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On behalf of: Corporate Europe Observatory, Greenpeace EU Unit, LobbyControl and Spinwatch. Hereafter referred to as “the Complainants.”

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2. Against which European Union (EU) institution or body do you wish to complain?

European Commission

3. What is the decision or matter about which you complain? When did you become aware of it?

This complaint concerns the failure of the European institutions, specifically the Commission, to adequately implement the 'revolving door' rules with a view to substantially reducing the risk of conflicts of interest from arising. The 'revolving door' is a recognised phenomenon describing the movement of staff from public sector positions to jobs in the private sector, or vice versa. The inadequate implementation of the rules by the Commission has occurred in a range of different cases which are detailed below.

The Complainants consider that these failures constitute maladministration, understanding maladministration to be poor or failed administration and that it occurs if an institution fails to act in accordance with the law, or fails to respect the principles of good administration, for instance through administrative irregularities. The Complainants have been aware of this problem for a number of years and over this time, have submitted a series of complaints to the Commission (as detailed in section 6 of this submission) to set out our concerns.

Background to the revolving door problem

The ‘revolving door’ is a recognised phenomenon by which politicians and officials move between positions of public office and jobs in the private sector, in particular when they come from and/or return to businesses which have a direct interest in the areas of public policy for which the officials are or have been responsible.

The revolving door phenomenon increases the likelihood that a public official will be taking decisions which are in some way related to their past or future work in the private sector

and which therefore generates a potential conflict of interest.

The Organisation for Economic Cooperation and Development's (OECD) 2007 definition of conflicts of interest is a good standard which should help with the application and implementation of revolving door rules: "Conflict of interest occurs when an individual or a corporation (either private or governmental) is in a position to exploit his or their own professional or official capacity in some way for personal or corporate benefit."¹

The OECD has also stated that while all public officials have legitimate interests which arise out of their capacity as private citizens, a conflict of interest "involves a conflict between the public duty and private interests of a public official, in which the public official has private interests which could improperly influence the performance of their official duties and responsibilities".²

The Complainants note that both definitions require a precautionary approach to be taken. Neither requires the proof of a conflict of interest to have taken place, but both refer to instances where a conflict of interest may arise, or where there is an apparent conflict of interest: "is *in a position to exploit*" and "which *could* improperly influence" [emphasis added]. The Complainants consider that this is an appropriate approach and that when applied to a revolving door scenario, action should follow. The OECD further argues that "conflicts of interest cannot simply be avoided or prohibited, and must be defined, identified, and managed."

Transparency International (TI) refers to "influence peddling, for example the excessive and undue influence of lobbyists in the European corridors of power"³ as a form of 'legal corruption', distinguishing it from illegal forms such as bribery, and arguing that it is promoted by "opaque lobbying rules, trading in influence and the existence of the revolving doors between the public and private sectors". TI also asserts that such practices result in a "subtle form of policy capture that skews decision-making to benefit a few at the expense of the many".⁴

TI argues⁵ that there are several distinct conflicts of interest which might arise from officials going through the revolving door into business, or vice versa:

- 1. Abuse of office** – where an official might use their influence while in office to shape a policy or decide to ingratiate themselves with companies which might later hire them.
- 2. Undue influence** – where an ex-official working for a company influences their former colleagues to favour the company.
- 3. Switching sides** – where an individual moves to a private sector role which requires them to oppose their previous institution on an issue where they used to represent the institution. This can be a problem if, for example, they use privileged information gained while in office to frustrate the institution's aims.
- 4. Regulatory capture** – where officials are overly sympathetic to the industry they must regulate because they used to work in that industry..

The Complainants agree with this analysis and underline that the policy capture can be so subtle that it is not easy to prove in a factual way. It can take place via the sharing of:

- confidential information (which is separately regulated under the Staff Regulations)
- crucial insider know-how about how internal policy-making systems and processes work
- useful contacts and networks which enable lobbying to take place on the basis of pre-existing relationships and knowledge
- pre-existing sympathy for, and insights into, a particular organisation's or sector's interests
- using previous status or authority to unduly influence their former staff and / or colleagues on behalf of their new employer or clients

These are all ways in which the revolving door can benefit a specific interest, company or sector over and above other companies, industries or interests, including the public interest. If EU staff were to engage in these practices, it would constitute a breach of the Ombudsman's 'Public service principles for the EU civil service'⁶ as well as of the commitment which EU officials should have towards EU citizens and should uphold by acting with integrity and objectivity. There is a serious risk that misplaced loyalties can undermine the faith that citizens have that the EU institutions solely act in the public interest.

The UN Convention on Corruption (2003) also recognises the seriousness of conflicts of interests and stresses the importance of: "Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure".⁷

Overall, it is clear that the 'revolving door' is a recognised phenomenon which requires regulation to reduce the possibility of a conflict of interest occurring and it is therefore important that there are robust rules in place regulating what should happen when EU staff go through the revolving door.

The European institutions do have several rules which are aimed at preventing conflicts of interest from arising when EU staff leave office and start new activities, or when staff join the EU institutions.

Current rules which aim at regulating the revolving door include:

- Staff Regulations Article 16 which regulates the post-employment activities of former EU staff
- Staff Regulations Article 11a which regulates current EU staff who find themselves in a possible conflict of interest position
- Commission decision on outside activities and assignments (85-2004) which regulates EU staff taking leave on personal grounds / going on sabbatical, and which also sets out specific exemptions for contract agents.

The Complainants make this complaint about the failure of the Commission to adequately implement revolving door and conflict of interest rules whilst recognising other rules relevant to this topic, including the right to work and regulation 45/ 2001 on the release of personal data.

4. What do you consider that the EU institution or body has done wrong?

Below is set out each of our concerns regarding the way in which the Commission applies, implements and enforces the various revolving door rules. These cover the following seven areas:

- A. Not ensuring that staff comply with their responsibilities under the rules and / or not applying sanctions in case of serious breaches
- B. Failure by the Commission to ensure that it has gathered all the relevant information when assessing cases
- C. Not adequately scrutinising the future employment of outgoing staff for risks of conflicts of interest
- D. Not adequately scrutinising incoming and current staff for risks of conflicts of interest
- E. Not keeping adequate records of cases assessed
- F. Not properly implementing the rules regarding sabbaticals
- G. Not having an adequate definition to determine when contract agents should be covered by the rules

Below is listed a summary of the specific concern (in bold), the specific regulation (in text boxes) which applies in this area, and then background, evidence and / or cases of failures to adequately implement or apply the regulations. Full details of all cases involving individuals are provided in the case studies at the back.

Area A: The Complainants consider that the Commission does not ensure that staff seek authorisation under Article 16 of the Staff Regulations; nor does it apply sanctions in the case of serious breaches. The Complainants consider that this is maladministration.

The Staff Regulations, Article 16 says: "Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof."
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Background

The OECD guidelines for managing conflicts of interest in the workplace⁸ make six key recommendations for managing conflicts of interest. These include 'identifying relevant conflict of interest situations' and 'enforcing the conflict of interest policy'. The OECD suggests providing clear descriptions of circumstances and relationships that can be problematic, developing organisational strategies and practices to tackle conflicts of

interest, providing procedures and consequences for non-compliance.

