



Suositus, joka koskee sitä, miten Euroopan puolustusvirasto käsitteli entisen hallintojohtajansa hakemuksia Airbusin johtotehtäviin (OI/3/2021/KR)

Suositus

Kanteluasia OI/3/2021/KR - **Tutkittavaksi otetut kantelut, pvm 22/02/2021** - **Suositus** 13/07/2021 - **Päätökset, pvm 28/01/2022** - **Toimielin, jota kantelu koskee** Euroopan puolustusvirasto (Toimielin hyväksyi suositusluonnoksen) |

Oikeusasiamies toteutti omasta aloitteestaan tutkinnan, joka koski Euroopan puolustusviraston (EDA) päätöstä sallia entisen hallintojohtajansa ottaa vastaan kaksi johtotehtävää Airbusilta, ilmaisu- ja avaruusalan yritykseltä.

Oikeusasiamiehen tutkinnassa selvitettiin myös, miten Euroopan puolustusvirasto käsitteli sitä seikkaa, että entinen hallintojohtaja aloitti uusissa tehtävissään ennen kuin Euroopan puolustusvirasto oli antanut hänelle siihen luvan, mikä on Euroopan puolustusviraston henkilöstösääntöjen vastaista.

Oikeusasiamies totesi, että ehdot, jotka Euroopan puolustusvirasto oli asettanut entiselle hallintojohtajalleen hyväksymispäätöksessään, olivat riskeihin nähden riittämättömät. Ehtojen noudattamista ei voitu valvoa, eikä ehtoja voitu panna täytäntöön. Myös siinä, miten Euroopan puolustusvirasto arvioi eturistiriitojen riskiä, oli puutteita.

Euroopan puolustusviraston olisi pitänyt asettaa tiukempia ehtoja ja kieltää entistä hallintojohtajaa ottamasta vastaan tehtävää, josta aiheutui suurin mahdollinen eturistiriita Euroopan puolustusviraston oikeutettuihin etuihin nähden. Koska näin ei tehty, Euroopan puolustusvirasto aiheutti toiminnallaan hallinnollisen epäkohdan.

Näiden havaintojen perusteella oikeusasiamies antoi kaksi suositusta:

i) Tulevaisuudessa Euroopan puolustusviraston olisi kiellettävä johtavassa asemassa olevia työntekijöitään ottamasta toimikautensa jälkeen vastaan sellaisia tehtäviä, joissa ilmenee selvä eturistiriita Euroopan puolustusviraston oikeutettuihin etuihin nähden.

ii) Euroopan puolustusviraston olisi määritettävä perusteet tällaisten toimien kieltämiseksi, jotta asia olisi johtavassa asemassa oleville työntekijöille selvä. Perusteista olisi kerrottava Euroopan puolustusviraston johtotehtävien hakijoille, kun nämä hakevat tehtäviä.

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



Introduction

1. When public officials, especially senior officials, leave the public administration to take up positions in the private sector, they are described as going through the 'revolving door'.

2. Revolving door cases in the EU administration may give rise to: (i) risks of a conflict with the legitimate interests of the EU; (ii) risks that information that is not public may be disclosed or misused; or (iii) risks that former staff members may try to influence ex-colleagues, who, in the case of departing senior staff are likely to have been their subordinates, in favour of their new employer.

3. The above risks must be analysed taking into account, among other matters, the individual's fundamental right to engage in work. Any restrictions on the rights of former EU staff to work in the private sector must be necessary for the purposes of achieving a legitimate public interest, and must be proportionate. [2]

4. EU institutions, bodies, agencies and offices (hereafter, institutions) must always assess revolving doors cases from the perspective of the public interest. [3] While all such cases need to be assessed on their individual merits, there must be greater scrutiny of moves by senior officials, given the higher potential risks involved to the interests of the institution. The nature of the employment contract (permanent or temporary) also needs to be taken into consideration.

