



**Friends of
the Earth
Europe**



Médiateur européen

30 JUIN 2014

Date d'arrivée

European Ombudsman Office
Fergal O' Reagan
Head of complaints and Inquiries U2
1 Avenue du Président Schuman
CS 30403
F-67001 Strasbourg Cedex

Brussels, 24th June 2014

Ref: Complaint 1853/2013/TN – Friends of the Earth Europe Observations

Dear Mr O' Reagan

In your letter dated 21st May 2014, you informed us about the opinion of the European Commission in complaint 1853/2013/TN. We appreciate being given the opportunity to comment on this. The observations of Friends of the Earth Europe are set out below, under the following structure:

- 1. The Commission's preface (pp 1-2 of the Commission's response)**
- 2. The Commission's comments on our arguments (p.15 of the Commission's response)**

Firstly, the response provided by the European Commission places a focus on denying the allegations put forward by our complaint, without addressing any of the substantial points we raised. In its current form, we do not consider that the European Commission's opinion provides any element that alleviates the concerns raised in our initial complaint, or indeed to address the maladministration we have highlighted.

1. The Commission's preface

In the preface of its opinion, the European Commission states that:

"The commission has always been very cooperative and transparent with the complainants providing them with extensive information and documents following their numerous requests for access to documents and complaints."

As previously detailed in our complaint, in relation to the handling of our case, Friends of the Earth Europe had months of delays before gaining access to all the elements and documents we had originally requested. Following the first access to document request (annex 1 to our complaint) and the first letter to the Secretariat General about the case

(annex 3 to our complaint), the European Commission mentioned the documents we had requested access to, without having disclosed them (annex 4 to our complaint). We had to table another access to document request to finally gain access to those documents (annex 5 to our complaint), and be in a position to analyse them. This is far from ensuring good cooperation and transparency in the process. Had the European Commission proactively disclosed these documents we requested from the beginning, it would have avoided multiple requests, and it also would have made the processing of the case much smoother.

When it comes to the question of the definition of a conflict of interest, the European Commission raises arguments that are distracting from the specific points raised in our complaint, while failing to address them in detail.

The Commission criticises our concept of a conflict of interest on grounds that it:

“has no basis in the SR, and would, if put into effect, infringe the fundamental rights of staff and former staff. [...] The latter point is of particular importance given the increasing proportion of temporary and contract staff, who may only be in the institutions for a short period, and thereafter need to find other employment. They cannot be obstructed in their legitimate and essential concern to find employment, except for objective and compelling reasons.”

It quotes article 15 paragraph 1 of the Charter to further strengthen its point. Friends of the Earth Europe is in no way contesting the fundamental right to engage in work and pursue a freely chosen or accepted occupation. The question raised by FoEE through this complaint is about the proper implementation of the rules set by the European Commission for its own staff in order to ensure that EU staff engaging in and pursuing new occupations do it under terms and conditions that are compatible with those rules in full line with the European Commission's duty to regulate in the public interest. The response of the European Commission seems to suggest that strong ethical rules impede the possibility for staff to find new employment after leaving the European Commission. Such a response does not address at all the problem of former EU staff using their insider knowledge and networks to seek highly paid positions in the private sector, and how this practice is harming the European Commission's duty to regulate in the public interest.

The Commission states that it:

“considers that its internal system is solid and that it assesses all cases with due consideration for the legitimate interests of the institution [...] The Commission is confident that it has a comprehensive set of rules that are correctly implemented and constantly being monitored for possible improvement.”

Unfortunately, the Commission's handling of Friends of the Earth Europe's complaint seems to suggest this is not the case. First of all, it is only because FoEE enquired about the case that the authorisation process for the job move took place. Indeed prior to our request for the access to document and our letter to the Secretariat General, there was no documentation about this job move (see annex 4 to our complaint). In fact, the Commission's response to Friends of the Earth Europe's complaint partly recognised this failure (annex 14 to our complaint; *“while it is regrettable that the request for authorisation was not introduced in due time by the person concerned”*). Furthermore, no follow-up measures appear to have been taken in relation to this failure to implement the rules which normally should be applied. The European Commission keeps hiding behind the responsibility of the individual staff and denying maladministration.

Finally, the Commission states that their “*decisions in this domain are fully in line with the general principles of good administration, lawfulness, proportionality, non-discrimination and equal treatment, and consistency*”. Again, this is contradicted by its handling of our case: the repeated delays in responding to FoEE’s requests for documents and correspondence, the failure of the European Commission to apply its own rules as well as their inability to recognise their failure in ensuring their proper application - all of which seem to be in contradiction with the requirements of the European Code of Administrative Behaviour¹, in particular article 10 on consistency and article 17 on time-limits.

2. The Commission’s comments on our arguments (p.15 of the Commission’s response)

In its opinion on FoEE’s complaint, the European Commission denies maladministration by stating that:

“The Commission refers to the extensive correspondence with the complainant and the explanations given. The Commission therefore cannot accept that, on the basis of the claims and allegations of the complainant, there has been maladministration.”

As mentioned above, and as extensively detailed through the annexes attached to our complaint, the European Commission has failed to address the concerns we raised that its own rules were not applied properly in this case. Also, it has failed to proactively disclose elements requested by FoEE from the early stages of this case and has systematically extended its time-limits for responses in handling our letters and complaint.

For the reasons mentioned above, we would like to maintain our complaint and reiterate our allegation that the European Commission’s handling of this case constitutes maladministration.

Yours sincerely, *NA*


Natacha Cingotti
Corporate and Transparency Campaigner
Friends of the Earth Europe

Contact: 

¹ <http://www.ombudsman.europa.eu/resources/code.faces#/page/1>