Similarly, the Ombudsman's recommendation on complaint 775/2010/ANA stated "Clearly, an institution should take all necessary measures to try to ensure that all members of staff comply with the rules mentioned above ... This means that an obligation is incumbent upon [the institution] to ensure that at that time its departing staff member complied with her obligations under Article 16 of the Staff Regulations."⁹

Evidence

For a range of reasons, the Complainants consider that the Commission does not adequately ensure that staff seek authorisation under Article 16 of the Staff Regulations.

First, the document sent to staff when they leave the Commission is not comprehensive enough on Article 16 requirements.¹⁰ It sets out some details of Article 16 but does not include the full text, includes no explanation of what it means in practice, and while mentioning it, does not include the actual form that officials are required to fill in when they wish to apply for authorisation for a specific activity.

Second, DG Human Resources' 'Practical guide to staff ethics and conduct' includes little explanation of what Article 16 means in practice and no case studies.¹¹ The ethics training sessions "Ethical management workshop" and "Ethics and integrity" training guides mention Article 16 requirements, but only in passing.¹² Case studies cannot cover all examples, but they can give an idea of high risk and low risk jobs and could act in a very practical way to explain the rules better and increase adherence. Other ethics guidance issued by other DGs may give better information about Article 16, but as DG-HR is the lead DG in this area, their materials should be of the highest standard.

Third, the Commission does not appear to sanction breaches in the rules. The Complainants are aware of a number of cases where officials have not informed their institution and requested permission at the moment at which they intended to take up the post. In some cases permission has only been sought many months later and after one of the Complainants or another organisation has raised the case with the Commission. In each of the written complaints made on these specific cases, the question was raised about sanctions. The Complainants are not aware that any of these cases (detailed below) have been referred to the IDOC and / or been subject to sanction.

This is highly problematic because the Complainants consider that when former staff apply six months or more late for authorisation, it is then much harder for the Commission to fully apply the rules and to impose restrictions or cooling-off periods. This is because by then the new job has become a *fait accompli* and conflicts of interest cannot be easily regulated retrospectively.

In fact, the Commission has said that no cases of breaches of Article 16 have been referred to the Investigation and Disciplinary Office of the Commission (IDOC) that would warrant a disciplinary sanction of the severity of a reduction in pension rights.¹³ The Complainants have reviewed the IDOC reports for 2008-2011 and as the table below

makes clear, very few cases were referred to the IDOC which involved breaches of either Article 11a, Article 12b or Article 16 of the Staff Regulations relating to revolving doors specifically.¹⁴ If this is an accurate picture, there would appear to be little incentive to follow these rules if there is no real threat of sanction or referral to the IDOC.

<u>IDOC report 2008 – revolving door cases</u>	<u>IDOC report 2009 – revolving door cases</u>	<u>IDOC report 2010 – revolving door cases</u>	<u>IDOC report 2011 – revolving door cases</u>
Downgrading – Failure to declare previous employer (security services)	Written warning - Engaging in an outside activity of a commercial nature during CCP without obtaining the Commission's permission		Reprimand - Exercising external activities without prior authorisation, as required by Article 12b, - regular and extended activity, remunerated above the annual maximum ceiling of 4500 euros . ¹
	Reprimand - Engaging in an unauthorised commercial activity during CCP and continuing to engage in this activity after being reinstated at the Commission		
	Reprimand - Engaging in undeclared employment for two years after retirement		
Total: 1	Total: 3	Total: 0	Total: 1

There is a duty on the Commission to ensure that all staff, especially those who will shortly depart or retire, understand their specific obligations in this area so as to minimise the likelihood of conflicts of interest arising. The Complainants also recognise that all individual staff members have a responsibility to familiarise themselves with, and to abide by, the Staff Regulations which are publicly accessible.

The Complainants are aware of a number of cases where officials have not informed their

¹According to Commission decision C (2004) 1597 of 28 April 2004 relating to external activities and assignments, external activities are "all (other) activity, paid or unpaid, that is of an occupational character or goes otherwise beyond what can be reasonably considered as a leisure activity". Article 8 of the decision C(2004) 1597 states that "Permission shall not be granted for assignments or activities for firms and companies whose objects are commercial, even if the official's relationship with the company or firm in question entails no remuneration or purely nominal remuneration". Despite noting that 11 officials and 1 contractual agent failed to ask for prior authorisation, all of which for commercial activities and therefore would not have been authorised, only one case was referred to the Disciplinary Board in 2011, with only 1 reprimand imposed.

institution and requested permission at the moment at which they intended to take up the post. In some cases permission has only been sought many months later, and in at least some cases only after one of the Complainants or another organisation has raised the concerns with the Commission.

In each of the five written complaints the Complainants have made on these specific cases, the question was raised about sanctions. Despite asking the Commission for this information, we are not aware that any of these cases have been referred to the IDOC and/or been subject to sanction.

We consider that when former staff apply for authorisation months or years late, it then becomes much harder for the Commission to apply the rules retrospectively and implement restrictions or to forbid the official from undertaking it (i.e. to implement a 'cooling-off period') if the risk of conflicts of interest merited it.

Cases

- Pablo Asbo worked at DG Competition on mergers for six years until March 2011 when he became Associate Director for Competition at Avisa Partners.¹⁵ He did not apply for permission until 21 September 2011, six months after starting at Avisa, following an access to documents request made on 5 September 2011 by Corporate Europe Observatory about this case. Pablo Asbo received no specific reminder of his obligations when he left, according to a letter to Corporate Europe Observatory from the Commission which states that “I confirm that there have been no specific or individual communications with ... Mr Asbo with regard to obligations under Article 16 of the Staff Regulations before September 2011.”¹⁶ *Please see detailed case information at back of complaint for more information.*
- John Bruton was EU Ambassador to the US until October 2009. He started work at IFSC Ireland in September 2010¹⁷ and in December 2010, he also took up a post as senior adviser to the Brussels-based lobby consultancy Cabinet DN¹⁸. In a blog post dated 24 March 2011, John Bruton wrote: “Last December it was brought to my attention by the Commission that, under their rules, I ought to have sought their consent for any professional activities I undertook in the two years after I ceased to be in their employment. I was unaware of this requirement, as it had not been brought to my attention by the Commission either in the discussions that took place before I accepted the post in 2004, or at any time thereafter until December 2010.”¹⁹ *Please see detailed case information at back of complaint for more information.*
- Petra Erler was Head of Cabinet to Enterprise and Industry Commissioner until February 2010. In April 2010, she established the European Experience Company and she became Managing Director. Yet Dr Erler only applied for permission to the Commission to undertake this activity on 30 August 2010, at least four months later. In her application for authorisation she wrote: “I regret if I have not fully complied with art 16 staff regulation, since I was not aware that this duty was applicable to me and unfortunately was also not made aware.”²⁰ *Please see detailed case information at back of complaint for more information.*