5. This inquiry concerns how the European Defence Agency (EDA) dealt with the move of its former Chief Executive to Airbus Spain and Airbus Defence and Space. The inquiry also looked into how the EDA dealt with the fact that its former Chief Executive did not await the EDA's approval before starting his new positions, which is a breach of the EDA's Staff Regulations. [4] (See annex 1 for descriptions of the European Defence Agency, and the role of the Chief Executive.)

The inquiry

6. On 22 February 2021, the Ombudsman opened an own-initiative inquiry [5] into:

1) How the EDA dealt with the 'post-employment application' of its former Chief Executive to take on senior positions at Airbus Spain and at Airbus Defence and Space.

2) How the EDA handled the breach by the former Chief Executive of the requirement in the EDA's Staff Regulations to obtain authorisation prior to taking up new activities.

7. In the course of the inquiry, the EDA replied to the Ombudsman's questions. [6] The Ombudsman's inquiry team also inspected the EDA's files on: (i) the decision to authorise the former Chief Executive's new positions; (ii) the former Chief Executive's breach of the requirement under the EDA's Staff Regulations to obtain authorisation prior to the actual start of the new employment; and (iii) all decisions taken by the EDA in relation to the authorisation of post-employment applications in 2019 and 2020.

Timeline

8. The Ombudsman's inquiry established the following timeline of the key events.



Date

Actions of the EDA

Actions of the former Chief Executive

1 February 2015

The former Chief Executive was appointed as Chief Executive of the EDA for a term of three years. His appointment was subsequently extended for an additional two years, until 1 February 2020.

31 January 2020

At the end of his term in office, the Chief Executive informed the EDA that he would return to his former post as a civil servant in the Ministry of Foreign Affairs of an EU Member State.

28 July 2020

The former Chief Executive applied for authorisation to take up two jobs, one at Airbus Spain and one at Airbus Defence and Space.

31 July 2020

The EDA informed the former Chief Executive that his application did not include sufficient information on how the new employers would mitigate risks of conflicts of interest between the previous and intended future roles.

The EDA also informed the former Chief Executive that it would not be in a position to take a decision before the proposed start date of the new jobs.

17 August 2020

The former Chief Executive signed an employment contract with Airbus and started to receive a salary there.

28 August 2020

The EDA reminded the former Chief Executive of its request for additional details [7] and asked for an explanation of how he would ensure that the exercise of the new duties and responsibilities would not conflict with the legitimate interests of the EDA, or be perceived to do so. The EDA also recalled that “*prior authorisation by [...] the Head of Agency - is required under the EDA Staff Regulations before engaging in an occupational activity*”. [8]

The former Chief Executive replied that while he had transmitted the EDA's request for additional information to his new employer, it had not yet provided this information.



31 August 2020

The former Chief Executive submitted additional details to the application for authorisation.

1 September 2020

The former Chief Executive started carrying out tasks for his new employer.

3 September 2020

The EDA consulted its Staff Committee on the former Chief Executive's request. The Staff Committee expressed concerns about "*the impact of [the] situation both vis-à-vis the EDA's external stakeholders and staff*".

The former Chief Executive submitted the 'Airbus policy towards ethics and compliance', as an addendum to the additional information he submitted on 31 August 2020.

7 September 2020

In examining the former Chief Executive's request and additional information, the EDA found that it created a perception of a conflict with the legitimate interests of the EDA and that it may give rise to an actual conflict of interest that could, if not mitigated, cause serious damage to the EDA's reputation. Therefore, the EDA imposed certain conditions in its decision authorising the application to take up the two new jobs.

14 September 2020

The EDA conducted a hearing with the former Chief Executive as part of a 'pre-disciplinary procedure' concerning the breach of the EDA's Staff Regulations.

The former Chief Executive took full responsibility for the breach of the EDA's Staff Regulations.

21 September 2020

The EDA issued a 'warning' [9] regarding the breach of the Staff Regulations.
The EDA's decision on the former Chief Executive's application

Arguments presented by the EDA

9. The EDA's decision to approve, with conditions, its former Chief Executive's two new jobs at Airbus is based on Article 18 of the EDA's Staff Regulations. According to Article 18, the EDA should assess whether the jobs that the former Chief Executive intended to take up are compatible with the "legitimate interests" of the EDA. Article 18 foresees that the EDA may forbid a former member of its staff from taking up a position if it is related to the official's



work in the last three years of service and could " *lead to a conflict with the legitimate interests of the agency*". (See footnote 4.)

