

CHIEF EXECUTIVE

1. When did the former Chief Executive become aware of the job opportunities at Airbus? When did he apply for the jobs at Airbus? When did Airbus make him the job offers? (If the EDA does not have this information on file, the EDA could ask the former Chief Executive to provide answers.)

The EDA Staff Regulations (“EDA SRs”)² set the rules applicable to staff, namely to the Temporary and Contract Agents (TAs & CAs) joining the Agency. The EDA SRs are largely aligned with the EU Staff Regulations and CEOS, in particular as regards the rights and obligations of staff set out in Chapter 2 of Titles I and II of the EDA SRs.

The key applicable legal basis as regards post-employment authorisation is found in Article 18 of the EDA SRs which reads:

Article 18

A member of temporary staff shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

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 AACC³ 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. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance.

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.

² Council Decision (EU) 2016/1351 of 4 August 2016 concerning the Staff Regulations of the European Defence Agency, and repealing Decision 2004/676/EC (OJ L 219, 12.8.2016, p. 1–81).

³ In accordance with Article 1.2 of the EDA SRs the authority authorised to conclude contracts (“AACC”) is determined in accordance with the relevant provisions of Council Decision 2015/1835. In this case, the AACC was the Head of Agency Mr Josep Borrell.

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In compliance with Article 31 of Decision (CFSP) 2015/1835, the Agency shall annually publish information on the implementation of the preceding subparagraph, including a list of the cases assessed.

In order to further detail and facilitate the effective implementation of these provisions, EDA has adopted a set of Chief Executive Decisions which form part of the EDA Ethics & Conduct framework.⁴ In the specific case of post-employment activities, CE Decision N°18/17 of 16 May 2018 on outside activities and assignments covers the obligations of staff leaving service as regards the implementation of Articles 18 and 19 of the EDA SRs.

This legal framework is also translated into internal Human Resources (HR) procedures and guidance material which provide additional support to staff members leaving – inter alia – when filling in their declarations of planned activities after leaving the service of EDA. This specific obligation is implemented through two separate documents which must be filled in, signed and returned to the HR Unit prior to the staff member's departure. These documents are:

- the Staff Exit Declaration form, and
- the Authorisation to engage in occupational activity after leaving EDA form.

Staff is reminded by HR staff of the applicable legal framework and their individual obligations when receiving these documents.

This process is applied to all staff members leaving EDA and was equally applied to the former Chief Executive, Mr Domecq, upon his departure on 31 January 2020.

As you will have verified in the documents shared with the case handlers, Mr Domecq fulfilled his obligations by (1) signing the staff exit declaration form, acknowledging his understanding of his obligations under Articles 18 and 19 of the EDA SRs and (2) by declaring his post-employment activity as a “*diplomatic position*” he would take up as of 01 February 2020 in the Spanish Ministry of Foreign Affairs, Mr Domecq's parent ministry from his career as a former Spanish Ambassador. EDA followed the applicable procedure and assessed this application based on the information provided and considering the public service nature of the position declared as his post-employment activity, the authorisation was granted unconditionally.

On 28 July 2020, Mr Domecq sent to EDA a new application for post-employment authorisation in line with Article 18 of the EDA SRs, indicating the new position he intended

⁴ Publicly available references on [Ethics and Conduct \(europa.eu\)](https://european-defence.eu/ethics-and-conduct).

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to take was with Airbus as *Head of Public Affairs Spain and Strategic Advisor*, with an expected starting date of 16 August 2020. This was the first time EDA was made aware of a position offered to Mr Domecq by Airbus.

Again, following the procedure for the assessment of the post-employment authorisation, my services performed an assessment of the application and determined that (1) there were not enough elements to perform a comprehensive analysis and (2) the indicated expected starting date was too close to the application date and it would, in all likelihood, not be possible to come to a decision within that timeframe. This was communicated to Mr Domecq and, following several email exchanges, EDA obtained sufficient information to perform a meaningful assessment of the application.

The assessment focused on the position as described and the additional information elements provided with a particular focus on the aspects which could reasonably be considered to lead to a – real or perceived - conflict with the legitimate interests of the Agency. The outcome of this assessment has been shared with the EO in the context of the inspection of the files, as well as provided – with justified redactions – in the context of an application for public access to documents.⁵

It stems from the above that EDA does not have the information requested by the EO regarding the timing of the application and position offer which preceded the application for post-employment authorisation by Mr Domecq, nor did it have any cause to seek such information when it received the new application. Indeed, the indication that Mr Domecq was returning to a position in his home administration in Spain was clear and without any inference that this would be a temporary posting. When the 28 July 2020 application for post-employment authorisation was filed to declare a change in the status (i.e. position in Airbus), the procedure was once again followed and the assessment - based on the elements provided- examined the potential impact of a decision to authorise the activity on the legitimate interests of the Agency. Declarations of staff members upon leaving service are filled in and signed by staff as “declarations on the honour”.