- Eline Post, an assistant case handler at DG Competition, went to work at Avisa Partners as a senior associate, working on competition and finance matters. She did not apply for permission until eight months or more after starting at Avisa, following an access to documents request made by Corporate Europe Observatory about this case. However, Eline Post received no specific reminder of her obligations when she left. In a letter to Corporate Europe Observatory, the Commission wrote that “I confirm that there have been no specific or individual communications with ... Ms Post with regard to obligations under Article 16 of the Staff Regulations before September 2011.”²¹ *Please see detailed case information at back of complaint for more information.*
- Derek Taylor was an energy adviser who had worked at the Commission for 25 years until his retirement. He set up his own consultancy DMT Energy Consulting, which concluded contracts with Bellona, Burson-Marsteller and the Global CCS (Carbon Capture and Storage) Institute. He did not apply for permission under Article 16 until two years after his activities commenced, and only then apparently in response to an access to documents request to the Commission about the case. The Commission has not indicated that Derek Taylor received a specific reminder about his obligations under Article 16 when he retired.²² *Please see detailed case information at back of complaint for more information.*

Conclusion

The Complainants consider that these specific cases indicate a wider, systemic problem. The Commission should do far more to implement Article 16 and to remind current and departing staff of their responsibilities. The Complainants also believe that they should be more active in referring cases to the IDOC and applying sanctions in cases of breaches of the rules.

Area B: The Complainants consider that the Commission fails to ensure that it has gathered all the relevant information when assessing cases and that this constitutes maladministration.

The Staff Regulations, Article 16 says: “If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the Appointing Authority 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.”

Background

The Complainants agree with the Ombudsman's view that “the assessment of a potential conflict of interest in the context of a 'revolving door' type of conflict is a complex exercise

which requires a careful examination of the staff member's tasks and the envisaged activities in the intended employment".²³

This recent ruling continued: "In order to carry out such an analysis, (i) the institution must possess sufficiently detailed information and, *in cases where such necessary information is not provided or is incomplete, it should take steps to obtain the missing information. As a minimum, such information should include a proper account of the tasks carried out at [the institution], a precise description of the proposed new employment and possible links between the new and the previous employment* [emphasis added]. After having collected the necessary information, (ii) [the institution] should proceed with an assessment that is as thorough as possible. Finally, (iii) [the institution] should properly record the results of its assessment."²⁴

Evidence

When the Commission considers an Article 16 application, the process is managed by DG-Human Resources. They ensure that sign-off is received from the Secretariat-General, Legal Service and in particular, the service where the individual worked. That service's view is considered to be especially important as they are considered to have specific insights into the work of the exiting or former staff member and the potential likelihood for conflicts of interest.²⁵

The Complainants believe that each DG consulted during this process has a responsibility to assess the application properly. Such a responsibility includes DG-HR which should be expected to hold expertise in these matters, to advise other DGs and to ensure that all scrutiny is as rigorous as possible. Yet in the cases listed below, it seems to us that sometimes ambiguous and incomplete Article 16 applications are submitted, feedback appears to lack coherence and consistency, and further clarification is not always sought from the individual concerned when it is required.

Additionally, it seems that sometimes the forms do not receive an adequate degree of scrutiny. The Commission appears to simply consider the information provided to it, or the website of the new employer, rather than proactively looking at other sources of information, such as the EU's Transparency Register (which can provide useful information on lobby firms' clients or on dossiers being lobbied on) or asking specific questions to the new employer. In all of the cases listed below, comprehensive access to documents requests and complaints were made and information on wider and systemic checks was not provided, leading us to the conclusion that such checks were not carried out.

Cases

- In his Article 16 authorisation, Pablo Asbo wrote "Consulting European Affairs" under 'description of work contemplated'.²⁶ No apparent clarification was sought by the Commission about what this might entail including topics and / or client lists. Judging by the Commission response to our complaint, it also failed to scrutinise information, available at the time on the EU Transparency Register, that one of

Avisa's recent clients was party to a case which Pablo Asbo had handled at DG Competition.ⁱ *Please see detailed case information at back of complaint for more information.*

- In his application for authorisation, John Bruton says he expects to have some contact with “other Commission departments” and indeed, had already done so in relation to one of his new roles.²⁷ This raises questions about who and how such lobbying was taking place and should have been the subject of further enquiry by the Commission. When asked to express its view on the application, the European External Action Service (the successor to DG RELEX) commented that “some of his replies are somewhat vague...”.²⁸ The Complainants are not aware of any efforts made by the Commission to encourage the EEAS to clarify matters with John Bruton, even though, in the words of the Commission, “this service [EEAS] is in the best position to ask further questions of the person if necessary”.²⁹ Furthermore, the Commission tells us that the Legal Service “pays careful attention to any case where a prohibition or restriction is proposed”,³⁰ but in this case, the approval of the Legal Service (via Julian Currall, Principal Legal Adviser, Personnel and Administration) was granted in only 34 minutes, notwithstanding the fact that he was sent 10 attachments of information relating to John Bruton's new roles.³¹ *Please see detailed case information at back of complaint for more information.*
- In her application for authorisation, Eline Post describes her new work as “assisting consultants on European Affairs”. She expects to have further direct or indirect contacts with the Commission.³² The Commission says that it consulted her new employer's website, but there is no evidence that they consulted the Transparency Register or that they proactively asked Eline Post or Avisa for further clarification about her new work, including client lists or cases she would work on, or likely contacts with the Commission. *Please see detailed case information at back of complaint for more information.*
- When Derek Taylor applied for authorisation, in response to the question “Will you receive remuneration or other pecuniary advantages”, he wrote “No”. Yet between 12 August 2009 and 31 December 2010, Derek Taylor's consultancy had a post-tax profit of 95 975 Euros; Derek Taylor and a Christine Taylor were the only listed directors and shareholders.³³ Even if Derek Taylor was not drawing a salary or a dividend from the company, it seems that his company was earning significant sums. The Complainants consider that the Commission should have clarified the situation, as part of its efforts to carry out an assessment which was as thorough as possible. In addition, Derek Taylor said that while he was at the Commission, he had contacts with all of those organisations with whom his consultancy then had contracts, and he also said that he would have direct or indirect links with

ⁱ Avisa Partners has assured Corporate Europe Observatory that Mr Asbo has not and will not work on any cases that he has dealt with at the Commission. Avisa stresses that since March 2010 they have not been doing lobbying consultancy work for Sumitomo Chemicals, one of the companies that Mr Asbo was banned from working for, despite the fact that, at the time, Avisa Partners' declaration on the EU's Transparency Register listed Sumitomo Chemicals as a client. This information was removed from their entry in April 2012. Furthermore, Avisa states that they never worked for Sumitomo on a competition case, and never approached that company with a view to assisting them on a competition case, either before or after the arrival of Mr Asbo.

Commission departments via his new work with DMT Energy. This information should have been further explored. *Please see detailed case information at back of complaint for more information.*

Conclusion

The Complainants consider that the evidence available to us indicates that there is not rigorous collection of information and scrutiny of Article 16 applications as a regime of good administration would require, and that the Commission does not fulfil its duty in this regard. These cases appear to indicate that a wider, systemic problem is likely to exist.