10. The EDA said that, after it had gathered sufficient elements to carry out a meaningful conflicts of interest assessment of the former Chief Executive's application, which concerned two jobs, it concluded that it could not establish any potential conflict with the interests of the EDA that would justify prohibiting him from taking the jobs. However, the EDA concluded that " *the situation has in fact created a perception of a conflict with the legitimate interests of the Agency and may give rise, in the future, to an actual conflict of interest, which could, if not mitigated, cause serious damage to the reputation of the Agency*".

11. To mitigate these risks, the EDA included conditions in its decision. In particular, the former Chief Executive should:

- abstain from contacts with the Airbus Brussels office on matters which concern the EDA until 31 January 2022;
- recuse himself from any Airbus decision or task which concerns EDA activities until 31 January 2022, in order to avoid any perceived or real conflict of interests;
- not have contact with EDA staff for the purpose of lobbying or advocacy on matters for which he was responsible as Chief Executive until 31 January 2021.

12. In reply to a question from the Ombudsman, the EDA said that, while Airbus Defence and Space SAS (part of Airbus France) had been awarded contracts based on public procurement procedures carried out by the EDA in 2019, [10] the former Chief Executive had not been involved in the decisions to award the contracts. [11]

The Ombudsman's assessment leading to a recommendation

13. The public must be in a position to trust that public authorities serve the general interest, and not private or personal interests. The instance of a senior public official moving to the private sector, soon after leaving the public service, can cause public disquiet, as occurred in this case.

14. Airbus is one of the largest actors in the European defence industry and, as such, has an interest in the EDA's activities. For example, Airbus bids for contracts in public procurement procedures organised by the EDA, and has an interest in recommendations on policy or public investment in the research and development of defence and security technology.

15. The EDA's decision concerned two jobs:

(i) **Head public affairs Airbus Spain**, with duties and responsibilities described as " *directly related to Spain only, not to any other country or the EU*".

(ii) **Strategic advisor for Airbus Defence and Space**, with duties and responsibilities described as " *[contributing] experience to the analysis and definition of guidelines of action for*



the strategy that will be approved by the leadership of the global group in all areas, worldwide as well as NATO, EU or individual countries in Europe or beyond. This does NOT entail lobbying activities in any case towards the EU institutions and bodies which are the sole responsibility [sic] of the Public Affairs office of Airbus in Brussels.”

It is this second job that would appear to be directly related to the activities of the EDA, with the result that the conflict of interest assessment in relation to this move deserves particular scrutiny.

16. The EDA's Staff Regulations state that:

*“Members of temporary staff intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform the Agency thereof using a specific form. **If that activity is related to the work carried out by the member of temporary staff during the last three years of service and could lead to a conflict with the legitimate interests of the Agency, the authority authorised to conclude contracts (AACC) may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit. [..]***

*In the case of former senior members of temporary staff, the AACC shall, in principle, **prohibit them**, during the twelve months after leaving the service, **from engaging in lobbying or advocacy vis-à-vis staff of the Agency for their business, clients or employers on matters for which they were responsible during their last three years in the service.**” (Emphasis added.)*

Conflict of interest assessment

17. The former Chief Executive was the EDA's highest-ranking official and so all EDA staff members who worked at the EDA during his time in office used to be his subordinates. The matters with which the former Chief Executive dealt during his last three years in office can be presumed to encompass all of the EDA's activities, and his knowledge of these activities can reasonably be presumed to be significant. [12]

18. The Ombudsman notes the temporary nature of the former Chief Executive's position at the EDA. [13] Temporary staff of the EDA are not entitled to transitional allowances, and prohibiting former employees from taking on new employment of their choosing, the most restrictive option available to the EDA, should be done only where other less restrictive measures are not adequate for protecting the interests of the EDA. [14]

19. During the inquiry, the Ombudsman asked the EDA to inform her (i) when the former Chief Executive had become aware of the job opportunities at Airbus, (ii) when the former Chief Executive applied for the jobs at Airbus, and (iii) when Airbus offered him the jobs. The Ombudsman suggested that, if the EDA did not have this information on file, it could ask the former Chief Executive to provide the relevant answers.

