

Draft recommendation of the European Ombudsman in the inquiry based on complaints 2077/2012/TN and 1853/2013/TN against the European Commission

Recommendation

Case 2077/2012/TN - Opened on 01/02/2013 - Recommendation on 22/09/2014 - Decision on 09/09/2016 - Institution concerned European Commission (Recommendation partly agreed by the institution) |

Case 1853/2013/TN - Opened on 28/11/2013 - Recommendation on 22/09/2014 - Decision on 09/09/2016 - Institution concerned European Commission (Recommendation partly agreed by the institution) |

The Commission has been granted an extension of the deadline for responding to the Ombudsman's draft recommendation in the above cases ("revolving doors") to 31 January 2015.

Made in accordance with Article 3(6) of the Statute of the European Ombudsman [1]

The phenomenon of staff leaving the EU institutions to take up positions in the private sector, or staff joining the institutions from the private sector, is often referred to as the "revolving doors" phenomenon. This phenomenon is a growing concern for EU citizens, particularly because of the risk that conflicts of interests may arise. As the independence and objectivity of the EU public administration is vital in terms of building trust on the part of citizens, the Ombudsman pays great attention to any concerns about conflicts of interest.

This inquiry, which was prompted by complaints made by a number of NGOs, has revealed systemic maladministration in the implementation of some aspects of the Commission's approach to the "revolving doors" phenomenon. The Ombudsman therefore makes specific recommendations to the Commission aimed at eliminating the shortcomings identified. In particular, the Commission needs a comprehensive and properly documented review process when staff leave to work outside the Commission. In a spirit of constructive dialogue, she also offers general guidance on how the Commission's procedures could be further improved. For example, the Ombudsman suggests that the Commission should publish on-line all relevant details of its decisions allowing senior staff to work outside of the Commission. This added transparency of the Commission's review process relating to revolving doors, at least as regards senior officials, will empower citizens to contribute to the enforcement of the conflict of interest



rules by the Commission.

The Ombudsman will step up supervision to ensure that the procedures of EU institutions relating to revolving doors result in correct, well-reasoned and well-documented decisions, and that relevant information relating to decisions on senior staff is made public.

The background to the inquiry

1. In 2012 and 2013, Corporate Europe Observatory, Greenpeace EU Unit, LobbyControl, Spinwatch and Friends of the Earth, submitted complaints to the Ombudsman relating to the "the revolving doors phenomenon". In response to those complaints, the Ombudsman decided to open an inquiry seeking to clarify, from a systemic perspective, how the European Commission deals with conflicts that may arise when staff leave or join its services. The Ombudsman's assessment includes an analysis of how the Commission interprets and applies the relevant rules in the EU Staff Regulations. [2] [3]

The inquiry

2. In this inquiry [4] the Ombudsman seeks to identify systemic problems and systemic solutions to those problems. Her inquiry therefore does not focus on the Commission's handling of the individual cases referred to by the complainants.

3. During the course of the inquiry, and in order to assess the systemic nature of the alleged problem, the Ombudsman's services carried out an in-depth inspection of the Commission's files. The inspection covered the Commission's files relating to the 11 individual cases identified by the complainants in their complaints to the Ombudsman. The inspection also encompassed 27 files, chosen by the Commission, relating to 27 other members of staff [5] . With a view to obtaining a fuller overview of the Commission's practices, 16 files chosen by the Ombudsman's services were also inspected.

4. The Ombudsman then asked the Commission to submit to her an opinion on the allegations and claims put forward by the complainants. She also asked the Commission to respond, in its opinion, to a series of detailed questions posed by her [6] .

5. The Ombudsman sent the Commission's opinion [7] to the complainants, who subsequently submitted their observations [8] to the Ombudsman.

The Ombudsman's assessment leading to a draft recommendation

Preliminary remarks



6. According to the OECD Guidelines for Managing Conflict of Interest in the Public Service [9] , a "conflict of interest" involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of his or her official duties and responsibilities.

