

To: José Manuel Barroso, President of the European Commission  
From: Corporate Accountability International, Corporate Europe Observatory and  
LobbyControl  
Re: The decision to renew the mandate of the members of the ad hoc ethical committee  
Date: Brussels, 14 January 2013

Dear Commission President,

It has come to our attention that the European Commission in mid-December decided to renew the mandate of the three members of the ad hoc ethical committee (Michel Petite, Rafael Garcia-Valdecasas and Terry Wynn) for a second three year period. We would like to make a complaint against this decision, in particular the re-appointment of Michel Petite. We would like to ask you to re-consider Mr. Petites' re-appointment.

Article 4 of the 2003 Commission decision on establishing the ad hoc ethical committee states that the appointment of a member requires their "independence, an impeccable record of professional behaviour as well as sound knowledge of the existing legal framework and working methods of the Commission".<sup>1</sup> We believe that the questions raised about the independence of Mr. Petite mean he is not a suitable person to hold this position.

Mr. Petite headed the Commission's Legal Service from 2001 to the end of 2007 and then went through the revolving door to private law firm Clifford Chance, a firm that also offers lobbying services. Clifford Chance, on its website, tells potential clients "You may be faced with the prospect of a regulatory development or policy decision that threatens the very nature of your business.... We offer a blend of legal and political expertise" and can assist in "approaching government or the EU institutions... advising on the parliamentary and political process, and drafting and tabling amendments to proposed legislation."<sup>2</sup> Mr. Petite represents the interests of companies,<sup>3</sup> and specialises in European Commission policies, community law and competition law, alongside antitrust, trade, banking, taxation and government relations and public policy (according to the company's website).<sup>4</sup> 'Government relations and public policy' are synonyms for lobbying services. The Commission granted approval for his move to Clifford Chance but told Petite not to lobby former colleagues or to deal with cases involving his previous department, for just one year.

Despite advertising lobbying services ('political advocacy strategy' and 'government relations'), on its website, Clifford Chance has not registered in the EU's voluntary Transparency Register, which means it is impossible to see for which clients Mr. Petite and his colleagues are working. However, in the Commission's December 2012 response to European Parliament's questions about the circumstances leading to the resignation of Commissioner Dalli, it became clear that tobacco giant Philip Morris International is a client of Clifford Chance, and that as a Clifford Chance lawyer Mr Petite presented views on tobacco legislation at meetings with Legal Service officials. The Commission response notes that Mr. Petite met with Legal Service officials in September 2011 and in September 2012. "Mr Petite mentioned that his law firm provided legal advice to a tobacco company (Philip Morris International) and set out his views on some legal issues of tobacco legislation."<sup>5</sup>

It is clear that setting out views on tobacco legislation, whilst working for a tobacco firm, to former colleagues in a Commission department falls under the definition of lobbying – or “interest representation” – that applies to the Commission’s Transparency Register.<sup>6</sup>

Furthermore, Michel Petite also represented Philip Morris Norway in 2011 before the Court of Justice of the European Free Trade Association (EFTA).<sup>7</sup> Mr. Petite’s legal representation work for Philip Morris Norway is controversial given that in 2004 he signed the Anti-Contraband and Anti-Counterfeit Agreement with Philip Morris International, on behalf of the European Community.<sup>8</sup> This agreement was part of an out of court settlement in a case of Philip Morris International’s involvement or complicity in large scale cigarette smuggling.

We would like to ask the following questions:

1. Does the Commission have a full overview of which clients Mr. Petite works for at Clifford Chance, whether in the role of lawyer, arguing a client’s case before a judge or jury in a court of law, or in the field of ‘government relations and public policy’? If so, can you provide us with that overview?
2. Has the Commission assessed whether these roles could jeopardize Mr. Petite’s independence as a member of the ad hoc ethical committee? If so, what is your conclusion?
3. Has Mr. Petite, as part of the ad hoc ethical committee, advised on any decisions relating to ex-Commissioners who moved to companies that were clients of Clifford Chance? This would constitute a clear conflict of interest for Mr. Petite.
4. Can you provide us with the full list of cases on which the ad hoc ethical committee has advised?

It is our opinion that Mr. Petite’s role representing Philip Morris International (and other corporate clients) raises doubts about his independence and his ability to rigorously assess potential conflicts of interest and judge whether ex-Commissioners moving into private sector lobby jobs are appropriate or not. We also believe that the fact that Mr. Petite works for a law firm that offers lobbying services but which has not signed up to the Transparency Register calls into question whether he has an “impeccable record of professional behaviour” in relation to ethics and lobbying.

Although his move to Clifford Chance was formerly approved by the Commission, we do not believe that a former Commission official who himself went through the revolving door to a law firm that offers lobbying services, represents a tobacco industry client and refuses to sign up to the Transparency Register, is the most credible advisor to the Commission on revolving door cases.

For these reasons, we believe his re-appointment to the ad hoc ethical committee is at odds with Article 4 of the 2003 Commission decision and should be revoked.

