

CHIEF EXECUTIVE

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European Ombudsman  
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FRANCE

EDA202110041/CSD/CE

14 October 2021

Subject: EDA detailed opinion in response to EO recommendations related to strategic inquiry ref. OI/3/2021/KR.

Dear Ms O'Reilly,

I refer to your letter dated 13 July 2021 conveying your recommendations in relation to how the European Defence Agency (EDA) handled the applications of its former Chief Executive to take on senior positions at Airbus (OI/3/2021/KR).

Following your inquiry you made two findings of maladministration by EDA and issued two recommendations as well as one suggestion for improvement to EDA. You furthermore requested the EDA's detailed opinion before 15 October 2021, which we now submit below.

General remarks in response to your findings

EDA continuously strives to ensure the highest standards of administration and fully agrees with you that the public must be in a position to trust that public authorities serve the general interest, and not private or personal interests. We place great importance on transparency in demonstrating EDA's compliance with legal obligations and ethical standards. We thus welcome your input as provided in your recommendations and suggestion for improvement.

*Response to the conflict of interest assessment*

We regret to learn from your letter that you consider that EDA's conflict of interest assessment lacked *"the requisite thoroughness"*.

Your finding in this respect appears to be based on your view that EDA should have checked when exactly the former Chief Executive became first aware of a possible engagement in the private sector.

From EDA perspective, it is not immediately apparent how such information, at that point in time, would have improved, from an *ex post* perspective, the handling of the conflict of interest assessment.

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Indeed, the conflict of interest assessment conducted by EDA in July/August 2020 focused on the assessment of the actual intention to take up a new job with Airbus, as communicated to EDA by the former Chief Executive for the first time on 28 July 2020, thus almost six months after the end of his employment with EDA.

As you were informed, at the end of his term in office, the Chief Executive had informed EDA that he would return to the Ministry of Foreign Affairs of an EU Member State as a civil servant. He had done so by submitting a written application for authorisation to engage in an occupational activity after leaving the EDA as well as a staff exit declaration, signed and dated 30 January 2021. He left the Agency on 31 January 2021.

The intention of taking up a different position than the one originally indicated was communicated by the former Chief Executive in the appropriate form on 28 July 2020 in a second application. EDA assessed the new application in view of establishing *“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”* (Art. 18 of EDA Staff Regulations).

EDA further determined whether the AACC, having regard to the interests of the service, should either forbid him from undertaking it or give its approval subject to any conditions it saw fit as required by the Staff Regulations. This assessment and the subsequent decision were done on the basis of concrete and verifiable elements rather than on the basis of non-verifiable information about the initial prospects of a possible engagement with Airbus.

As it becomes clear from EDA’s reply to the former Chief Executive of 31 July 2021 in response to his application submitted on 28 July 2020, EDA immediately requested all additional information it required for the purpose of conducting a thorough and meaningful assessment of the new application with regards to a (potential) conflict of interest, in accordance with its Staff Regulations, and recalled to the applicant that concluding a new contract without prior authorisation would constitute a breach of the Staff Regulations. EDA finalised the assessment once it had received the required information and took a decision based on the information provided.

EDA does not, therefore, concur with your finding that it has not examined the matter with the requisite thoroughness.

### *Response to your assessment of the conditions applying to EDA’s decision*

As you point out under the section relating to the conflict of interest assessment, against the background of EDA’s temporary-only employment contracts, the most restrictive option available to EDA, being prohibiting former employees from taking a new employment of their choosing, should be

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used only where other less restrictive measures are not adequate for protecting the interests of EDA. As recognized in EU case law, EU institutions, bodies and agencies enjoy wide discretion.<sup>1</sup>

EDA, after having considered all elements of the case, imposed the following conditions in order to mitigate any risk:

- “• 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;
- 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;
- Until 31/01/2022 – Mr Domecq should abstain from contacts with the Airbus Brussels office for matters which concern EDA.”

With regards to the condition (abstention from contacts with Airbus Brussels office for matters that concern EDA), you remark under point 25, that “*the information and contacts to which the former Chief Executive had access while in office may have also concerned other EU institutions (which are directly involved in the operation of the EDA)*”. EDA takes the opportunity to clarify that the Agency is set up under the Treaty on European Union as a separate legal entity operating under the authority of the Council and is governed by its own legal framework. Although the Head of the Agency is also the High Representative/Vice-President of the European Commission, no EU institution is “*directly involved in the operation of the EDA*”. EDA is of the view that its condition to abstain from contacts with the Airbus Brussels office for matters that concern EDA already comprises information concerning other EUI as far as they relate to EDA activities. The former Chief Executive was furthermore reminded in the AACC decision of his duty under Article 19 of the EDA Staff Regulations 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.