7 . The OECD Guidelines suggest that managing conflicts of interest constitutes a balancing exercise, given that a too-strict approach to controlling interests may conflict with other rights, or be counter-productive by deterring experienced and competent people from seeking public office. According to the OECD Guidelines, a balanced approach is taken by identifying integrity risks; prohibiting specific unacceptable forms of private interests; making public officials aware of the circumstances in which conflicts can arise; and ensuring effective procedures for the identification, disclosure, management and promotion of the appropriate resolution of conflict of interest situations.

The main rules at EU level

8. The Staff Regulations that apply to the staff of EU institutions oblige officials [10] to carry out their duties and conduct themselves **solely with the interests of the Union in mind** . [11] Officials must not, in the performance of their duties, deal with matters in which, directly or indirectly, they have any personal interest which might impair their independence. [12]

9. **Before recruiting an official** , an EU institution must examine whether the candidate has personal interests which might impair the official's independence [13] .

10. Officials are, **even after they stop working for the institution** , bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. [14] Officials who intend to accept a job within two years of leaving the service shall inform their institution. [15] If that job is related to the work carried out by the official during the last three years working for the EU institution, the institution has the right to forbid the official from taking the job if the institution considers that it would lead to a conflict of interest. It can also allow the official to take the job provided the official complies with conditions designed to eliminate any conflict of interest. [16]

11. An EU institution must also, in principle, prohibit its **former senior officials** , during the 12 months after they leave the institution, from lobbying the institution's staff, or otherwise representing client's interests to the institution's staff, on matters the former senior officials were responsible for during the last three years working for the institution. [17]

12. The above outline refers to staff who retire or resign and then take up positions outside the EU institutions. Similar issues may arise when officials take **leave on personal grounds**. Officials may take leave on personal grounds for up to 12 years during their time at an EU institution. Most leave on personal grounds is granted for family and other personal reasons. However, some staff use the possibility to ask for leave on personal grounds to take up other



employment. Such staff must seek permission if they decide to work during their leave [18] . The EU institutions can refuse such requests, or impose appropriate conditions, if the job gives rise to a conflict of interest or if it is otherwise detrimental to the interest of the European Union [19] . This would be the case where the job involves lobbying or advocacy toward the official's institution [20] , or if it involves a policy area in which the official had been working during the three years immediately preceding the leave on personal grounds. [21] Upon reinstatement after leave on personal grounds, the EU institution must examine whether, as a consequence of the activities carried out during the leave or otherwise, the official has any personal interest such as to impair his or her independence or to otherwise constitute a conflict of interest. [22]

The Ombudsman's assessment

[23]

The need to address systemic maladministration

13. On the basis of the inspections of the Commission's files, the Ombudsman finds that there are certain deficiencies in the Commission's implementation of the procedures, primarily regarding how decisions are explained and documented. The Ombudsman considers that the Commission has not responded adequately to all of the questions asked by her in her letter to the Commission requesting an opinion. As those questions related to deficiencies identified by the Ombudsman during the inspection of the Commission's files, the fact that the questions have not been addressed adequately leads the Ombudsman to conclude that there exists an instance of systemic maladministration. The Ombudsman will address this systemic maladministration by making a draft recommendation to the Commission. The detailed rationale for the above conclusions will be further outlined below.

14. The Commission did respond positively to some of the Ombudsman's questions. As a result, the Ombudsman is satisfied that the Commission has made, or is in the process of making, improvements to certain aspects of its procedures. The Ombudsman commends the Commission for these efforts. The Ombudsman will, however, in a spirit of constructive dialogue, provide further guidance to the Commission in this regard, aimed at assisting the Commission not only to deal correctly with individual cases, but also allowing citizens to be reassured that the Commission applies the rules properly.