20. The EDA replied that it did not have the information requested, nor did it have any cause to seek such information when it received the application. This was because it assumed that the former Chief Executive first became aware of the prospective jobs at Airbus after he



returned to his post in the Ministry of Foreign Affairs of a Member State. [15] The EDA did not ask the former Chief Executive to provide answers in the context of the Ombudsman inquiry.

21. It has therefore not been established with certainty when the former Chief Executive became aware of the job opportunities at Airbus. In this context, there is a general concern that the prospect of moving to the private sector may influence the conduct of senior public officials while they are still employed in the public administration.

22. In the Ombudsman's view it is reasonable to expect a public authority to check, when it is examining a sensitive revolving door case involving its former highest-ranking staff member, when the prospect of job(s) first emerged. As is clear from the section below on the breach of the Staff Regulations, this information would also arguably have been pertinent in terms of assessing the seriousness of that breach. The fact that the EDA did not seek to obtain this information is a shortcoming that suggests that the EDA did not examine the matter with the requisite thoroughness.

Conditions applying to the EDA's decision

23. The Ombudsman's assessment of the conditions that the EDA imposed seeks to determine whether they sufficiently and effectively mitigated the risks of conflicts of interest that the EDA had identified.

Abstention from contacts with the Airbus Brussels office for matters that concern the EDA

24. The EDA's decision requires the former Chief Executive to abstain from contacts with the Airbus Brussels office for matters that concern the EDA until 31 January 2022. The Ombudsman understands the purpose of this condition to be to mitigate the risk that the former Chief Executive would attempt to engage in indirect lobbying or advocacy via the Airbus Brussels office towards EDA staff. The Ombudsman questions whether this restriction is sufficiently effective.

25. First, the EDA's decision does not prevent the former Chief Executive from contacting the Airbus Brussels office in relation to matters that concern other EU institutions. The information and contacts to which the former Chief Executive had access while in office also concerned other EU institutions (which are directly involved in the operation of the EDA). The Ombudsman is of the view that it should have been explicitly mentioned in the EDA's decision that the former Chief Executive should not contact the Airbus Brussels office on any matters that he dealt with during his last three years in service. [16]

26. Second, when the former Chief Executive was asked by the EDA to clarify his application, he informed the EDA that lobbying activities towards the EU are "*the sole responsibility of the Public Affairs office of Airbus in Brussels*". In reply to the Ombudsman, the EDA listed the



former Chief Executive's interactions with Airbus in 2018 and 2019. From the information and documents provided to the Ombudsman, it is clear that these contacts took place with the Airbus Brussels office but also with other parts of Airbus, including Airbus Defence and Space, where one of the former Chief Executive's jobs is. [17] The Airbus Brussels office is thus not the only part of Airbus with responsibility for lobbying or advocacy towards the EDA. [18] The EDA should have taken this into account when it assessed the former Chief Executive's application in order to determine the appropriate restrictions to mitigate the risks of conflicts of interest.

27. For these reasons, the Ombudsman finds that this condition was not sufficient to mitigate the risks involved.

Recusal from Airbus decisions or tasks that concern EDA activities

28. The EDA's decision requires the former Chief Executive to refrain from participating in any Airbus decision or task that concerns EDA activities until 31 January 2022. This condition would arguably be an effective means to avoid perceived and actual conflicts of interest, as it addresses the risk that the former Chief Executive would use his knowledge of the EDA's activities and contacts to provide his new employer with privileged access to information about the EDA's activities.

29. In reply to the Ombudsman's question on how the EDA monitors and enforces the restrictions it imposed on the former Chief Executive's new jobs, the EDA said that it *"has neither the resources nor the competence to perform a systematic monitoring of post-employment conditions, beyond raising awareness and ensuring transparency on the conditions set"*. The EDA itself therefore appears to be of the view that it cannot effectively monitor and enforce this condition.