Area C: The Complainants are concerned that the Commission does not adequately scrutinise Article 16 applications for potential conflicts of interest and that this constitutes maladministration. If a fuller assessment were carried out, the Commission would be more likely to detect a risk of a conflict of interest and to take action accordingly by implementing restrictions and / or a cooling-off period.

The Staff Regulations, Article 16 states: "If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the Appointing Authority 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."

Background

The Ombudsman recently found that "the scope of the term 'policy field' alone does not suffice to establish the presence or absence of a conflict of interest.³⁴ This ruling said: "In this regard, it should be pointed out that an overlap between a Special Adviser's tasks and his or her outside activities does not automatically imply a conflict of interest. At the same time, the absence of an overlap between the respective activities does not necessarily establish an absence of conflicts of interest either ... in order for the Commission to establish whether a conflict of interest exists in any given case, it needs to compare the prospective Special Adviser's tasks with his outside activities."³⁵

The Complainants acknowledge this. We do consider that an overlap between old and new activities can be an indicator of the risk of conflicts of interest and that such overlaps should be rigorously scrutinised. The Complainants also consider that part of the process of assessing possible 'conflicts of interest' within Article 16 applications should be to assess each one against a clear definition of this term.

Evidence

The Commission has told us that it does have a definition of a conflicts of interest as it

relates to Article 12b of the Staff Regulations (relating to outside activities for current officials or leave on personal grounds / sabbaticals), which is as follows: “A conflict of interest shall be deemed to exist where the assignment or the activity would reflect on the official’s status as an official and would be detrimental to the loyalty she owes to the institution and its authorities but also where it would be incompatible with her duty to conduct herself in a manner that is beyond suspicion in order that the relationship of trust between that institution and herself may at all times be maintained”.³⁶

In relation to Article 16 which uses the language of “a conflict with the legitimate interests of the institution”, the Commission has told us that there are no working interpretations of this term. The Commission went on to say that “Commission assessment of these terms is based on case to case approach and it is conducted in the whole context of Articles ... 16 and other relevant provisions of the Staff Regulations as well as the case law of Court of Justice of European Union. These terms must be defined and substantiated with regard to the case under examination and, in principle, cannot be defined in abstract terms”³⁷.

The Complainants fundamentally disagree with this approach and consider that having a robust working definition of a conflict of interest is imperative to be consistent, fair and to ensure that the risk of conflicts of interest are genuinely tackled. Of course, such a working definition would then need to be applied to each case individually, but if the Commission had such an approach, it would be more likely to recognise and act upon any risks of conflicts of interest which occur.

Overall, there has been only one case in the four years since January 2008 when the Commission has, under Article 16, forbidden a departing or departed official from undertaking a planned activity, when the Commission has considered at least 343 cases in total.³⁸

Cooling-off periods between public service and jobs that involve lobbying or other risks of conflicts of interest can diminish the potential for serious ethics problems on both sides of the equation. Particularly in the initial two years after going through the revolving door, Commission officials could potentially exploit their previous status to unduly influence their former staff and / or colleagues on behalf of their new employer or clients. A cooling-off period can also prevent (the appearance of) former public officials ‘cashing in’ on their insider knowledge and network within the institutions.

In the four cases immediately below, staff received a restriction but no cooling-off period. The Complainants consider that a cooling-off period would have been more appropriate in tackling the risk of conflicts of interest. However, the Complainants also restate their concern (raised under Area A) that when former staff apply for authorisation months or years late, the Commission may consider it much harder to apply the rules retrospectively and implement restrictions or to forbid the official from undertaking it (i.e. to implement a ‘cooling-off period’) because the job is already a *fait accompli*.

Cases

- Pablo Asbo worked at DG Competition on mergers in different sectors for six years; he later became Associate Director for Competition at Avisa Partners (a Brussels-based consultancy) in March 2011. The Commission banned him from dealing with cases upon which he had previously worked at DG Competition, but the Commission failed to implement a cooling-off period. *Please see detailed case information at back of complaint for more information.*

- John Bruton was EU Ambassador to the US via DG RELEX for five years until 31 October 2009. He started work at IFSC Ireland in September 2010³⁹ and in December 2010, he also took up a post as senior adviser to the Brussels-based lobby consultancy Cabinet DN⁴⁰. The Commission authorised all of John Bruton's new professional activities provided that, for two years, he was not in contact with former colleagues at DG RELEX regarding files and matters he dealt with during his EU role, and that he did not deal with cases or provide consultancy services concerning files with which he dealt while in Washington.⁴¹ The Complainants consider that the Commission should have imposed a full cooling-off period, considering the seniority of John Bruton and the wide scope of his ambassadorial role, the potential scope of his new roles, and his undoubtedly extensive contact book and inside know-how. *Please see detailed case information at back of complaint for more information.*

- Petra Erler was Head of Cabinet to Commissioner Verheugen until February 2010. In April 2010, alongside Professor Verheugen, she established the European Experience Company which offers its clients “creative solutions and The best strategy for your success in dealing with European institutions”.⁴² The Commission wrote to Dr Erler that they were “pleased to authorise this activity”, attaching two conditions to this authorisation: she should not establish contact with or approach the services that came under the authority of Commissioner Verheugen or any former colleagues who were members of the cabinet; she should not advise companies who have been addressees or beneficiaries of any individual decision prepared by the services under the authority of Commissioner Verheugen.⁴³ The Complainants consider that the conditions applied to Dr Erler were too narrow and would not prevent the risk of conflicts of interest from arising. Commissioners' senior staff including Heads of Cabinet are likely to be involved in a wide number of issues which stretch beyond the scope of their immediate portfolio. Yet there were no wider restrictions or a cooling-off period placed on Dr Erler to account for this. This is especially concerning considering that the staff representatives of the Joint Committee who were consulted on this case gave a unanimously negative opinion on it, citing concerns about possible conflicts of interest and how ambiguities about the case had not been sufficiently resolved. This led to the minutes of the meeting recording that there was a divided opinion (“un avis partagé”).⁴⁴ Yet a mere two days later on 7 October 2010, Michel Magnier at the Commission wrote to Petra Erler to say that her proposed new activity was approved, subject to the restrictions outlined above.⁴⁵ *Please see detailed case information at back of complaint for more information.*

- Eline Post was an assistant case handler at DG Competition for six years before moving to Avisa Partners where she became a senior consultant on competition

matters. Under Article 16, she was restricted from dealing with cases upon which she had previously worked at DG Competition but the Commission imposed no cooling-off period.ⁱⁱ *Please see detailed case information at back of complaint for more information.*

In the following cases, staff received no restriction or cooling-off period, other than a reminder of their ongoing obligations under the Staff Regulations. The Complainants consider that the Commission should instead have perceived the risk to the legitimate interests of the Commission from their moves and acted accordingly by adding a restriction or cooling-off period:

- Mogens Peter Carl was director-general at DG Trade and then at DG Environment until July 2008. He then took a leave of absence to advise the French government on environment and climate change policy before returning to DG Environment before his retirement on 1 August 2009. In February 2010 Mogens Peter Carl became a senior adviser at Kreab Gavin Anderson. Kreab is a major lobby consultancy which has “around 50 EU experts in our Brussels office focused on helping our clients to understand and influence EU decision making” and it is “especially focused on financial services, environment [sic], energy and the internal market”.⁴⁶ Its single biggest client in 2010 was Scania (the vehicle manufacturer), which accounted for approximately 12 per cent of its overall turnover.⁴⁷ The Complainants are alarmed that the Commission did not introduce a cooling-off period or a restriction on Mogens Peter Carl's job move considering that he was one of the most senior officials at the Commission and he became a senior adviser to a major Brussels lobby firm. *Please see detailed case information at back of complaint for more information.*
- Jean-Philippe Monod de Froideville was a personal advisor and member of Competition Commissioner Neelie Kroes' cabinet where he advised on mergers and acquisitions in the financial services and health-related markets, until 31 March 2009.⁴⁸ Afterwards, Jean-Philippe Monod de Froideville set up an advisory firm to provide services including public relations, lobbying, media contacts, advice regarding relations with the political authorities, the government and the European institutions.⁴⁹ He later became “Associate director within its growing European Affairs practice” at Interel working on competition and trade matters. The Commission chose not to implement either a cooling-off period or any conditions on the moves by Jean-Philippe Monod de Froideville. Considering the seniority of Jean-Philippe Monod de Froideville and his previous influential role, the Commission should have been more vigilant and proactive. *Please see detailed case information at back of complaint for more information.*
- Derek Taylor moved from the Commission after 25 years, including five as an energy adviser, to set up his own consultancy DMT Energy Consulting, which concluded contracts with Bellona, Burson-Marsteller and the Global CCS (Carbon Capture and Storage) Institute. The Complainants consider that there was a high risk of conflicts of interest in this case which the Commission should have sought to

ⁱⁱ Avisa Partners has declared to Corporate Europe Observatory that Eline Post has not and will not work on any case she dealt with while at DG Competition.

regulate. Burson-Marsteller's 2011 client list included ExxonMobil, European Small Volume Car Manufacturers Alliance, Camfil Farr, Neste Oil, GE Energy and others likely to have a strong interest in the insights of a former senior energy adviser with 25 years experience of working at the Commission.⁵⁰ Meanwhile, Derek Taylor's work at Bellona and the Global CCS Institute covers exactly the same areas of policy which he worked on whilst at the Commission which included working on nuclear issues but also on other aspects of energy policy with an emphasis on coal, 'clean coal' technologies, carbon capture and storage, and the environmental costs and benefits of their use. Yet no restrictions or a cooling-off period were imposed on Derek Taylor. *Please see detailed case information at back of complaint for more information.*

Conclusion

The Complainants consider that on the evidence presented regarding the above cases, the Commission does not have a common definition of conflicts of interest, nor does it adequately scrutinise Article 16 applications for potential conflicts of interest. As a result, we consider that where restrictions were imposed, they were insufficient and not proportionate to the risk of conflicts of interest, and that in a number of cases a cooling-off period would have been more appropriate. If a more robust assessment was carried out, the Complainants believe that the Commission would have been more likely to detect a risk of a conflict of interest and to take action accordingly.

Area D: The Complainants consider that the Commission does not proactively scrutinise current and incoming staff for conflicts of interest, especially conflicts of interest resulting from the revolving door and that this constitutes maladministration.

The Staff Regulations, Article 11a says: "An official shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests."

"Any official to whom it falls, in the performance of his duties, to deal with a matter referred to above shall immediately inform the Appointing Authority. The Appointing Authority shall take any appropriate measure, and may in particular relieve the official from responsibility in this matter."

Evidence

As discussed above in relation to applications made under Article 16 of the Staff Regulations, part of the process of assessing possible "family and financial interests"

under Article 11a would be to assess each case against against a clear definition. The Commission has told us that there are no working interpretations of this term and that “Commission assessment of these terms is based on a case to case approach and it is conducted in the whole context of Articles 11a ... and other relevant provisions of the Staff Regulations as well as the case law of Court of Justice of European Union. These terms must be defined and substantiated with regard to the case under examination and, in principle, cannot be defined in abstract terms”⁵¹.

Again, the Complainants fundamentally disagree with this approach. Having a robust working interpretation of “family and financial interests” is imperative to be consistent, fair and to ensure that the risk of conflicts of interest are genuinely tackled. Of course, such a working definition would then need to be applied to each case individually, but if the Commission had such an approach, they would be more likely to recognise and act upon the risks of conflicts of interest which lie within the cases which follow.

The Complainants consider that having a former client or a former employer with an interest in the work an official undertakes at the Commission can constitute a risk of a conflict of interest and should be included within such a definition. This is because such officials could be unduly influenced by their previous history, networks, contacts or can be overly sympathetic to either the industry or the specific organisation in question. 'Regulatory capture' is a recognised phenomenon.⁵²

Yet, it is not clear that the Commission shares this interpretation; indeed the Commission appeared to rule out the possibility that a conflict of interest might exist once an official has left their previous employment and joined the Commission, at least in one particular case which has been raised where the Complainants were told “After his entry into service, [he] no longer had any contractual obligations towards [his former employer] and the assumption that official [he] might have some “personal interest” which could impair his independence in the performance of his duties, is gratuitous and unfounded”.⁵³

The Commission considers that it already takes sufficient action to monitor conflicts of interest which might arise under Article 11a. In a letter to the Complainants, the Head of Cabinet to Commissioner Maroš Šefčovič, Juraj Nociar says “... the submission of a CV is part of the recruitment procedure and I fail to see what else an institution could do to “scrutinise” staff...”. Yet it is not clear to the Complainants that screening specifically for conflicts of interest via CVs at the time of recruitment is actually a formal step during the process of recruiting staff. It is also not clear whether CVs alone provide all required information about previous employers and / or clients; and whether these CVs are monitored on an ongoing basis, for example, when an official starts to work on a new dossier or makes an internal job transfer.

Once in post, the Commission makes it clear that it considers that it is an official's ongoing “obligation to inform the Appointing Authority” of any possible conflicts of interest.⁵⁴ It also refers to the training and ongoing ethics guidance provided to its staff to remind them of this obligation. Yet, the training and ethics materials seen do not present a comprehensive overview of conflicts of interest scenarios, including via the revolving door, which the Complainants consider is required to fully comply with Article 11a.ⁱⁱⁱ

ⁱⁱⁱ In April 2012, Corporate Europe Observatory tabled access to document requests to eight DGs

For example the powerpoint presentation for new arrivals in DG-Enterprise “Ethics and Integrity in the workplace” refers to conflicts of interest arising under Article 11a of the Staff Regulations but only in the context of: “selection panels where you may know the candidates; calls for tenders where you have a personal/ financial interest; activities of spouse; running for public office”.⁵⁵

Meanwhile the “Code on Professional Ethics in DG Home Affairs and DG Justice” lists the following ways in which direct or indirect interests may arise: family or partnership ties, personal friendships; holding of financial interests (later defined as “holding securities” or other financial interests); insider dealing; political affinities and national influences; gifts, favours and donations.⁵⁶

All of these are important risks of conflicts of interest, but it is hard to find concrete evidence that the Commission considers that a previous employer or client may also provoke a risk of conflict of interest; and hard to find evidence that the Commission encourages staff to consider this scenario too. The nearest would appear to be the “Ethics Guidelines for DG-Markt Staff 2011” which do include the following: “you have family or personal friends in an industry for which you have a policy-making role; you have private information at your disposal which may unduly influence your impartiality...”.⁵⁷ The Complainants consider that even this could be usefully refined further.

