

CHIEF EXECUTIVE

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SENT BY EMAIL ONLY

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Dear Ms. Sédou, Ms. Silva and Mr. Vranken,

I refer to your letter dated 20 January 2021 in which you raise concerns regarding the post-employment authorisation granted by the European Defence Agency (EDA), pursuant to Article 18 of the EDA Staff Regulations (EDA SRs),¹ to the former Chief Executive, Mr. Jorge Domecq.

The Head of the Agency (HoA), Mr Josep Borrell, has asked me, as Chief Executive of EDA, to convey the Agency's views and position in response to the points raised in your letter.

By way of background, I would like to recall that Mr Domecq sent an application requesting authorisation for post-employment activities pursuant to Article 18 of the EDA SRs on 28 July 2020. EDA immediately initiated the process of assessing the application based on information provided by the applicant, in line with the relevant provisions of the EDA SRs. This assessment, based on factual elements and applicable rules, led to a decision - adopted on 07 September 2020 - to authorise the activity subject to restrictions. As evidenced by the documents released in response to your application for documents under Regulation (EC) No 1049/2001,² the EDA SRs were fully enforced through due process and transparent

¹ Council Decision (EU) 2016/1351 of 4 August 2016 concerning the Staff Regulations of the European Defence Agency, and repealing Decision 2004/676/EC (OJ L 219, 12.8.2016, p. 1).

² Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).

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procedures, based on the information available to the EDA. We therefore refute your allegation regarding any failure by EDA to implement the Staff Regulations.

As regards your claim related to the situation of conflict of interest which you state is inherent to the function for which authorisation was requested. Following an assessment of the elements provided, the Agency concluded that, whilst there is no evidence that simply by joining Airbus, Mr Domecq had put himself in a situation which would - in and of itself - constitute an established conflict with the legitimate interests of the Agency, the situation could *de facto* lead to such a conflict. EDA's assessment therefore clearly recognises the potential risks that may result from the situation and addresses them by setting conditions to the post-employment authorisation, which contrary to what you assert are fully in line with the requirements of Article 18 of the SRs.

Indeed, the Article 18 SRs ban on contacts with EDA staff for 12 months after leaving service for lobbying or advocacy purposes has been set as a first condition in the decision to authorise post-employment. In that respect, please note that all EDA staff members are given regular training on how to address issues or situations related to conflict of interests and are fully aware of their statutory obligations in this respect.

In addition to this first restriction, EDA set two specific conditions tailored to ensure a strict separation between the Airbus entities involved in EDA activities and the new function of Mr Domecq, which is essentially focused on Airbus Spain, and this for two years after leaving service.

I would also recall that the Agency, fully aware of the recommendations of the European Ombudsman in similar matters, did consider the possibility to prohibit the activity when assessing the facts of the case. However, the Agency found that there was no established conflict with the interests of the Agency which would justify a prohibition to engage in the occupational activity, which - as the European Ombudsman herself notes - is the most restrictive option available which should be used only where the other less restrictive measures are not adequate in terms of protecting the interests of the Agency. In this case, EDA finds that the conditions set adequately protect the interests of the Agency and mitigate any potentially perceived conflict of interests.

In your letter you also express a view that the process to assess the application for post-employment activity was somehow undermined because Mr. Domecq failed to wait for the process to be finalised before starting the activity on 01 September 2021, in breach of EDA SRs.

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Firstly, I would like to put on record that the Agency immediately acted on the breach as soon as it was established beyond doubt, in full compliance with the EDA SRs. Your claim that it was somehow not taken into account is therefore unfounded. In that respect, it is important to recall that the post-employment authorisation procedure and the handling of a breach of the SRs follow two separate procedures, which in this case – as you will have seen from the documents released to you – were handled in parallel.

As shown in the documents shared with you, my services provided the HoA – acting as Authority Authorised to Conclude Contracts (AACC)³ – with the possible measures to address this breach. Such measures are assessed against the nature of the alleged breach and must be proportionate with its seriousness. In the present case, the facts of the matter were established and, based on the nature of the breach, the proportionate measure decided was to issue a warning (*"mise en garde"*) under Article 141(b), recognising the failure to meet obligations under the SRs, but not requiring a disciplinary proceeding.

In response to your suggestion that Article 147.2 of the EDA SRs should be brought in line with those of other EU Agencies, please note that the divergence from the EU Staff Regulations in that specific provision is due to the fact that the EDA does not offer its staff a retirement pension scheme as the one of the EU officials and other EU agents.

Lastly, I would like to highlight that EDA has a comprehensive ethics framework in place; while a breach is by definition individual, I can assure you that the EDA SRs have been enforced through a due process and transparent procedures resulting in a conditional authorisation to exercise the activity.

Yours sincerely,



Jiří Šedivý

³ Cf. Article 1.2 of the EDA Staff Regulations.