Relevant rules and procedures

15. The Ombudsman is satisfied that the EU Staff Regulations provide a strong legal basis for managing conflict of interest issues within the EU institutions. They identify risks and provide protection against certain behaviours and situations. They set the procedures for the identification, disclosure, management and adoption of the appropriate resolution of conflict of interest situations. The Ombudsman also finds, on the basis of the information obtained in the course of her inquiry, that the Commission has actively put in place many useful procedures and structures for implementing these rules. In the Ombudsman's view, the challenge lies in the



optimisation of these procedures and structures with a view to ensuring that the rules **are fully implemented in all cases**.

16. Such optimisation involves ensuring that all decisions are correct, well-reasoned and well-documented. The decision-making process should be transparent. It should also involve the imposition of measures that are, in terms of addressing possible conflicts of interest, fit-for-purpose.

Information to staff

17. After carefully examining how the Commission communicates to its staff, the Ombudsman is satisfied that the Commission has significantly increased its efforts to provide staff with information and training on how to avoid conflicts of interest. Importantly, it has also sought to raise the awareness of staff on the issue of conflicts of interest. The Ombudsman commends the Commission for having taken these steps and encourages it to continue with its efforts.

Implementing the rules and procedures

Reasoned decisions

18. The Commission has acknowledged the importance of having a systematic and coherent approach to dealing with requests from staff to work outside the Commission and for dealing with the recruitment of staff, many of whom will have worked previously in areas linked to the work of the Commission. In the Ombudsman's view, the objective of avoiding conflicts of interest can be achieved only by making a well-reasoned and well-documented analysis **of each individual case**. As regards staff leaving the Commission, the Commission's analysis should set out i) a clear and complete description of the work carried out by the official during the last three years of service; ii) a clear and complete description of the new occupational activity of the official; iii) an appropriately detailed analysis as to whether the work carried out as an official and the new activity are related; iv) if they are related, the Commission should describe, in appropriate detail, what the legitimate interests of the Commission are in the area concerned and analyse whether the new activity would conflict with these interests. If conflicting interests are identified, the Commission should describe and analyse the appropriate remedy. The remedy might be a complete refusal to authorise the official to undertake the outside activity. Alternatively, the Commission might approve the request to undertake the outside activity subject to compliance by the official with certain conditions. On the basis of an examination of a number of the Commission's files, the Ombudsman finds that the Commission's analysis of individual cases does not always fully address all the issues set out above.

19. If a request to be allowed take up a job is made by an official who used to work in a DG with a DG-specific Code of ethics and integrity (see further below and the guidance in point (h) below), the decision on the application should state whether the Code in question sets out more



detailed and relevant rules and analyse the application on the basis of these rules also.

20. The Ombudsman has found, on the basis of an examination of a number of its files, that the Commission normally sets out extensive reasoning in **a decision refusing a request to undertake an outside activity** and in decisions approving such requests subject to conditions. This is not surprising, since there exists a general legal obligation to state the grounds for any decision which adversely affects the person to which that decision is directed (namely, the official concerned). However, from the point of view of the general public, it is equally if not more important that the Commission sets out clearly and fully the grounds for **positive decisions, namely decisions which authorise, without any conditions, an official to take up a job outside the institution**. Although the Commission is correct in stating that it has no *legal* obligation to provide reasons for such positive decisions, it is clearly good administrative practice and in the interest of all citizens that such decisions are fully and well-reasoned. To do so is also in the interests of the Commission. If such decisions are not fully and well-reasoned, the Commission will lose the trust of EU citizens, many of whom see the obvious dangers created by the "revolving doors" phenomenon. In addition, by taking such measures, the Commission can help dispel any doubts arising in the case of individual officials. The Ombudsman wishes to underline, in this respect, that her analysis of the Commission's files has led her to the firm conclusion that, in the overwhelming majority of cases examined, no conflicts of interest were evident.

