



Emily O'Reilly
European Ombudsman

Mr Jean-Claude Juncker
President
European Commission

Strasbourg, 26/05/2016

Strategic inquiry OI/6/2016/AB concerning the European Commission's rules and practices to prevent possible conflicts of interest of Special Advisers

Dear Mr President,

In carrying out its work, the European Commission rightly seeks to obtain the best advice available, be it from within the Commission or, if necessary, from the outside. Outside expert advice can take the form of "Special Advisers", who provide direct assistance to Commissioners based on their exceptional qualifications and/or the relevance, quality and level of their professional experience and expertise¹.

Special Advisers have privileged access to Commission decision-makers at the highest levels and potentially to confidential information. Moreover, due to their high-level experience and skills, their advice to these decision-makers may be given more weight than advice from other sources.

Many individuals are employed for only a short period of time, often for only a number of days per year; some are unpaid, some are retired but many also work outside the Commission during their time as Special Advisers. While this is not in itself an obstacle to having a Special Adviser, this does imply that the necessary rules and procedures be put in place to prevent Special Advisers being used to exert undue influence on the Commission in favour of vested interests. Furthermore, if a Special Adviser is chosen to give **independent** expert advice, the Commission should ensure that the Special Adviser provides such advice in full independence of any outside role he or she might have. Thus, a robust system to check for any conflicts of interest must be put in place.

¹ [Article 5 of the Conditions of Employment of Other Servants of the European Union \(CEOS\)](#).



Complaints submitted to my office have raised questions about the mechanisms the Commission has in place to assess conflicts of interest when appointing Special Advisers and I have already inquired into this matter in the past. Therefore, and taking into account the considerations outlined below, I consider that there are grounds for opening a systemic inquiry. My inquiry will examine how the Commission is applying its present rules and also the question of whether it would be advisable for the Commission to amend its present rules and practices, in line with principles of good administration. In this context, it is my view that EU institutions should not only continue to work towards preventing conflicts of interest, but also appearances of conflicts of interest, and should continue to be proactive in identifying and managing risks in this area. This will serve not only the reputation of the EU institutions but, in the present context, the reputations of the Special Advisers themselves, often individuals of impeccable credentials and of the highest standing.

I would like to stress that this inquiry does not concern the conduct of any individuals, but instead focuses on the following systemic administrative issues.

First, concerns have been raised about the extent of the Commission's examination conducted before Special Advisers are appointed. As my predecessor pointed out, *"it is the Commission's responsibility, not the prospective Special Adviser's, to determine whether there is a conflict of interest that should prevent the latter from being appointed"*². It would be helpful to reassure the public that the Commission obtains all necessary information regarding the prospective mandate of the Special Adviser and his/her outside activities before the appointment is made.

In the case of Special Advisers, whose mandate can be very broad, an overlap between their tasks and outside activities need not automatically prevent their appointment. Possible overlaps, while not automatically implying a conflict of interest, should nevertheless be adequately addressed.

Second, since Special Advisers are free to continue and/or take up new roles in the private sector during their mandate, the conflict of interest assessment should be an ongoing process. It is good administrative practice to ensure that a Special Adviser informs the Commission of substantial changes to his/her activities and for a new conflict of interest assessment to then take place. Although the Commission had agreed to do so³, this matter has been raised again in a complaint recently submitted to my office. The present inquiry will therefore allow the Commission to set out the rules which now apply where there has been any change in the outside activities of a Special Adviser' after s/he has been appointed.

Finally, the Commission provides a substantial amount of information concerning its Special Advisers, including their CVs, on its website. This is

² Decision of the European Ombudsman closing his inquiry into complaint 476/2010/ANA <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/10719/html.bookmark>

³ In its reply to the Decision of the European Ombudsman closing his inquiry into complaint 476/2010/ANA.



already a high level of transparency. However to avoid any suggestion of a conflict of interest where there is none, I would ask the Commission to consider proactively publishing additional information, in particular on its conflict of interest assessment. Data protection issues could be addressed by asking prospective Special Advisers to give their consent to disclosure.

As a first step in this inquiry, I would appreciate it if you could arrange for my services to inspect the files of all Special Advisers appointed in 2015 and 2016. Please be assured that the Ombudsman's inspection will not result in third parties or any other person obtaining access to any documents which the Commission identifies as confidential during the inspection, or to any information contained in such documents.

The meeting should also provide the opportunity to exchange views and provide clarifications at this early stage. Depending on the Commission's availability, I would envisage the inspection taking place at the end of June. I will determine the next step in this inquiry on the basis of the information obtained at the inspection. I do not, therefore, at this stage, ask the Commission to provide an opinion on the matter.

I should be grateful if your services could contact Ms Alice Bossière (+ 32 2 283 34 01), Strategic Inquiries Officer, responsible for this inquiry, in order to agree on a convenient date for the inspection of documents.

Yours sincerely,

Emily O'Reilly