DG-HR's “Practical guide to staff ethics and conduct” explains a potential conflict of interest situation as including those where “you find yourself in a situation that could reasonably lead to allegations being made of bias or partiality, in light of your personal interest”.⁵⁸ Yet no further explanation is given about how to interpret this and no case studies or examples.

As mentioned previously, the OECD guidelines for managing conflicts of interest in the workplace recommends that there is a “clear and realistic description of what circumstances and relationships can lead to a conflicts of interest situation” and to “ensure that the conflicts of interest policy is supported by organisational strategies and practices to help identify concrete conflict of interest situations at the workplace”.⁵⁹

Cases

- Mårten Westrup was contracted by DG Enterprise as a Legal Officer from 2007-08, and then as a Policy Officer from 2009-September 2010. When Mårten Westrup left DG Enterprise after a total of 27 months' work, he moved to a role at BusinessEurope (one of Brussels' most influential lobby groups) where he took up a position as adviser to its Industrial Affairs Committee (with specific responsibility for climate change). In 2011, he returned to work for DG Energy as a Policy Officer in the unit handling 'energy policy & monitoring of electricity, gas, coal and oil markets'. Yet this move does not appear to have been proactively scrutinised by the Commission upon his appointment for a potential conflict of

requesting “any guidance note, briefing paper etc issued to staff which advises on how to improve ethics and/ or deal with potential conflicts of interest within the DG”. The eight DGs were: ENV, Energy, Markt, Home, ENTR, SANCO, Trade, Clima.

interest based on his previous work for BusinessEurope. Instead, an assessment was only made when Mårten Westrup himself took the initiative to check a possible conflict of interest to his hierarchy. The Complainants consider that the Commission should be proactive in scrutinising all incoming staff for possible conflicts of interest. *Please see detailed case information at back of complaint for more information.*

- Marcus Lippold had a long career in the oil industry, specifically ExxonMobil, from 1992 prior to joining the Commission. Now, Marcus Lippold's role at Directorate General for Energy makes him responsible for international energy relations; previously he was a senior energy economist at DG-Tren working on oil and coal related legislation where his portfolio included European oil upstream and downstream sectors and related refinery products and product markets. It is clear that Marcus Lippold's Commission work has brought him into contact with the oil and fuel industry and he is also involved in the discussions on the implementation of the EU's Fuel Quality Directive. Corporate Europe Observatory requested "all correspondence, including emails, and notes/ minutes from any meetings which discuss Marcus Lippold's employment at DG-Energy as it relates to Articles 11 and 11a of the Staff Regulations. The Commission replied that "there are no documents corresponding to your request about M. Lippold". This raised the concern that the Commission had not undertaken any assessment of whether or not Marcus Lippold has a conflict of interest, although the Commission states that a standard recruitment procedure was followed, which included scrutinizing his CV and an interview. Yet it is far from evident, without any documentation to so demonstrate, that scrutinizing a CV and an interview constitutes a transparent and substantive assessment of potential conflicts of interest. *Please see detailed case information at back of complaint for more information.*

Conclusion

It appears to the Complainants that the Commission considers that there is a very low risk of conflicts of interest arising from officials joining from the private sector, and therefore does not adequately monitor such risks. The Complainants recognise that manuals, guides and training cannot cover every plausible scenario and context although they could be improved. Additionally, the Complainants consider that the Commission does not proactively scrutinise current and incoming staff for potential conflicts of interest, especially those resulting from the revolving door phenomenon, and that this constitutes maladministration. These cases may reflect a more systemic problem across the institution.

Area E – The Complainants consider that the Commission does not keep adequate records and information management systems for the Article 11a and Article 16 assessments and measures it takes when it reviews individual cases and that this constitutes maladministration.

The European Ombudsman's Code of Good Administrative Behaviour, Article 24 says: "The Institution's departments shall keep adequate records of their incoming and outgoing mail, of the documents they receive, and of the measures they take."

Evidence

The Commission has told us that "there is no central registration of [Article 11a] applications".⁶⁰ The Commission has also told us that, in relation to Article 16 and to unpaid leave, "DG Human Resources only keeps a record of the number of applications and, with regard to the decision on professional activities after leaving the Commission, on the type of decision taken. These records are for statistical purposes only. Individual decisions can only be retrieved for an identified member of staff. There is no search facility for retrieving all cases where an application ... was made".⁶¹

Judging by a series of access to document requests tabled in 2011 to seven DGs, it appears that none of them keeps a central register.^{iv}

This is not good administration for a number of reasons. First, without a detailed register, it seems unlikely that the Commission could develop precedent and ensure consistency in the application of these rules across the institution. The application of Articles 11a and 16 require a degree of subjective evaluation and it would be important to ensure that a consistent approach is adopted, whilst being mindful of individual circumstances.

Second, without a detailed register, it seems unlikely that the Commission could detect overall trends within this important area i.e. whether there is an increase in staff leaving from a particular DG or unit and / or joining a particular firm or organisation (or vice-versa, if lots of new recruits come from a particular company), whether on a permanent basis or via unpaid leave.

Third, without a detailed register, it seems unlikely that the implementation of decisions that are made to authorise (or not) new professional activities or external activities during unpaid leave, and to attach conditions or restrictions to such authorisations, can be effectively monitored. If there is no centralised information, how can the Commission be sure that all DGs or other relevant bodies know about the conditions that were placed on a certain staff member? If official X is told that he cannot contact institution Y and Z but institution Z doesn't know, how can it flag it up in the event that official X does approach them?

Fourth, without a detailed register, it seems unlikely that the Commission could effectively review how well Articles 11a and 16 are working, whether they are effective in tackling conflicts of interest, and the extent of overall compliance across the institution. For example, the Complainants know of a range of cases where staff members or former staff members did not apply for authorisation under the rules when they should have done (as previously detailed). Without a detailed register which monitors this, it seems highly

^{iv} Access to document requests were tabled to DGs Energy, ECOFIN, ENTR, SANCO, Trade, MARKT, Environment.

unlikely that the Commission would detect this problem, or have data to inform any subsequent new procedures it may wish to put in place.

On 8 February 2012, the Complainants complained to the Commission about this failure of record-keeping; the Commission's reply dated 16 May 2012 did not respond to our substantive concerns.⁶²

Conclusion

Based on this evidence the Complainants consider that there is a systemic problem within the Commission that it does not keep adequate records or information management systems of the Article 11a and Article 16 assessments and the measures it takes when it reviews individual cases, and that this constitutes maladministration.

Area F: The Complainants consider that the Commission has not properly implemented the revolving door rules as they relate to personal leave (sabbatical posts) in the case of a specific official (case detailed below) and that this is maladministration.