With regards to the second condition of a recusal from Airbus decisions you furthermore remarked that EDA appears to be of the view that it cannot effectively monitor and enforce this condition, thereby rendering the conditions ineffective.

Contrary to this general assumption, EDA simply remarked that it “*has neither the resources nor the competence to perform a systematic monitoring of post-employment conditions*”. This does not mean that the conditions cannot be monitored at all, as was explained in EDA’s response. Moreover, EDA is of the view that this condition also serves the important purpose to instruct staff on the conduct expected in such cases and ensures better awareness of the restrictions applicable to Mr. Domecq, and forms part of the monitoring of the conditions. Indeed, it is not further explained how you reached the conclusion that there was a “*lack of effective monitoring and enforcement by the EDA*”.

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<sup>1</sup> Case F-86/13 [EUR-Lex - 62013FJ0086 - EN - EUR-Lex \(europa.eu\)](#) .

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We recognize that a **systematic** monitoring of conditions concerning the compliance of the former staff member within the new employer organisation is indeed difficult as long as such behaviour would not manifest itself externally. However, all EDA staff members were made aware of the general conflict of interest rules (awareness raising) and were furthermore concretely informed of EDA's response and the conditions imposed on the former Chief Executive. Indeed, the communication to all staff served to ensure effective implementation of the conditions at all levels, should any breaches thereof become apparent and come to the attention of EDA staff.

You furthermore consider that the failure to extend the lobbying ban to two years amounts to a lack of consistency.

First of all, I would like to point out that EDA's condition with regards to the lobbying ban is fully aligned with Article 18 EDA SR: *"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.**"*

EDA thus followed the rule contained in its SR, being aware that exceptions to this rule may be applied, where so required. The fact that EDA stipulated longer time periods for the other two conditions only demonstrates, from our perspective, the differentiated and balanced approach with regards to each specific condition, taking account of the principle of proportionality.

You furthermore criticise EDA for not including staff of other EU Institutions in the lobbying ban. Whilst it is true that the obligations of staff under the EU Staff Regulations and the EDA Staff Regulations are broadly the same, the institutions remain separate legal entities, with staff governed by separate legal acts. In this respect, I would like to point out that it was EDA's intention to stipulate conditions which EDA could actually monitor. It is not immediately apparent on what legal grounds EDA would have been able to impose such conditions on staff which are not under its Staff Regulations, or even (had this been legally feasible) how EDA would have been expected to ensure the effective monitoring and enforcement of such a condition **vis-à-vis staff of other EUI**.

EDA would welcome your practical advice on how such a lobbying ban including staff of other EUI could have been effectively implemented by EDA.

We would welcome any practical recommendations from your side what concretely such an effective monitoring and enforcement should entail, taking into account the resources of the Agency and considering that EDA, as an example, does not have recourse to a sanction such as reducing pension rights.

### *Response to your findings of maladministration*

Under point 36 you identify two instances of maladministration:

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- Not imposing sufficiently effective restrictions to mitigate against the risks of real and perceived conflicts of interest, which the EDA had determined existed.
- 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.

We note that you reached a different assessment with regards to the effectiveness of the three conditions imposed by EDA in order to mitigate against the risks of real and perceived conflicts of interest than EDA. Under point 35 you stated that you determined *"that the threshold for prohibiting this job was reached, and not doing so constituted maladministration"*.

While acknowledging the points you made and the conclusions you reached in your inquiry, we would have welcomed a more substantiated and specific reasoning with regards to the definition of this threshold, which appears decisive here for your conclusions and which would have been useful in view of any possible future cases. Reaching this (undefined) threshold would thus imply an automatic recourse to the most restrictive option available to EDA under the SR, namely prohibiting the former employee from taking up a new employment of their choosing and thus limiting the fundamental right to engage in work and to pursue a freely chosen or accepted occupation, while fully acknowledging the limitations and conditions set out under the Staff Regulations.

Following a thorough assessment of the case at hand, which also took account, as previously explained, of the limited direct involvement of the former Chief Executive with Airbus while in office, EDA considered less restrictive measures than the prohibition of the occupational activity as adequate and proportionate for protecting its legitimate interests. In doing so, EDA combined a set of conditions which aimed at jointly striking the appropriate balance between the need to ensure integrity through temporary prohibitions and restrictions, and the need to respect the freedom to choose an occupation and right to engage in work as provided by Article 15 of the Charter of Fundamental Rights.