2. Did the EDA develop a plan or consider how to communicate about this matter, both internally to address concerns of staff members, and externally to Member State authorities and stakeholders, including media outlets as indicated in September 2020 to the EDA Staff Committee? If so, could the EDA please elaborate on this?

⁵ A2D registered as 2020/19/IN.

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EDA values an open and transparent approach to communication on key topics, both internally to staff as to our various external stakeholders (participating Member States, industrial stakeholders, media or other key stakeholders).

Internally, all EDA staff members were informed of the decision by the Head of Agency, acting as AACC, to grant permission to former CE Jorge Domecq to take on his new position at Airbus including the conditions laid upon him during a virtual all staff meeting on 14 September 2020. Moreover, staff working in the Procurement and Contracts Unit (CSD/PCU) are regularly briefed on such cases and how to react when identifying names of former staff in calls for tender or other related procurement documents. Following the same approach, all staff were informed of the opening of the EO inquiry by forwarding CE Communication to Member States on 25 February 2021 (see below external communication).

To external stakeholders, EDA developed Questions & Answers based on expected information requests as soon as the decision was taken by the Head of Agency, acting as AACC. This document was also shared with the Head of Agency/HRVP spokesperson. As is customary, such Questions & Answers are adapted following developments and kept up to date (i.e. Access to documents request, opening of the inquiry by the European Ombudsman). In terms of communication with EDA Member State representatives, EDA informed them of the strategic inquiry and the background thereto on 25 February 2021.

As a last remark I would like to note that, as required in Article 18 of the EDA SRs, a summary of the assessment of and decision taken on the application for post-employment activity was published in January of this year in the 2020 Annual Report⁶ on the implementation of Article 18 of the EDA SRs, which is available under the Ethics and Conduct page of the public EDA website.

3. What interactions did the former Chief Executive have with Airbus before leaving the EDA? Please provide a chronology of all interactions that took place between 1 January 2018 and 31 January 2020. Please provide copies of any communication between the former Chief Executive and Airbus (including, but not limited to Airbus Spain, Airbus Defence and Space and Airbus Brussels office) that EDA holds.

⁶ <https://eda.europa.eu/who-we-are/ethics-and-conduct/documents>

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Based on the information EDA has recorded for the time period indicated, EDA has identified seven (7) occasions during which the former Chief Executive interacted with Airbus representatives. In detail, the chronology is as follows:

2018

- **05/02:** CE Domecq meeting with Airbus representatives at EDA premises.
- **24-26/09:** CE Domecq mission to Madrid for the EDA Military Airworthiness Conference (26/09/2018) and high-level meetings with ES officials (MOD, MFA) on 24, 25 and 26/09/2018. As a side event to the mission, CE introduced the President Airbus ES and Director of Military Aircraft of the Airbus Group at a business breakfast on 25/09/2020.
- **29/11:** EDA Annual Conference with participation of Mr Eduardo Dominguez Puerta, Senior Vice President and Head of Urban Air Mobility, Strategy & International, Airbus as a speaker.
- **05/12:** Meeting with Airbus CEO at EDA premises and attendance of Airbus annual reception.

2019

- **17-18/06:** CE Domecq participation to the Paris Air Show at Le Bourget (FR), incl. side meeting with Airbus Head of Strategy, Mergers & Acquisitions and Public Affairs.
- **11/10:** CE Domecq participation in the Airbus « *Rencontres Institutionnelles* » event (FR).
- **28/11:** EDA Annual Conference with participation of Mr Dirk Hoke, CEO, Airbus Defence and Space as a speaker

2020

No meetings with Airbus in January 2020 (last month of service of Mr Domecq).

The documents related to these meetings held by EDA have been shared with the EO case handlers as part of the inspection of files and support the view that these interactions remained fully within the expected role of the EDA Chief Executive and were solely focused on the interests of the Agency.

4. Was the former Chief Executive involved in the decision-making process related to the 2019 contracts that the EDA agreed with Airbus? If so, please describe the role that the Chief Executive had in this respect, as well as his specific tasks.