21. With a view to correcting this deficiency, the Ombudsman recommends (see point (a) of the recommendation below) that every step of the Commission's analysis, in every case, be set out in detail in the Commission's files. Positive decisions, that is, decisions approving the new occupational activity, should be as well-reasoned as decisions to refuse approval.

22. The importance of having a systematic and coherent approach to dealing with requests from staff to work outside the Commission, and to take correct, well-reasoned and transparent decisions, also applies to a decision as to whether a contract agent leaving the Commission has had access to "sensitive information" which obliges him or her to inform the Commission when starting a new job. [24]

Sufficient information or clarifications needed?

23. The Ombudsman has found, on the basis of an examination of its files, that the Commission does not normally properly record, in its files, that the official concerned has provided it with enough information to allow it to carry out its analysis. The Ombudsman considers, with a view to correcting this deficiency (see point (b) of the recommendation below), that the Commission should mention explicitly, in the file, that the information provided by the applicant regarding his or her job outside the Commission is sufficient to allow it to carry out a thorough analysis of the case. The Ombudsman is of the view that the need, imposed on the service analysing the file, to make such an explicit statement, leads to a situation where the service can reflect more carefully on the issue. If the analysis leads to the conclusion that the information provided is not sufficient, the Commission should ask the applicant to provide additional information.



Self-imposed commitments

24. On the basis of an examination of the Commission's files, the Ombudsman has noted that staff members sometimes volunteer commitments, in their application to the Commission, to be allowed to take up a new job. Such commitments could, for example, relate to agreeing not to work on projects in which the official has worked on while in the Commission (one case related to an official committing not to be involved in a Commission-funded NGO-driven project on which that official had previously worked). Such honest and proactive cooperation from officials is commendable.

25. As suggested in the Ombudsman's letter to the Commission asking for an opinion, a decision authorising a former official to take up a new job should include specific reference to any such self-imposed commitments and the needs addressed by them. By way of example, the decision should state expressly that the official has volunteered a commitment not to work on projects in which he/she has been involved while working at the institution.

26. The Ombudsman notes with approval that the Commission agreed to this suggestion. With a view to giving guidance to the Commission to improve its procedures further (see point (p) of the recommendation below), the Ombudsman will ask the Commission to ensure that it takes steps to implement its agreement.

Time-limit for imposing conditions

27. The Staff Regulations require officials to keep their institution informed of any jobs they wish to take up within two years of leaving the institution. The limitation on the obligation on former officials to keep their institution updated on work activities does not, however, imply that former officials can ignore the rules on conflicts of interest once that two-year period expires. The Ombudsman points out that officials are obliged to behave always with integrity and discretion as regards the acceptance of certain appointments or benefits. [25] This general obligation is not time limited and should apply as long as the activity is closely related to the work carried out by the former staff member during his or her service in the Commission. With a view to ensuring this obligation is met, the Ombudsman will make a recommendation (see point (f) of the recommendation below).

Documentation of steps followed

28. The Ombudsman notes, from the inspection of recently completed files, a clear improvement in the Commission's efforts to document its decisions. The Commission's Directorate-General Human Resources ('DG HR') now regularly consults the DG in which the applicant worked during the last three years in the Commission. Further, DG HR now regularly consults the cabinet of the responsible Commissioner in the case of high-level officials. DG HR also now sends, on the basis of the views obtained on a given request, a draft decision to the Secretariat-General and the Legal Service. In addition, DG HR also sends, on the basis of the further views obtained, a proposal to the Joint Committee for it to deliver an opinion [26]. The



Commission is thus enabled to take a decision on the basis of a more complete file. The Ombudsman takes a positive view of these developments.

29. The Ombudsman considers, however, that it is of the utmost importance that all disagreements or reservations made in respect of the circulated draft decisions or proposals are well-reasoned. DG HR should then carry out a careful analysis thereof. If the eventual view of the Commission is that it need not take such disagreements or reservations into account, the detailed reasons for this evaluation should be noted, recorded and analysed in the file [27] . This is particularly the case when the disagreements or reservations come from the DG where the official used to work. The fact that the Ombudsman makes this observation reflects the fact that she is not convinced, in light of the detailed inspection of the Commission's files, that such steps have always been taken. With a view to correcting this deficiency, the Ombudsman will make a recommendation (see point (c) of the recommendation below).