30. The difference between authorising a post-employment activity and refusing it must lie in the ability of the institution to be able to impose credible conditions that effectively mitigate the risk of conflicts of interest. The lack of effective monitoring and enforcement by the EDA is particularly problematic regarding the former Chief Executive's new job as strategic advisor to Airbus Defence and Space. This role involves contributing to the company's EU strategy, which, given the interests of the new employer [19] and the nature of the role of strategic advisor including for the EU, may concern EDA activities.

Lobbying ban

31. The EDA's decision included that the former Chief Executive should not have contacts with EDA staff for the purpose of lobbying or advocacy on matters for which he was responsible as Chief Executive. This restriction was imposed for the first twelve months after the former Chief Executive left office, which effectively meant the period from 7 September 2020 to 31 January 2021. [20]



32. This condition is based on the provision in the EDA's Staff Regulation that former senior staff, during the twelve months after leaving the service, should be prohibited from engaging in lobbying or advocacy vis-à-vis EDA staff for their business, clients or employers on matters for which they were responsible during their last three years in the service. This provision is a minimal standard, and the EDA could, if it considers it necessary to protect its legitimate interest, go beyond the period of twelve months.

33. In this case, the EDA decided to prohibit the former Chief Executive from contacting the Airbus Brussels office on matters concerning the EDA's activities for a period of 24 months. The EDA itself had thus determined that the risk of the former Chief Executive engaging in lobbying or advocacy vis-à-vis EDA staff could last up to 24 months after the former Chief Executive left office. The Ombudsman therefore finds that it would have been reasonable for the EDA also to stipulate that this more general condition to mitigate against the risk of lobbying or advocacy vis-à-vis EDA staff should also last until 31 January 2022. The failure to do so amounts to a lack of consistency.

34. Furthermore, the Ombudsman is of the view that the scope of this condition, which included staff at the EDA only, is questionable. This is because the former Chief Executive had dealt with matters during his last three years of service that concerned other EU institutions (see paragraph 25). In the Ombudsman's view, the EDA should have stipulated that this condition applied also to staff of other institutions working on matters that the former Chief Executive had dealt with.

35. The Ombudsman finds that the conditions that the EDA imposed either:

- did not sufficiently mitigate the risk of the former Chief Executive engaging in direct or indirect lobbying and advocacy vis-à-vis EDA staff and staff of other EU institutions on matters that he had dealt with during his last three years of service, or
- could not be monitored and enforced.

This was particularly the case for the role as strategic advisor to Airbus Defence and Space. The Ombudsman determines that the threshold for prohibiting this job was reached, and not doing so constituted maladministration.

36. Not imposing sufficiently effective restrictions to mitigate against the risks of real and perceived conflicts of interest, which the EDA had determined existed, constitutes **maladministration**. Not prohibiting the job of strategic advisor for Airbus Defence and Space, which posed the greatest risk of conflicting with the EDA's legitimate interest also constitutes **maladministration**. To address this, the Ombudsman makes two recommendations below, in accordance with Article 3(6) of the Statute of the European Ombudsman.

How the EDA dealt with the former Chief Executive's breach of its Staff Regulations

Arguments presented by the EDA

37. Former EDA staff members intending to take up an occupational activity, whether gainful



or not, within two years of leaving the service must inform the EDA thereof. The EDA must examine whether the occupational activity is related to matters that the former staff have dealt with and whether it could lead to a conflict with the legitimate interests of the EDA. The EDA must notify its decision within 30 working days of being informed by the former staff member (see footnote 4). If the EDA does not notify the former staff member of its decision by the end of that period, this is deemed to be an implicit acceptance of the intended occupational activity.

38. The former Chief Executive's intention to take up jobs with Airbus concerned matters for which the former Chief Executive had been responsible during his last three years in service. Based on its assessment, the EDA considered that the jobs could create a perception of a conflict with the legitimate interests of the EDA, which, in the absence of measures to mitigate the risk, could give rise to an actual conflict of interest that could cause serious damage to the EDA's reputation.