It is also questionable whether Mr. Petite’s role in the committee is in line with the guidelines for the WHO Framework Convention on Tobacco Control, which state that parties must “avoid the creation of any perception of a real or potential partnership or cooperation” and avoid any preferential treatment of the industry.<sup>9</sup> Appointing a lawyer who works for the tobacco industry to an influential position advising the Commission on ethical issues could be construed as creating the perception of potential partnership or cooperation with the tobacco industry.

Furthermore, whilst the Commission has stated that the ethical committee post “does not deal with any subject which is linked to the tobacco directive”,<sup>10</sup> it is impossible to guarantee that no Commissioner will, in future, want to go and work for the tobacco industry, or lobby consultancies and law firms that represent them. The WHO guidelines also require clear policies to prevent health officials going through the revolving door into tobacco industry jobs. Moreover, the ad hoc ethical committee “may be requested by the President to deliver opinions on any general ethical question concerning the interpretation of [the] Code of Conduct [for Commissioners]”.<sup>11</sup> This increases the possibility of the committee’s dealing with subjects that may link to the tobacco directive.

We would also like to point out that there is a serious lack of transparency around the work of the ad hoc ethical committee. CV’s and Declarations of Interest of the members of the ad hoc ethical committee are not published online, contrary to what is the case for the Commission’s Special Advisors. We urge you to improve online transparency both with regards to the members of the ad hoc ethical committee and to its decisions.

More generally, we would like to stress that decisions about Commissioners’ ethics should be truly independent. We would like to reiterate the suggestions made by the ALTER-EU coalition in the open letter sent to you on November 5th, including the following: “we encourage you to consider establishing an independent ethics committee, with a broader and better defined mandate than the existing ad hoc ethical committee, which deals primarily with post-employment issues. This committee must be fully independent and composed of experts on public administration ethics.”<sup>12</sup>

Yours sincerely,

Olivier Hoedeman, Corporate Europe Observatory  
Nina Katzemich, LobbyControl  
John Stewart, Corporate Accountability International

- 1 See: [http://www.theeuros.eu/IMG/pdf/Decision\\_Comite\\_ad\\_hoc\\_2003-2.pdf](http://www.theeuros.eu/IMG/pdf/Decision_Comite_ad_hoc_2003-2.pdf)
- 2 See [http://www.cliffordchance.com/legal\\_area/public\\_policy/political\\_advocacy\\_strategy.html](http://www.cliffordchance.com/legal_area/public_policy/political_advocacy_strategy.html)
- 3 For example, Crédit Agricole S.A., and ING. See [http://www.cliffordchance.com/search.html?contenttype=news&person=/content/cliffordchance/about\\_us/find\\_people\\_and\\_offices/lawyers/fr/michel\\_petite&date=0](http://www.cliffordchance.com/search.html?contenttype=news&person=/content/cliffordchance/about_us/find_people_and_offices/lawyers/fr/michel_petite&date=0)
- 4 See [http://www.cliffordchance.com/about\\_us/find\\_people\\_and\\_offices/lawyers/fr/michel\\_petite.html](http://www.cliffordchance.com/about_us/find_people_and_offices/lawyers/fr/michel_petite.html)
- 5 See answer to Q.15 to the Commission, pg. 36/46: [www.ehrenhauser.at/assets/FINAL\\_COM-and-OLAF-reply-to-questionnaire-30-NOV-fin.pdf](http://www.ehrenhauser.at/assets/FINAL_COM-and-OLAF-reply-to-questionnaire-30-NOV-fin.pdf)
- 6 “Activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and decision-making processes of the EU institutions” including “contacting members or officials of the EU institutions”. See: [http://europa.eu/transparency-register/pdf/faq\\_en.pdf](http://europa.eu/transparency-register/pdf/faq_en.pdf)
- 7 See [http://www.eftacourt.int/images/uploads/16\\_10\\_Judgment\\_EN.pdf](http://www.eftacourt.int/images/uploads/16_10_Judgment_EN.pdf)
- 8 See [http://europa.eu/rapid/press-release\\_SPEECH-04-358\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-04-358_en.htm)
- 9 See Guidelines for implementation of WHO Framework Convention on Tobacco Control, Article 5.3 (2): [http://www.who.int/fctc/text\\_download/en/index.html](http://www.who.int/fctc/text_download/en/index.html)
- 10 See Commission spokesperson Pia Ahrenkilde Hansen in EC Midday press briefing, 09/01/2013: <http://ec.europa.eu/avservices/video/player.cfm?ref=91482>
- 11 See Code of conduct for Commissioners C (2011) 2904, Article 2.3. on Consultative competence of the Ad Hoc Ethical Committee: [http://ec.europa.eu/commission\\_2010-2014/pdf/code\\_conduct\\_en.pdf](http://ec.europa.eu/commission_2010-2014/pdf/code_conduct_en.pdf)
- 12 See: [http://www.alter-eu.org/sites/default/files/documents/Letter%20to%20Barroso%20on%20Dalli%20scandal%20November%202012%20Nov%205\\_0.pdf](http://www.alter-eu.org/sites/default/files/documents/Letter%20to%20Barroso%20on%20Dalli%20scandal%20November%202012%20Nov%205_0.pdf)