The importance of consistency in imposed conditions

30. The Ombudsman commends the Commission's commitment, as set out in its opinion, to foster and ensure consistency in the treatment of similar cases as regards the conditions that are imposed on its officials taking up work outside the Commission. The Ombudsman considers that DG HR plays an important role in detecting inconsistencies in the conditions suggested by the services consulted. DG HR should take care to alert the services about such inconsistencies, asking for clarifications and, where relevant, for the conditions to be revised.

31. However, the Ombudsman's inspection of files has led her to conclude that such consistency has not always been the rule. With a view to correcting this deficiency, the Ombudsman will make a recommendation (see point (d) of the recommendation below).

32. The Ombudsman also intends to follow up on this commitment through inspection of the Commission's files when evaluating the implementation of the new conflict of interest provisions in the Staff Regulations (see paragraph 44 below).

Codes on ethics and integrity

33. During the inspection of the Commission's files, the Ombudsman was provided with a copy of DG Competition's Code on Ethics and Integrity, applicable to its staff. The Ombudsman considers that this Code has many useful and appropriate special features which reflect the specific and sensitive tasks of DG Competition.

34. In response to the Ombudsman's question regarding such DG-specific Codes, the Commission stated that the different DGs may, and even should, depending on their particular work environment and where appropriate, lay down more detailed guidance for their staff. According to the Commission, some DGs have detailed codes on ethics and integrity. The Commission states that all DG-specific codes or guidelines must be approved by DG HR, the Secretariat-General and the Legal Service before adoption, in order to ensure consistency throughout the Commission's services.



35. With a view to giving guidance to the Commission to improve its procedures further (see points (g) and (h) of the recommendation below), the Ombudsman considers it appropriate for the Commission to identify those DGs that *should* have sector-specific codes on ethics and integrity and to make sure that such codes are put in place for those DGs.

Information from other sources

36. On the basis of the files inspected, the Ombudsman acknowledges that the Commission does indeed act on information it receives from sources outside the institution, as it described in its opinion.

37. The Ombudsman commends the Commission in this regard. She notes that, given the scale of the challenge, the EU institutions may struggle to monitor effectively full compliance with conflict of interest rules. She thus underlines that enforcement, with and through the help of civil society, plays an important role in this area.

38. Further, by showing that it is always open to receiving information from outside sources, the Commission builds trust in its commitment to applying ethics rules fully and effectively.

Independence of assessment

39. The assessment of requests from an official to accept a job offer should always be carried out by persons not having a close connection to that official. As pointed out to the Commission in the letter asking for its opinion on this matter, the Ombudsman is of the view that the system for assessing cases of possible conflicts of interest could be open to criticism in cases involving members of senior staff (directors, director generals and members of Commissioners' cabinets at AD grade). This is so because the assessment by the Commission of files involving such staff may be based on opinions from people with whom they have worked very closely. At present, there does not appear to be any generalised system for ensuring that the assessment of applications submitted by senior staff is carried out by services unconnected with the DG or Cabinet concerned.

40. The Commission says that not only the DG concerned, but also unconnected services (DG HR, the Secretariat-General and the Legal Service) are involved in the assessment of applications of senior staff. It acknowledges, however, the validity of the Ombudsman's concerns in respect of the views expressed by the DG where the senior staff member used to work. DG HR therefore now requests a written confirmation of the views expressed by the DG in question from the Commissioner's cabinet responsible for that DG.

41. The Ombudsman considers, however, that the close connection between the senior staff member and the relevant Commissioner can also lead to problems in this regard.