Article 16 of the 'Commission decision on outside activities and assignments' says that for CCP/ personal leave/ sabbaticals:

2. The official may not deal with individual cases that she had worked on in the course of the three years of active service in the Commission immediately preceding the probable or actual date of commencement of her leave on personal grounds. When officials have worked on individual cases prior to the said period of three years, they are not thereby automatically authorised to deal with those individual cases.

3. The official may not participate in meetings or have contacts of a professional nature with her former Directorate General; or service for a period of:

- 1 year where the official occupied a management function in this Directorate General or Service
- 6 months in all other cases.

4. The appointing authority may make any authorisation it grants subject to such conditions as it reasonably sees fit, in the light of the particular characteristics of a policy area or of the circumstances of the case. The appointing authority may in particular increase the restrictions laid down in paragraph 3.

Background

The Complainants consider that sabbaticals require an even higher degree of scrutiny than permanent revolving door cases because of the very nature of a sabbatical which involves allowing the official concerned to return to their old job, or an equivalent one, when they

choose.

For this area, the Commission does have a definition of conflict of interest: “A conflict of interest shall be deemed to exist where the assignment or the activity would reflect on the official’s status as an official and would be detrimental to the loyalty she owes to the institution and its authorities but also where it would be incompatible with her duty to conduct herself in a manner that is beyond suspicion in order that the relationship of trust between that institution and herself may at all times be maintained”.⁶³

The Commission welcomes sabbaticals for its staff, saying that it “is in principle favourable to staff getting further experience outside the Commission as their career develops: it is important that we are aware of new ideas and practices in other business sectors [sic]”⁶⁴. The Complainants agree that the chance to go on sabbatical is an important career opportunity, but one that must be balanced against the need to prevent conflicts of interest from arising. There is no proactive Commission transparency about which staff are currently on sabbatical but the number of officials engaging in commercial activities (where the risk of conflicts of interest is surely highest) during their sabbatical in 2011 was 36 per cent or 194 individuals.⁶⁵

Case

- Magnus Ovilius was Head of Sector, Preparedness and Crisis Management at DG-Justice, Freedom and Security (functions now covered by DG-HOME) until 2008 when he left, on personal leave, for a post as Senior Vice President Government Relations at Smiths Group plc where he continues to be employed today. Smiths Group is a global technology company whose products include those in the “threat & contraband detection” domain. Considering the overlaps between his old and new posts, and his involvement in government relations for his new employer, the risk of potential conflicts of interest seems high. The Complainants consider that this sabbatical post should have been subject to much higher restrictions, as allowed for by the rules, and potentially should have been prevented entirely. But instead, the Commission only seems to consider a narrow range of risks can arise from sabbaticals. In response to the the Complainants' complaint on this case, the Commission implied that they are really only concerned about the risk of conflicts of interest when there is a possible breach of “professional secrecy” or where an official proposes to work on the “very same files” with their new employer.⁶⁶ The Complainants consider that this is too narrow an interpretation of the conflicts of interest definition set out above and does not give due weight to the particular concerns that arise from undertaking lobbying or related activities during a sabbatical appointment. *Please see detailed case information at back of complaint for more information.*

Conclusion

The Complainants consider that the Commission did not properly apply the revolving door rules on sabbaticals or the appropriate conflict of interest definition in the sabbatical

approval(s) of Magnus Ovilius'. It is not clear to the Complainants whether this is a one-off case or if this is an indication of a systemic problem.

Area G: The Complainants consider that it is maladministration that the Commission has an inadequate definition of access to 'sensitive information' when judging whether or not the revolving door rules apply to departing contract agents.

Article 21, 'Commission decision on outside activities and assignments': "Only those contract staff who have had access to sensitive information shall be subject to the obligations laid down in Article 18 (2). [obligations to request permission for new activities after leaving the Commission, similar to Article 16 of the Staff Regulations]. Contract staff shall be informed by their service whether Article 18 (2) is applicable on leaving the service."

Evidence

The Commission has told us that it does not have an "exhaustive definition of 'sensitive information'". The Commission has also told us "that information which is already public or accessible to the public cannot be considered as sensitive information and that information which is not or not already accessible to the public is, in any case, subject to professional secrecy, in particular information about undertakings, their business relations or their costs components".⁶⁷

This is an inadequate description and that it is very hard to interpret a rule when there is no commonly-used definition of what key words mean. Whilst it may be appropriate to exclude some contract agents from the revolving door rules for reasons of practical administration, and so as not to unduly burden the agents themselves, the Complainants consider that all contract agents involved in decision-making, policy-making or legislative processes within the Commission should be covered by the definition of having had access to sensitive information.

Case

- Mårten Westrup was contracted by DG Enterprise as a Legal Officer from 2007-08 and then as a Policy Officer from 2009-September 2010. During this time he was involved in the production of a range of policy documents including on carbon dioxide emissions from cars and on industrial policy. When Mårten Westrup left DG Enterprise after a total of 27 months' work, he moved to a role at BusinessEurope where he took up a position as adviser to its Industrial Affairs Committee (with specific responsibility for climate change). This move was considered exempt from Article 18(2) of the 'Commission decision on outside activities and assignments' (and Article 16 of the Staff Regulations) because Mårten Westrup was a contract agent and he was deemed to have not had access to sensitive information during his time at DG Enterprise.⁶⁸ *Please see detailed case information at back of complaint for more information.*

Conclusion

The Complainants consider that it is maladministration that the Commission exempts so many contract staff from the revolving door rules. This relates at least partly to the inadequate definition of 'sensitive information' used by the Commission when judging whether or not the revolving door rules apply to departing contract agents. The lack of a common definitions implies a systemic problem in the Commission.

5. What, in your view, should the institution or body do to put things right?

The Complainants consider that there are a number of ways in which the Commission could put things right in terms of how it applies, implements and enforces the revolving door rules:

- The Commission should develop proactive procedures to inform staff of their obligations under Article 16 of the Staff Regulations. This would include sending the form to all outgoing or retiring staff; making sure these obligations are fully covered by internal ethics training, manuals and publicity, including by developing some related case studies. Standard reminder letters could be sent once a year for two years to ex-staff to remind them of their ongoing responsibilities under the Staff Regulations, including to remind them to ask for further authorisation if a relevant change of circumstances should occur (what circumstances these would likely be should be better defined).
- The Commission should develop proactive procedures to inform staff of their obligations under Article 11 and Article 11a of the Staff Regulations when they join the Commission and / or when staff change jobs internally. This would include proactively asking staff to complete a declaration of interest form which would include information about previous employers and/ or clients. We would recommend that these become publicly available. We note that the European Medicines Agency now proactively scrutinises incoming staff for conflicts of interest, asking them to fill in annual declarations of interest which are then posted on-line. These declarations ask for information which includes previous work with the pharmaceutical industry. Information about areas from which individual staff members have been recused is also available.⁶⁹ The European Food Safety Authority has a similar procedure although these forms are not yet publicly available. The Commission should adopt this good practice. In addition, these obligations should also be fully covered by internal ethics training, manuals and publicity, including by developing some related case studies.
- The Commission should develop robust and widely-applicable definitions for “conflicts of interest” and other relevant terms such as “family and financial interests” and “sensitive information” as used in the Staff Regulations; these

definitions should take full account of the revolving door phenomenon. The OECD's work in this area should be helpful when better defining 'conflicts of interest'. For a more robust definition of 'access to sensitive information', the Complainants consider that all those involved in decision-making, policy-making or legislative processes within the Commission should be covered. But we also think that “access to sensitive information” should not be the sole criterion to judge whether a contract agent is obliged to request permission for future activities. Length of service could also be taken into account, as could the nature of the subsequent proposed activity. At the moment it appears that too many contract agents are excluded from consideration under the rules. The “sensitive information” exclusion may also cause confusion and result in non-compliance.

