff again for the work that you have done so far. We hope that you will use the opportunity of your final opinion on this complaint to set out your next steps on the topic of conflicts of interest and revolving doors.

Yours sincerely,

Olivier Hoedeman

On behalf of Corporate Europe Observatory, Friends of the Earth Europe, Greenpeace EU Unit, LobbyControl and Spinwatch

i http://www.asktheeu.org/en/request/article_16_staff_regulations_app