

Follow-up of the Commission on the European Ombudsman's draft recommendation - Two joined complaints by Corporate Europe Observatory, Greenpeace EU Unit, LobbyControl and Spinwatch (ref. 2077/2012/TN) and Friends of the Earth Europe (ref. 1853/2013/TN)

Correspondence - 09/12/2015

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) |

One of the Ombudsman's recommendations in the inquiry based on complaints 2077/2012/TN and 1853/2013/TN against the European Commission relates to the publication of outside activities of former senior managers. The Ombudsman has additionally underlined in an undated letter received by the Commission in February 2015 that the publication of decisions authorising such activities of senior managers should take place regularly and not just annually, which is the minimum legal requirement.

The Commission has given very careful consideration to this recommendation. It commends the Ombudsman's efforts to further increase transparency, so that any possible or potential conflict of interest is laid open, just as the mitigating measures that have been put in place in order to prevent any such conflicts from arising. The Commission has thus followed the Ombudsman's recommendation in relation to the contents of the publications in question.

The Commission must nevertheless reconcile the desire for transparency with its obligation to protect personal data of its staff and former staff. In this respect the agreement of the former senior officials concerned would not constitute a sufficient legal basis for such publication. As recalled by the European Data Protection Authorities in the context of the Article 29 Working Group, consent that has been given by an employee in the context of an employer-employee relation cannot, as a rule, be considered as given freely, because of the subordinate position of the employee. The Staff Regulations establish a statutory link between the staff and their institution. This link – and the resulting subordinate position of the person concerned – does not end with the termination of service since the Staff Regulations foresee ongoing rights and obligations well beyond such termination. Since the subordinate position of the former official must thus be considered to exist as long as the statutory link exists, publication of their personal data cannot be done by seeking their consent.



In accordance with Article 5(a) and (b) of Regulation 45/2001, however, the publication of the personal data in question is based on the legal obligation imposed on the Commission by Article 16 (4) of the Staff Regulations, which in turn points to Article 16 (3) of the Staff Regulations referring to lobbying activities of former senior officials.

This therefore has led the Commission to decide the following:

- in accordance with the Staff Regulations and their implementing rules, senior managers are defined as managers holding the position of a Director or equivalent and upwards;
- the information in relation to occupational activities of former senior managers is to be published on an annual basis;
- the published information relates to activities of former senior managers that could give rise to lobbying or advocacy as per Article 16 (3) of the Staff Regulations.

On this basis, the Commission would like to communicate to the European Ombudsman its first annual publication of information concerning occupational activities of senior officials after leaving the service (Article 16 (3) and (4) of the Staff Regulations).

This publication has been approved by the College and will shortly be made available to all interested parties in German, English and French on the Commission's Europa-Website.