



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
HUMAN RESOURCES AND SECURITY

Director-General

Brussels, **08 AVR. 2016**

Ms Vicky Cann
CEO
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1050 Brussels
By email:
Vicky@corporateeurope.org

Subject: Complaint concerning the Commission services' conflicts of interest assessments relating to Marcus Lippold and Aleksandra Tomczak

Dear Ms Cann,

I refer to your letter of 3 December 2015 addressed to the Secretary-General of the Commission, Mr Alexander Italianer, concerning the Commission services' assessments of the alleged conflicts of interest relating to Mr Marcus Lippold and Ms Aleksandra Tomczak.

You consider that the authorisation of "sabbatical appointments" of Mr Lippold and of the recruitment of Ms Tomczak are cases of maladministration. I would like to stress that the internal processes of authorisations of Mr Lippold's outside activities while on leave for personal grounds and of Ms Tomczak's recruitment have been fully respected. The authorisations were given by the appointing authority after all necessary consultation and analysis in accordance with obligations of the Staff Regulations in particular Article 12b and Article 11, paragraph 3. I therefore disagree with your assumptions of maladministration.

I shall clarify this by addressing first your comments concerning Mr Lippold and then regarding Ms Tomczak.

Marcus Lippold

You express a number of concerns about the authorisation of activities undertaken by Mr Lippold, in particular because they are undertaken while being on leave for personal

grounds and because of what you interpret as a "right to return to an equivalent job" at the Commission.

Let me first remind you that in accordance with Article 40(4)(d) of the Staff Regulations *"on the expiry of his leave an official must be reinstated in the first post corresponding to his grade which falls vacant in his function group, provided that he satisfies the requirements for that post"*. The notion of equivalence is hence limited to the administrative definition of the post not to its content. Before offering a post for reinstatement and in accordance with the fourth paragraph of Article 11 of the Staff Regulations, the appointing authority examines systematically whether the job proposed in the Commission to staff returning from a leave on personal grounds would entail any risk of conflict of interest with the activities undertaken during a leave on personal grounds. In this respect I would like to refer to the Commission response to your access to documents request (reference GESTDEM 2015/852) whereby the form "declaration of conflict of interest upon reinstatement after leave on personal grounds" was provided to you.

Secondly, Mr Lippold submitted requests to undertake his activity during leave on personal grounds at MOL Group which was authorised under certain conditions aiming at preventing any potential conflict with the interests of the Commission, as indicated in the Commission response to your access to documents request GESTDEM 2015/4702. Mr Lippold was recalled of his obligations to behave with discretion and integrity, not to disclose information received in line of duty unless the information has already been made public or is accessible to the public.

Mr Lippold carried out his activity at MOL in his area of expertise (international oil relations) but the link between the post of Mr Lippold and his activity at MOL is limited and indirect and as such not constitutive of a risk of conflict of interest. When assessing the risk of conflict of interest the appointing authority takes into consideration all relevant elements including the duration of the career, the grade, and the time that has elapsed since the person was effectively at work in the institution.

You wrote that Mr Lippold has undertaken lobbying activities towards DG ENER on behalf of MOL about the implementation of the oil stocks Directive. As you partially recall in your letter, in accordance with Article 40(1a) of the Staff Regulations, the permission shall not be granted to an official for the purpose of his engaging in an occupational activity which involves lobbying or advocacy vis-à-vis his institution and which could lead to the existence or possibility of a conflict with the legitimate interests of the institution. As you describe them yourself, those contacts did not aim at influencing the European legislation or its activities. It is the role of the Commission to provide information on the application of Directives as part of its transparency and customer service obligations. Commission staff must answer queries in compliance with the Commission Code of Good Administrative Behaviour ensuring that good governance is fully respected with the public.

Furthermore you rightly pointed out that MOL Group is registered in the European Commission Transparency Register. Being registered, MOL Group committed to behave in conformity with the Code of Conduct on the Transparency Register which sets out the rules for all those registered and establishes the underlying principles for standards of behaviour in all relations with the EU institutions. In particular point (h) of this Code states that *"if employing former officials or other staff of the European Union, or assistants or trainees of Members of EU institutions, [representatives shall] respect the obligation of such employees to abide by the rules and confidentiality requirements*

which apply to them". That circumstance should be duly taken into consideration as a part of the general ethical context of the present case.