39. The EDA found that the former Chief Executive began the new jobs on 17 August 2020, prior to obtaining the EDA's authorisation and before the end of the period of 30 working days. The additional information needed to examine his request properly, which the EDA had first requested from him on 31 July 2020, was submitted by the former Chief Executive on 31 August 2020. On 1 September 2020 the former Chief Executive effectively started his activities in the new jobs at Airbus.

40. The EDA initiated what is known as a 'pre-disciplinary procedure' [21] against the former Chief Executive for non-compliance with the requirement to obtain prior authorisation. [22]

41. During the pre-disciplinary hearing, the EDA told the former Chief Executive that, "*since the facts were established beyond doubt, the Head of Agency saw no need to open an administrative investigation and had decided to move directly to a pre-disciplinary procedure*". The EDA further informed the former Chief Executive that "*the [Head of Agency] does not at this stage consider it proportionate to initiate disciplinary proceedings but intends to issue a warning*".

The Ombudsman's assessment

42. Following its assessment of the potential conflicts of interest, the EDA determined that the new jobs of the former Chief Executive could create a perception of a conflict with the legitimate interests of the EDA, which, in the absence of measures to mitigate that risk, could give rise to an actual conflict of interest that could cause serious damage to the EDA's reputation.

43. The Ombudsman notes that the Head of Agency saw no need to open an administrative investigation and decided to move directly to a pre-disciplinary procedure. [23] This procedure included a hearing with the former Chief Executive on the breach of the Staff Regulations.



44. The former Chief Executive took up his new jobs on 17 August 2020, three weeks before the EDA determined what restrictions would be necessary to mitigate any risks of conflicts of interest. Going forward, the EDA may wish to reiterate to staff, including its most senior staff, the importance of notifying revolving door moves in good time. Not only would this enable the Agency to conduct a thorough and timely assessment to seek to address conflict of interest situations but also would avoid giving the impression that the procedure is a mere formality.

45. The Ombudsman notes that the EDA did not have sufficient information to properly assess the risks of conflicts of interest related to the request of the former Chief Executive for most of the time that it had available under the EDA Staff Regulations. [24] While the EDA relies on the cooperation of former staff to submit to it the information it needs for its assessment, the Ombudsman suggests that the EDA ensure that the specific form for those applying for authorisation for intended positions is drafted in such a way that (former) staff members provide the relevant information from the outset. The Ombudsman will make a suggestion for improvement below.

Recommendation

On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendations to the European Defence Agency (EDA):

1. In future, the EDA should, where necessary, forbid its senior staff from taking up certain positions after their term of office. Any such prohibition should be time-limited, for example, for two years.

2. To give clarity to its senior staff, the EDA should set out criteria on when it will forbid such moves. Applicants for senior EDA posts should be informed of the criteria when they apply.

The EDA will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the EDA shall send a detailed opinion by 15 October 2021.

Suggestion for improvement

The EDA should ensure that the specific form for those applying for authorisation for intended jobs is drafted in such a way that (former) staff members provide the relevant information to enable the EDA to perform a meaningful assessment from the outset.

Emily O'Reilly European Ombudsman

Strasbourg, 13/07/2021



Description of the European Defence Agency

The European Defence Agency (EDA) promotes and facilitates cooperation between EU Member States within the EU's Common Security and Defence Policy.

The EDA falls under the authority of the Council of the EU, to which it reports and from which it receives guidelines.

The EU's High Representative is the Head of Agency, leading the EDA's Steering Board, its decision-making body that is comprised of defence ministers from each EU Member State (except for Denmark) and a European Commission representative, and providing the link with the Council of the EU.

The EDA's Chief Executive, assisted by the Deputy Chief Executive, is responsible for the oversight and coordination of the EDA's work. They are appointed by the Steering Board.

The EDA's activities include coordinating intergovernmental programmes, as well as funding projects that involve cooperation with the security and defence industry.