Finally, we would also like to point out that EDA, throughout the handling of the case, distinguished between the elements pertaining to the (potential) conflict of interest assessment (as triggered by the application) and the later arising issue of a very obvious (and undisputed) breach of the EDA Staff Regulations due to fact that the former Chief Executive did not wait for EDA's authorisation before signing the contract and taking up the new role, which was dealt with under the applicable disciplinary rules.

Follow up to your recommendations

I turn now to your recommendations which were as follows:

*"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."*



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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. In accordance with the Statute of the European Ombudsman, the European Defence Agency (EDA) shall send a detailed opinion before 15 October 2021."*

Concerning your first recommendation, as for any past cases, including the case at hand, EDA will always consider all options at its disposal under the Staff Regulations, including the possibility of a prohibition to take up certain positions, for future cases.

With regards to your second recommendation, I would like to inform you that the EDA Legal Office has conducted a substantive review of the internal rules, guidance material and templates and has recommended the following measures:

- 1) **EDA to put in place guidelines on post-employment restrictions;**
- 2) **EDA to insert a new standard paragraph in vacancy notices (in particular for senior staff);**
- 3) **EDA to consider adopting internal procedures restricting access to confidential information (where staff still in service declare a move to another job);**
- 4) **EDA to consider formally appointing a member of staff as EDA Ethics Officer.**

I am pleased to inform you that follow-up on all specific points is underway.

All vacancy notices for senior staff will contain a new standard paragraph as follows:

### ***New section in EDA Vacancy Notices for members of staff***

*Please note that for this position restrictions (including prohibition) on post-employment activities may be applied.*

*For two years after leaving the Agency, members of staff remain bound to seek clearance from the EDA, as soon as the post-employment activity is known and in due time to allow for authorisation before engaging in another activity. If that activity is related to the work carried out during the last three years of service at the EDA, and it could lead to a conflict with the legitimate interests of the EDA, the Agency can give its approval subject to any conditions it deems fit or forbid the activity.*

*In its assessment, EDA will in particular look at the nature of the future position, the quality of the future employer, level of interaction with EDA staff on EDA activities, likelihood of involvement in decision taking of a financial/commercial nature and the level of risk of conflict with the legitimate interests of the Agency.*

*For senior staff, an additional ban of 12 months will apply on lobbying or advocacy vis-à-vis Agency staff for their business, clients or employers on matters for which they were responsible during their three last years of service.*

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Candidates are referred to the relevant section in EDA's Ethics Framework, available on EDA's website: [Ethics and Conduct \(europea.eu\)](https://europea.eu).

The other measures are under preparation by the respective services and will be put in place as soon as approved by the management.

In particular with regards to the third measure, the Agency will need to further discuss its practical feasibility with the newly arrived Chief Information Security Officer and IT colleagues.

The fourth measure will require additional resources which are currently not available. Internal reflections on the most appropriate and most sustainable set-up are ongoing.

Follow-up to your suggestion for improvement

In addition, you made the following suggestion for improvement to the EDA:

*"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."*

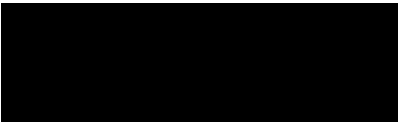

EDA fully agrees with this suggestion and has already modified the application form. The form now clearly outlines the expected detail of information and ensures that the Agency will be provided with all elements required for a thorough assessment from the outset.

Please find it attached in annex to this letter.

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I hope that this detailed response provides clarifications and serves to inform you of EDA's follow-up in relation to your recommendations and suggestion for improvement. I furthermore trust that this response will be published on the European Ombudsman's website and stand ready to furnish any further information you may require.

Yours sincerely,

  
Jiri Sedivy 

Annex 1: Application for authorisation to engage in an occupational activity after leaving EDA

## Application for authorisation to engage in an occupational activity after leaving EDA

### Article 18 of the [Staff Regulations](#)

Please note that this application for authorisation is required before engaging in an occupational activity, whether gainful or not, **within two years of leaving the service**.

If that activity is related to the work carried out by the staff member 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/her from undertaking it or give its approval subject to any conditions it thinks fit. For senior staff (i.e. CE, DCE, Directors), an additional ban of 12 months applies on lobbying or advocacy vis-à-vis Agency staff for their business, clients or employers on matters for which they were responsible during their three last years of service.

It is therefore of utmost importance to provide all relevant information as soon as possible and in the required detail as to allow EDA to take a decision within 30 days.