You also refer to a case launched by MOL against the Croatian government at the ICSID in 2013, in which *"it seems inconceivable that Mr Lippold ... did not play some part in this process"*. This is an assumption that you make not bringing concrete elements of proof and which concerns a dispute between a private company and a Member State in which the Commission is not involved.

Then you comment on Mr Lippold's activity during leave on personal grounds at Saudi Aramco. Again Mr Lippold sought for authorisation to undertake this activity, which the appointing authority gave at the end of a thorough examination respectful of the established process and which concluded that, as described, the envisaged activity would not lead to any potential conflict of interest. I take note that you bring a different personal evaluation of the situation but as such this cannot constitute a ground to prove that there has been maladministration. Let me also stress that Mr Lippold was not working as an "adviser" in the Commission as you suggest but as a junior administrator.

Overall you argue that working for a company which does not share the same interests as the Commission constitutes *per se* a conflict of interest and would be sufficient to deny to somebody the right to work. I remind you that when taking its decision, the appointing authority must also respect the fundamental right to engage in work and to pursue a freely chosen or accepted work while carefully weighting the ethical principles at stake. It would not be proportionate to prohibit a person from working within a company which is not declared illegal, which pursues legal aims and in addition accepts to abide by the EU transparency register principles and code of conduct. The appointing authority analyses each situation on a case-by-case basis and on its individual merits. The tasks inherent to an outside activity in the context of a leave for personal grounds has to be analysed in relation to the tasks held by the jobholder at the Commission in the last three years before leaving on leave for personal grounds (Article 16 of the Commission Decision C(2013)9037). At the end, it is for the appointing authority to formulate a duly reasoned opinion or to give permission.

Aleksandra Tomczak

You consider that the appointment of Ms Tomczak constitutes maladministration because the conflict of interest, that to your opinion this appointment entailed, was not adequately addressed due to the nature of the measures taken. You argue for Ms Tomczak's "personal sympathy" with the coal industry, presuming a bias, rather than considering the high level technical expertise she is offering to the Commission towards enhanced efficiency of the EU climate change policy. Again in this case the process of recruitment has been adequately handled according to the rules in force and your dissent on the type of action taken cannot be considered as a proof of maladministration.

A thorough analysis of any potential conflict of interest has been made upon recruitment of Ms Tomczak in accordance with the third paragraph of Article 11 of the Staff Regulations. I refer you to the form "declaration of conflict of interest at recruitment" provided to you in the context of your access to documents GESTDEM 2015/852 as well as the Commission response to your access to document request 2015/5713 concerning the recruitment of Ms Tomczak.

I disagree with your comment that the measures imposed by the Commission were *"missing entirely the risk of conflict of interest with this appointment"*. The Commission

imposed measures that were proportionate in that they would prevent the candidate from being in position of conflict of interest either through direct (exclusive) contact with the members of her former employer or involvement in files related to individual coal companies or related national sectors. You also quoted Article 11 paragraph 1 of the Staff Regulations, commenting that "*it seems to us that the responsibility to implement them lies not only with the official*". Article 11 of the Staff Regulations applies to all staff members. It is an obligation on each staff member to respect the Staff Regulations obligations and breaching any of these obligations leads to a disciplinary procedure which could result in sanctions. The Commission is responsible for providing a sound framework ensuring that the highest standards in terms of independence, integrity, impartiality and objectivity are met, which it does in a proactive manner.

In this context, I would like to refer you to the response to your access to documents (reference GESTDEM 2015/6020) recently provided by DG ENER whereby it was confirmed that the measures imposed to Ms Tomczak in her first months of duty were duly applied and implemented.

Finally, a last point in your letter refers to a meeting of the World Coal Association with a member of the Cabinet for research, science and innovation. All relevant information on this meeting has been provided to you in response to your access to documents request GESTDEM 2015/6016 made on 17 November 2015.

If you are not satisfied with this answer, you may lodge a complaint directly with the European Ombudsman under Article 228 TFEU.

Yours sincerely,



Irene SOUKA

Cc: Mr Alexander Italianer, SG