42. The Ombudsman maintains that the greatest care possible should be taken to ensure that the assessment of all applications is carried out by persons not having had any direct



professional connections with the applicant. The Ombudsman also acknowledges, however, that in respect of senior officials, this may be difficult to achieve. With a view to correcting the deficiencies identified above, the Ombudsman will make a recommendation below (see point (e) of the recommendation below).

43. Separate from her recommendation, and in light of the pressing need to reassure the public that files of senior staff are dealt with properly, the Ombudsman will, throughout the course of her mandate, take a more proactive role as regards the files of senior staff members. As will be explained below, she will be on constant alert regarding conflict of interest issues involving senior members of staff. She will use her powers to make sure that the rules are respected and that citizens can be assured that the EU institutions act only in the interest of the common good of the EU.

Changes to the Staff Regulations

44. The Ombudsman considers that the above analysis, of how to ensure that decisions are correct, well-reasoned and well-documented, should serve as guidelines for how to deal with the new Staff Regulation rules on the assessment of incoming staff (Article 11(3) of the Staff Regulations). The Commission should, similarly, also consider the above principles, when analysing whether the prohibition on senior staff leaving the Commission from engaging in lobbying or advocacy vis-à-vis the Commission for 12 months (Article 16(3) of the Staff Regulations) is complied with. The Ombudsman intends to inquire into the implementation of these provisions during the course of 2015. The Ombudsman will provide guidance to the Commission on these points (see points (n) and (o) of the recommendation below).

Transparency – the best way forward

45. Transparency in the area of conflicts of interest is particularly important in order to gain the trust of civil society. If the public is properly informed about the rules and procedures and how they are applied by the Commission, there will be much less room for doubt and suspicion about possible conflicts of interest. In addition, greater transparency allows civil society to provide information that the EU institutions need to ensure compliance with the rules.

46. The Ombudsman therefore encourages the Commission to improve its Ethics and conduct website [28] , in order to better explain the rules and procedures.

47. The Ombudsman considers that DG-specific codes or guidelines should be published on the website of the DG in question and on the Ethics and conduct website.

48. The Ombudsman also considers that the Commission should not limit itself to publishing only the information legally required under the new Article 16(4) of the Staff Regulations [29] . In line with the principles of good administration, and with a view to improving citizens' trust in the EU, and to ensure proper enforcement with the help of civil society, it should also publish information on decisions to allow senior officials to carry out work outside the Commission. In this regard, the Commission should publish online, as soon as possible after a decision to



authorise a senior official to accept a job offer has been taken, (i) the name of the senior official concerned, (ii) details of the duties carried out in the Commission, (iii) details of the duties to be carried out in the new position, and (iv) the Commission's assessment and conclusions (including any conditions that are imposed) in respect of the potential conflict of interest situation.

49. The Ombudsman does not consider that Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the institutions impedes such publication, given that the balancing of interests – the privacy of the senior official concerned and the public interest in knowing that senior Commission officials adhere to the obligation to act solely with the interests of the Union in mind – should, in the majority of cases, weigh in favour of the public interest. In order to comply with such rules, it suffices to inform all relevant senior officials, at the latest at the time of submitting their applications to the Commission informing it of the intention to take up a new job or other activity, that it will publish the information in question. Such a step will permit such officials to give their views on the impact of such publication on their legitimate interests and for the Commission to take those views into account in the balancing exercise required under Regulation 45/2001.

50. As regards that balancing exercise, the Ombudsman underlines that publication of such information as regards senior staff would empower civil society to scrutinise the reported situation and to report any irregularities to the Commission and, where appropriate, to the Ombudsman.

51. The Ombudsman notes that in at least one Member State, the United Kingdom [30], such procedures are the norm. The EU should set itself the goal of being a leader in this regard, rather than lagging behind individual Member States.