THE FORMER TEMPORARY OR CONTRACT AGENT			
NAME / First name:			
Position:			
EDA Personnel N°:		Category:	<input type="checkbox"/> TA <input type="checkbox"/> CA <input type="checkbox"/> SNE
End of contract:	dd/mm/yyyy	Grade/step:	
Address:			
E-mail:			
Telephone(s):			
Please describe your work during the last three years of service:			
Are you receiving or will you receive any pecuniary benefit from the EDA after leaving? If so, please specify what sort (invalidity or unemployment allowance).			<input type="checkbox"/> YES <input type="checkbox"/> NO



NEW INTENDED ACTIVITY	
Organisation (name):	
Address:	
Website:	
E-mail:	
Telephone(s):	
Nature of activities:	
Does this organisation receive funding from EDA? If yes, please provide details.	<input type="checkbox"/> YES <input type="checkbox"/> NO
Does the organisation for which you wish to work have direct or indirect commercial, financial, or contractual links (including grants) with a European Union institution or body (in particular the EDA)? If so, please specify.	<input type="checkbox"/> YES <input type="checkbox"/> NO
During your work at EDA, did you have any direct or indirect relations with the organisation for which you wish to work <sup>1</sup> ? If so, please specify (including past contact points at the organisation, meetings, conferences etc.).	<input type="checkbox"/> YES <input type="checkbox"/> NO
Please specify your position (incl. job title) in the organisation:	
Expected duration:	Expected starting date: dd/mm/yyyy
Nature of activities:	
You will be:	<input type="checkbox"/> an employee <input type="checkbox"/> a shareholder <input type="checkbox"/> self-employed
E-mail:	
Telephone(s):	
Please provide a description of your intended occupational activity, including main tasks, your specific field of activity, etc.	

<sup>1</sup> State in particular whether you were engaged in preparing financial and/or contractual relations.

Will you receive remuneration or other pecuniary advantages? If yes, specify.	<input type="checkbox"/> YES <input type="checkbox"/> NO
Will your new activity have direct or indirect links with EDA? If yes, specify.	<input type="checkbox"/> YES <input type="checkbox"/> NO
Other relevant information:	
You may attach any document you consider will demonstrate that your new activities or duties are compatible with those you exercised at the EDA, e.g. job description of the intended activity, statute of the organisation, etc.	

NAME / First name:	Signature:
Place and date:	

ASSESSMENT OF THE HEAD OF UNIT <sup>2</sup>	
<input type="checkbox"/> Favourable <input type="checkbox"/> Unfavourable	
If unfavourable, give reasons:	
<div>NAME / First name:</div> <div>Place and date:</div>	
<div>Signature:</div>	

ASSESSMENT OF THE DIRECTOR <sup>3</sup>	
<input type="checkbox"/> Favourable <input type="checkbox"/> Unfavourable	
If unfavourable, give reasons:	
<div>NAME / First name:</div> <div>Place and date:</div>	
<div>Signature:</div>	

ASSESSMENT OF THE HEAD OF UNIT HR <sup>4</sup>	
<input type="checkbox"/> Favourable <input type="checkbox"/> Unfavourable	
If unfavourable, give reasons:	
<div>NAME / First name:</div> <div>Place and date:</div>	
<div>Signature:</div>	

<sup>2</sup> Any modification of the activity after this application must be reported to the Chief Executive.

<sup>3</sup> Any modification of the activity after this application must be reported to the Chief Executive.

<sup>4</sup> Any modification of the activity after this application must be reported to the Chief Executive.

ASSESSMENT OF THE CORPORATE SERVICES DIRECTOR <sup>5</sup>	
<input type="checkbox"/> Favourable <input type="checkbox"/> Unfavourable	
If unfavourable, give reasons:	
<div>NAME / First name:</div> <div>Place and date:</div>	
<div>Signature:</div>	

ASSESSMENT OF THE DEPUTY CHIEF EXECUTIVE	
<input type="checkbox"/> Favourable <input type="checkbox"/> Unfavourable	
If unfavourable, give reasons:	
<div>NAME / First name:</div> <div>Place and date:</div>	
<div>Signature:</div>	

DECISION OF THE CHIEF EXECUTIVE	
<input type="checkbox"/> Activity authorised <input type="checkbox"/> Activity refused	
If refused, on what grounds:	
<div>NAME / First name:</div> <div>Place and date:</div>	
<div>Signature:</div>	

<sup>5</sup> Any modification of the activity after this application must be reported to the Chief Executive.