EDA activities of a more intergovernmental character are:

- Overseeing the *Capability Programmes*, which are programmes aimed at developing capability in four major areas of defence technology [25] ;
- Carrying out the *Coordinated Annual Review on Defence (CARD)* , which has six specific 'focus areas' for defence systems [26] ;
- Assisting in the administration of the *Permanent Structured Cooperation (PESCO)* in which 25 EU Member States participate to cooperate on defence activities;
- Producing the *Capability Development Plan* , which serves as a baseline and reference for the implementation of the CARD, the PESCO, and the European Defence Fund (EDF).

Other EDA tasks, which may include interacting with defence industry actors, include:

- Identifying *Key Strategic Activities* that should be supported, and fostering a common understanding of Member States, EU institutions and defence industry actors about industrial and technological areas, as well as skills and competencies where dependence on non-EU players could put at risk the EU's freedom of action in the defence domain;
- Identifying priorities and gaps in *Research and Technology* , including by hosting fora for experts from government, industry, small and medium enterprises and academia, moderated by the EDA.

The EDA also works to ensure that the interests of the defence community are conveyed to the Commission and other EU bodies to maximise potential synergies. [27]

Description of the Chief Executive's job



The tasks for which the EDA Chief Executive is responsible are: *"(a) ensuring the implementation of the Agency's three-year Planning Framework; (b) preparing the work of the Steering Board; (c) preparing the draft annual general budget to be submitted to the Steering Board; (d) preparing the three-year Planning Framework to be submitted to the Steering Board; (e) ensuring close cooperation with, and providing information to, the Council preparatory bodies, notably the PSC and the EUMC; (f) preparing the reports referred to in Article 4(2); (g) preparing the statement of revenue and expenditure and implementing the Agency's general budget and the budgets of ad hoc projects or programmes entrusted to the Agency; (h) the day-to-day administration of the Agency; (i) all security aspects; (j) all staff matters ."* [28]

[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): <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:31994D0262> .

[2] See Article 15 Charter of Fundamental Rights of the European Union.

[3] The Ombudsman has recently launched a wide-ranging inquiry into how the Commission handles revolving doors cases among its staff, as a follow up to an earlier inquiry on the matter, see: <https://www.ombudsman.europa.eu/en/decision/en/110608> . The Ombudsman is also looking into a revolving door case concerning a former Vice-President of the European Investment Bank (EIB), see: <https://www.ombudsman.europa.eu/en/news-document/en/143494>

[4] . Article 18 of the EDA Staff Regulations foresees that: *"Members of temporary staff intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform the Agency thereof using a specific form . If that activity is related to the work carried out by the member of temporary staff during the last three years of service and could lead to a conflict with the legitimate interests of the Agency, the AACC may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit. The AACC shall, after consulting the Staff Committee, notify its decision within 30 working days of being so informed"*. See: COUNCIL DECISION (EU) 2016/ 1351 - of 4 August 2016 - concerning the Staff Regulations of the European Defence Agency, and repealing Decision 2004/ 676/ EC (europa.eu)

[5] See: <https://www.ombudsman.europa.eu/en/correspondence/en/138504> .

[6] See: <https://www.ombudsman.europa.eu/en/correspondence/en/141624> .

[7] The EDA specified it needed a description of:

- The intended jobs' duties and responsibilities, indicating where these duties may overlap the duties he had as Chief Executive;
- The new employer's direct or indirect commercial, financial or contractual links (including grants) with the Commission and the EDA;
- The former Chief Executive's direct or indirect relations of an institutional nature with the



new employer;

- How the intended new jobs would have no direct or indirect links with the EDA.

[8] In accordance with Article 18, the EDA must notify its decision **within 30 working days** of being so informed. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance. (Emphasis added.)

[9] Article 141 of the EDA Staff Regulations (see footnote 4 for a link) establishes the measures the EDA can take against a staff member after a breach of his/her obligations under the SR: "*On the basis of the investigation report, after having notified the staff member concerned of all evidence in the files and after hearing the staff member concerned, the AACC may:*

(a) decide that no case can be made against the staff member, in which case he shall be informed accordingly in writing; or

(b) decide, even if there is or appears to have been a failure to comply with obligations, that no disciplinary measure shall be taken and, if appropriate, address a warning to the staff member ; or

(c) in the case of failure to comply with obligations within the meaning of Article 139:

(i) decide to initiate the disciplinary proceedings provided for in Section D of this Title; or

(ii) decide to initiate disciplinary proceedings before the Disciplinary Board. " (Emphasis added.)