52. The Ombudsman considers that only in exceptional compelling circumstances would privacy reasons prevent such publication. The Ombudsman invites the Commission to inform her of any such case and the Ombudsman will ask her services to inspect the file. This will allow the Ombudsman to assess the reasonableness of the decision taken to allow that senior staff member to take up an outside job offer. Especially as regards senior officials, and if it becomes necessary to undertake a formal inquiry, the Ombudsman will not hesitate to use her full powers, including the obligation on officials to testify before her office, in cases of doubt as to the proper application of the conflicts of interest rules

53. On the basis of the above, the Ombudsman calls on the Commission to take the necessary steps to prepare such a publication, in accordance with the data protection rules. In particular, it should inform all relevant senior officials, at the latest at the time of submitting their applications to the Commission informing it of the intention to take up a new job or other activity, that it will publish the information in question.

54. The Ombudsman will provide guidance to the Commission on the above points (see points (i), (j), (k) and (l) and of the recommendation below).



Centralised register

55. The Ombudsman notes the Commission's concern that a centralised register of staff applications to work after leaving the service or while on leave on personal grounds, and of conflict of interest assessments of incoming staff, may have data protection implications. On the other hand, the complainants consider that it is difficult for the public to monitor compliance with the rules without access to statistics generated by such a central register. The Ombudsman is not fully convinced by either argument. In the Ombudsman's view, a central register ensures that the Commission has a clear overview of what its services are doing in this regard and would thus help the Commission to apply the conflicts of interest rules effectively and consistently. [31]

56. However, such a centralised register need not be a *public* register. Any information in that register should only be made public in line with data protection rules. In this respect, apart from certain information relating to senior staff (see paragraph 48 above), the information in that central register should not be disclosed without the consent of the officials concerned.

57. The Ombudsman considers, by way of guidance (see point (m) of the recommendation below) that a central register would help the Commission to ensure its own consistent application of the conflict of interest rules. The Ombudsman therefore maintains that the Commission should put in place such a central register.

Concluding remarks

58. The objective of the present recommendations is the elimination of the systemic maladministration identified in the Commission's procedures for dealing with potential conflicts of interest. The Ombudsman is committed, in relation to all EU institutions, bodies, offices and agencies, to maintaining a watchful eye in this area in the future, to identifying any possible deficiencies that may arise in the future and to recommending all the necessary improvements on behalf of concerned citizens.

The draft recommendation

On the basis of this inquiry, the Ombudsman makes the following draft recommendation to the Commission [32] :

The Commission should:

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

(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;



- (c) Properly record and analyse comments made by other Commission services, particularly when the eventual position of the Commission deviates from those comments;**
- (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;**
- (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;**
- (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.**

Guidelines for further improvements

The Ombudsman suggests that the Commission:

- (g) Identify those DGs that should have Codes on ethics and integrity and make sure that such codes are put in place;**
- (h) Where applicable, also analyse applications to work outside the Commission on the basis of DG-specific Codes of ethics and integrity;**
- (i) Improve the Ethics and conduct website [33] of the Commission;**
- (j) Publish online DG-specific codes or guidelines;**
- (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;**
- (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;**

- (m) Put in place a centralised register of staff applications to work outside the**



Commission and for conflict of interest assessments of incoming staff;

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

(o) Use the Ombudsman's recommendations 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;

(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.

The Commission and the complainants will be informed of this draft recommendation and suggested guidelines. In accordance with Article 3(6) of the Statute of the European Ombudsman, the Commission shall send a detailed opinion by 31 December 2014. The detailed opinion could consist of the acceptance of the draft recommendation and a description of how it has been implemented. The Ombudsman also asks the Commission to address her suggestions for further improvements in the context of the detailed opinion.

Emily O'Reilly

Done in Strasbourg on 22 September 2014

[1] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.

[2]

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CONSLEG:1962R0031:20140101:EN:PDF>
[Link]

[3] EU Commissioners are subject to rules and procedures regarding conflicts of interest which are different to those applying to Commission staff. While the Ombudsman considers that ensuring that Commissioners, or former Commissioners, do not find themselves in conflicts of interest, is extremely important, this inquiry, which is based on complaints received from NGOs, focuses only on staff going through the "revolving door".

