



Emily O'Reilly
European Ombudsman

Mr Maroš Šefčovič
Vice-President
European Commission
1049 BRUSSELS
BELGIQUE

Strasbourg, 26 -11- 2013

Complaint 297/2013/(RA)FOR

Dear Mr Šefčovič,

As you know, the above mentioned inquiry relates to an alleged conflict of interests of a member of the Commission's Ad hoc Ethical Committee. At this stage of the inquiry, I would like to bring to your attention the broad gist of the reasoning that could support a possible future draft recommendation to the Commission.

I would like to underline at the outset that my reasoning does not contain or imply a negative evaluation of the personal ethical credentials of any member of the Ad hoc Ethical Committee.

In this regard, I note that the Commission's opinion argues that, in order for the first allegation of the complainants to be sustained, it would be necessary to indicate in "which situation" and to "which extent" a conflict of interests would exist as regards a member of the Ad hoc Ethical Committee. Both these elements call for comment.

I first emphasise that it would be surprising if the Commission were to regard a conflict of interest (actual or potential) involving a member of the Ad hoc Ethical Committee as acceptable, irrespective of its extent.

As regards the situations in which a conflict of interests would exist, the complainants argue that one member of the Ad hoc Ethical Committee is a "lobbyist". The Commission disputes this description. I note, however, that irrespective of the accuracy of the term "lobbyist", it is not disputed that this person represents private interests in contacts with the Commission. I note that the complainants gave examples of the member meeting with officials in the Commission's Legal Service in September 2011 and September 2012 and representing the interests of a tobacco company. The Commission does not dispute this factual assertion, but simply insists that the contacts with the Commission's Legal Service were limited to "legal issues" relating to the "Tobacco Directive", and that, as a result, they did not constitute "lobbying".



In my view, it is difficult to consider that such legal representation work, which I understand may range from simply gathering information from Commission officials on behalf of clients to seeking to convince Commission officials of a legal argument on behalf of clients, does not constitute a potential conflict of interests.

A conflict of interests exists when a public official has private interests which *could* influence the performance of their official duties and responsibilities. It is not necessary that there should be evidence that a public official *actually* modifies his or her behaviour in regard to official duties and responsibilities as a result of private interests. On the contrary, it is the mere *possibility* that behaviour could be influenced by private interests (in this case, representing clients' interests) which is central to determining whether a conflict of interests exists. Any concrete example of a conflict of interests actually altering the behaviour of a public official would be very serious and indeed would constitute misconduct. However, the fact that no such misconduct has been demonstrated does not exclude the existence of a conflict of interests.

On the basis of my analysis, briefly summarised here, my view is that the Commission should revoke its decision to re-appoint the member in question and should appoint another person instead. In this context and in light of the arguments above, I would like to invite you to consider whether the Commission really believes that reasonable citizens with common sense would be convinced that there is no possibility that the work of the Ad hoc Ethical Committee could be influenced by the client-related activities of the member in question?

I hope this letter will be helpful to you in the ongoing internal reflexions of the Commission about this matter.

Yours sincerely,

Emily O'Reilly