[10] One contract was awarded to Airbus Defence and Space SAS (part of Airbus France) under a framework contract for the procurement of EU satellite communications (SatCom) and one contract concerning SatCom training was financed under the operational budget of the EDA.

[11] Although the EDA's Chief Executive is the Agency's legal representative, the powers of 'authorising officer' are delegated, meaning that the Deputy Chief Executive signed the procurement contracts in question.

[12] For a selection of matters on which the former Chief Executive worked during the last three years of service, see:

<https://eda.europa.eu/news-and-events/news/2020/01/22/eda-bids-farewell-to-chief-executive-jorge-dor>

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[13] The former Chief Executive returned as a civil servant with the foreign ministry of his home country after leaving the EDA.

[14] According to EU case law, EU institutions, bodies and agencies enjoy wide discretion in this area. See:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1549037343294&uri=CELEX:62013FJ0086>

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[15] The former Chief Executive had signed what is known as a staff exit declaration form, acknowledging his understanding of his obligations under the EDA Staff Regulations as regards post-employment and indicating the return to the ministry of foreign affairs of an EU Member State.

[16] Including any work that related to the Council of the EU (see the Annex for list of such matters) or the Commission, for example related to the European Defence Fund and the European defence industrial development programme, see:
https://ec.europa.eu/growth/sectors/defence/european-defence-fund_en .

[17] See p.6 of the EDA's reply:
<https://www.ombudsman.europa.eu/en/correspondence/en/141624> . The invitation to the event on 5 February 2018 originated from Airbus Spain, the invitation to the event in September originated from Airbus Defence and Space, the invitations to the events in June and October 2019 originated from Airbus SE.

[18] The Ombudsman also notes that the meetings with the Commission that Airbus lists in the Transparency Register are related to Airbus, and not strictly to the Airbus Brussels office. See:
<https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=2732167674-76>
.

[19] The Ombudsman notes that the interests of Airbus are also broader than the activities of the EDA alone, as is evident from the company's registration in the EU Transparency Register See: Transparency Register - Search the register (europa.eu) .

[20] Article 18 of the EDA Staff Regulations provides for a one year lobbying ban for senior officials leaving office.

[21] Under Article 141 of the EDA Staff Regulations, see footnote 9. In the context of this procedure, the EDA's Head of Agency (the EU's High Representative) on 9 September 2020 mandated the EDA Chief Executive to represent him in the setting up, holding of and recording of the hearing of the former Chief Executive.

[22] In accordance with Article 18 of the EDA Staff Regulations, see footnote 4.

[23] In accordance with Article 141 of the EDA Staff Regulations, see footnote 9.

[24] See the timeline above. The former Chief Executive submitted his request on 27 July 2020. The 30 working day period thus started on this day. The EDA informed him that the request lacked information on how the new employers would mitigate risks of conflicts of interest between his previous and intended future roles on 31 July 2020. On 31 August 2020, or on the 26th working day after submitting the request, the former Chief Executive submitted the information that the EDA had requested, leaving the EDA with four working days for its assessment, which included consulting the EDA Staff Committee.



[25] Namely Air-to-Air Refuelling, Remotely Piloted Aircraft Systems, Governmental Satellite Communication, and Cyber Defence.

[26] Namely main battle tanks, soldier systems, patrol class surface ships, counter unmanned aerial systems, defence applications in space, and military mobility.

[27] For further details, see: Council Decision (CFSP) 2015/1835, defining the statute, seat and operational rules of the European Defence Agency

<https://www.eda.europa.eu/docs/default-source/documents/eda-council-decision-2015-1835-dated-13-10-2015.pdf>

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[28] See:

<https://eda.europa.eu/docs/default-source/documents/eda-council-decision-2015-1835-dated-13-10-2015.pdf>

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