[4] All relevant correspondence in this inquiry has been published on the following website:

<http://www.ombudsman.europa.eu/cases/caseopened.faces/en/52661/html.bookmark> [Link]

[5] The Ombudsman asked the Commission to choose a number of cases to illustrate the



internal Commission procedures.

[6] The detailed questions posed by the Ombudsman, as well as the allegations, claims and supporting arguments put forward in the complaints can be found here:

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/52714/html.bookmark>
[Link]

[7] Available at:

<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/54523/html.bookmark>
[Link]

[8] To be published soon at

<http://www.ombudsman.europa.eu/cases/caseopened.faces/en/52661/html.bookmark> [Link]

[9] The Commission referred to these Guidelines in its opinion.

[10] The relevant rules in the Staff Regulations, such as Articles 11 and 16, also apply to temporary staff (see Article 11 of the Conditions of employment of other servants of the European Union). In respect of contract staff, Article 11 of the Staff Regulations applies (see Article 81 of the Conditions of employment of other servants of the European Union).

[11] Article 11 of the EU Staff Regulations.

[12] Article 11a of the Staff Regulations.

[13] Article 11, third paragraph, of the Staff Regulations.

[14] Article 16, first paragraph, of the Staff Regulations.

[15] See also Article 22(1) of Commission Decision of 16 December 2013 on outside activities and assignments

[16] Article 16, second paragraph, of the Staff Regulations.

[17] Article 16, third paragraph, of the Staff Regulations.

[18] Article 12b of the Staff Regulations. As regards the Commission, see also Article 14(1) of Commission Decision of 16 December 2013 on outside activities and assignments

[19] See also Article 14(2) of Commission Decision of 16 December 2013 on outside activities and assignments

[20] See also Article 14(3) of Commission Decision of 16 December 2013 on outside activities and assignments



[21] See also Article 16(1) of Commission Decision of 16 December 2013 on outside activities and assignments

[22] Article 11, fourth paragraph, of the Staff Regulations and Article 18, first paragraph, of Commission Decision of 16 December 2013 on outside activities and assignments

[23] The Ombudsman's assessment is made on the basis of the Commission's opinion, the results of the inspection of the Commission's files and the complainants' observations thereon.

[24] Article 22(1), second paragraph, of the Staff Regulations and Article 18, first paragraph, of Commission Decision of 16 December 2013 on outside activities and assignments

[25] Article 16(1) of the Staff Regulations.

[26] The Commission's Joint Committee is made up of representatives of the Commission's services and representatives of staff (normally union representatives).

[27] The Ombudsman acknowledges the Commission's concern in respect of setting out different views held by different services in the eventual decision, but she maintains that the different views should be properly addressed in the file.

[28] http://ec.europa.eu/civil_service/admin/ethic/index_en.htm#3 [Link].

[29] Each institution shall publish annually information on the implementation of Article 16(3), which sets out that former senior officials shall be prohibited, during the 12 months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service.

[30]

http://acoba.independent.gov.uk/former_crown_servants/former_crown_servants_appointments_2012.aspx [Link]

The Ombudsman notes that even though Member States must, through the transposition of Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and the free movement of such data, comply with data protection rules which are identical, in substance, to the rules under Regulation 45/2001, the United Kingdom considers it entirely correct and legal to make available such information.

[31] The Ombudsman considers such a register to be necessary in order to ensure the correct and consistent application of the Staff Regulations by the Commission. This can be done in compliance with Regulation 45/2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data, and particularly Article 5 thereof.



[32] All the issues covered by the Ombudsman's draft recommendation were brought to the Commission's attention through the detailed questions put to it by the Ombudsman in her letter asking for an opinion.

[33] http://ec.europa.eu/civil_service/admin/ethic/index_en.htm#3 [Link]