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As provided in the EDA Council Decision,⁷ the Chief Executive of EDA is the Agency's legal representative. The Chief Executive has delegated powers to specific staff members through an internal Decision,⁸ which includes the delegation of powers of Authorising Officer (AO) to the Deputy Chief Executive, the Corporate Services Director, the Head of Finance Unit and Head of Procurement & Contract Unit, i.a.

In practical terms, this means that the awarding of contracts at EDA follows a set procedure:

- (1) a recommendation for the contract award is made by the evaluation committee to the Authorising Officer (Deputy Chief Executive by delegation); this does not involve the Chief Executive but solely the Deputy Chief Executive, and the Director and Head of Unit concerned;
- (2) the award decision is taken by the Deputy Chief Executive;
- (3) the contract is prepared for signature by the Procurement and Contracts Unit, under the Corporate Services Directorate, and
- (4) the contract is signed by the Deputy Chief Executive acting by delegation for EDA.

For 2019, Airbus Defence and Space SAS (Airbus France) was awarded specific contracts under a Framework Contract for the procurement of EU Satcom and one contract financed under the Operational Budget of the Agency (OB) relating to Satcom training. From the EDA records on these contracts, I can confirm that the procedure described above was followed and, as a result, Mr Domecq was not involved in the contract award decisions.

5. Has the EDA reviewed the specific form for those seeking authorisation for new jobs, for example to make sure that future applicants submit a detailed description of their future tasks?

As explained in the response to question n°1 above, the form referred to is an instrument used by EDA as part of the procedure for post-employment activity assessment and any review to it should be considered, in my view, in a broader perspective. In that respect, I would like to inform you that the EO recommendations in case 2168/2019/KR were internally reviewed and assessed by my services as soon as these were published in May 2020, as for

⁷ Article 10.7 of Council Decision (CFSP) 2015/1835.

⁸ CE Decision N°17/01 of 29 March 2017 on the delegation of powers to certain staff members of the European Defence Agency.

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any other recommendation issued by the EO which may have an impact on the Agency's way of working.

Moreover, based on the experience of handling the authorisation for Mr Domecq, EDA has initiated a more in-depth review of its current procedures in order to harness lessons learned and address any gaps identified in an effort to improve and ensure EDA's approach in these cases is both compliant and effective. Some specific measures have been identified and are currently under discussion for implementation, and recommendations stemming from the EO's inquiry will be reflected in this review.

6. What does the EDA do in practice to monitor and enforce the restrictions it imposed on the former Chief Executive's new jobs?

As referred to above the decision of the Head of Agency authorised the post-employment activities subject to three specific time bound conditions:

- (1) Until 31/01/2021 – Mr Domecq should not have contacts with EDA staff for the purpose of lobbying or advocacy on matters for which he was responsible as Chief Executive of EDA;
- (2) Until 31/01/2022 – Mr Domecq should remove himself from any Airbus decision or task which concerns EDA activities in order to avoid any perceived or real conflict of interests;
- (3) Until 31/01/2022 – Mr Domecq should abstain from contacts with the Airbus Brussels office for matters which concern EDA.

Furthermore, Mr Domecq was reminded of his duty under Article 19 of the EDA SRs to refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or is accessible to the public.

As indicated above in my response to your question 2, EDA has made sure that the communication to staff and stakeholders on the situation, the decision taken and specifically the conditions set, were clear and comprehensive. This was especially important since information concerning any breach of these conditions would in all likelihood be first spotted at working level. It is however important to note that EDA 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.

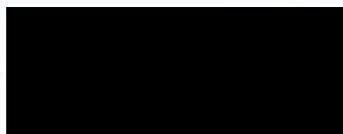
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In terms of enforcement, a distinction should be made between breaches to the conditions imposed to former staff for which EDA can bring evidence in order to trigger an action – and in such cases EDA has been able to take decisive action to enforce the conditions - and breaches for which there is no evidence (e.g. a prohibition to lobby) which will be difficult to enforce.

Similarly to the EU institutions, EDA has the tools to enforce staff members' ethical obligations in accordance with the relevant provisions of the EDA SRs which provide for administrative inquiries, pre-disciplinary and disciplinary procedures, with measures almost identical to those available to other EUIs. However, it should be noted that where - at the end of a disciplinary procedure - EUIs may impose sanctions on a (former) staff member ranging from a reprimand to the reduction of pension rights, the only enforcement measures available to EDA in the case of former staff are in effect the warning and the reprimand, since EDA does not have a pension scheme for its staff. In the specific case of the Mr Domecq, EDA made use of the measures available under the EDA Staff Regulations.

I trust the response provided as well as the outcome of your inspection of the relevant files have provided you with the required information.

Yours sincerely,


Jiri Seivyl