- The Commission should improve its scrutiny and decision-making of Article 11a, Article 16 and sabbatical authorisations. This is likely to result in a higher level of restrictions and cooling-off periods being applied in cases where there is a risk of conflicts of interest. In particular, the Commission should:
 - be more recognising of the phenomenon of the revolving door and the risks associated with it;
 - revise the application for authorisation form used to elicit further information: they could formally request job descriptions, copies of contracts and other relevant documentation;
 - be proactive in following up when information provided is not clear or sufficient;
 - probe claims that no conflicts of interest exist;
 - more readily use external sources of information such as the EU's Transparency Register so that the decision-makers have as full a picture as possible when making a decision;
 - apply the more robust definitions of key terms discussed above;
 - ensure that there is independent oversight to monitor the scrutiny of applications and implementation of the rules more generally.
- The Commission should take action when members of the Joint Committee raise concerns about a particular case and seek to deal with these concerns. The purpose of “consulting the Joint Committee”, required by Article 16, should not be a simple tick-box exercise, but should instead be an opportunity for the Commission to gather meaningful feedback on important decisions from an experienced group of fellow staff members, all of whom should have the same aim in mind: to prevent conflicts of interest or the risk / appearance of them, and to ensure that all officials and former officials behave with integrity and in the interest of the EU institutions.
- The Commission should consider better use of sanctions and / or referral to the IDOC when there have been clear breaches of the rules. If staff are aware that breaches of the rules will be met with the threat of sanction, it is likely that overall levels of compliance will increase.
- The Commission should keep full and proper records of all conflicts of interest and revolving door cases including a central register which can allow for cross-comparison, analysis and evaluation. At the moment, with information solely kept in

individuals' personnel files, it is not clear how an evaluation of what works or does not work under the rules is possible. Nor is it clear, in these circumstances, how any monitoring of the restrictions imposed can take place, including when ex-staff are forbidden from meeting with certain colleagues for a certain period of time.

- The Commission should operate proactive transparency in this area, including around the outgoing revolving door, the incoming revolving door (including the publication of staff declarations of interest), and external sabbaticals involving new activities. The 'Commission decision on outside activities and assignments' demands that individuals on CCP / sabbatical give their permission for information about their sabbatical to be publicly available as part of the authorisation process. Yet it appears that this information is not currently made publicly available by the Commission; the Complainants consider that it should be. Our request to see it under access to documents elicited only a short statistical table.⁷⁰ The Complainants consider that a proactive approach to securing transparency when permission is sought at the time of application and which is part of the authorisation process is positive and should be extended to other areas too such as Article 16 and Article 11a approvals. As a minimum this would result in an annual report which assesses how these and other conflicts of interest rules have been followed. Ideally, there would be information published on-line for each case.
- A recent parliamentary report⁷¹ in the UK recommended an overhaul of the revolving door rules there and said: "To further enhance predictability for applicants, the Commissioner should be required to publish clear guidance on the procedures which he or she will follow when considering an application, and the expected timescale for each stage of the process. Target timescales should be consistent for all former public servants, regardless of whether they were Ministers, special advisers or civil servants. The Commissioner's decisions in individual cases, and his or her reasons, should also be published when the appointment is taken up. Applicants should have a corresponding duty to notify the Commissioner when they take up an appointment. The Commissioner should be required to monitor compliance with his or her decisions, and to report annually to Parliament on the cases considered during that year, any contraventions of the rules and any sanctions imposed." We consider that these recommendations could be usefully adopted by the European Commission too.
- Finally, the Complainants have noticed that access to document requests to obtain papers about specific individuals and the revolving door appear to be less successful now than one year ago. The Commission indicates that this is because the individuals concerned have refused to release the paperwork to us; the Complainants consider that, until a new proactive transparency regime is brought in, the Commission should recognise the public interest in these issues and release more information than is currently the case.

The Complainants further consider that the Staff Regulations themselves, particularly Articles 11a, 16 and the rules relating to sabbaticals, should be reformed to tackle some loopholes. These changes include:

- A mandatory cooling-off period of at least two years for all EU institution staff members entering lobbying or lobby advisory jobs, or any other job which provokes a conflict of interest with their work as an EU official
- A clear ban on any EU institution staff member undertaking a sabbatical which involves lobbying, providing lobbying advice, or which provokes a conflict of interest with their work as an EU official
- A clear ban on staff members starting new, external posts within two years of leaving an EU institution unless and until authorisation has been proactively given for the move
- The inclusion of a comprehensive definition of conflicts of interest
- Application to all staff working in the EU institutions (including those on contracts)
- Scrutiny of all staff joining the EU institutions for potential conflicts of interest. Such rules must serve to assess possible conflicts of interest that arise when a person employed by the EU institutions deals with matters which they have previously lobbied on, or which substantially affect the financial and/ or commercial interests of former employers and clients. Where there is a potential conflict of interest, individuals must be recused from such matters. All recusal agreements should be made publicly available online.

However, the Complainants recognise that changes to the Staff Regulations themselves go beyond the scope of this complaint.

In early Summer 2012, the Complainants learnt that the Commission was conducting a review of the internal guidelines relating to EU staff undertaking external activities. A set of recommendations similar to the list above has been sent to the Commission.

6. Have you already contacted the EU institution or body concerned in order to obtain redress?

Yes - please specify

The following written complaints have been made to the Commission:

1. On the handling of the case of Pablo Asbo dated 1 December 2011. A Commission reply was received dated 15 February 2012 – Annexe 1.
2. On the handling of the case of John Bruton dated 8 February 2012. A Commission reply was received dated 4 April 2012 – Annexe 2.
3. On the handling of the case of Mogens Peter Carl dated 16 April 2010. A Commission reply was received dated 6 May 2010 – Annexe 3.
4. On the handling of the case of Petra Erler dated 11 June 2012. A Commission reply was received dated 13 September 2012 – Annexe 4.
5. On the handling of the case of Marcus Lippold dated 13 July 2012. A Commission reply was received dated 7 September 2012 – Annexe 5.
6. On the handling of the case of Jean-Philippe Monod de Froideville dated 20 January 2012. A Commission reply was received dated 7 March 2012 – Annexe 6.
7. On the handling of the case of Magnus Ovilius dated 25 May 2012. A Commission reply was received dated 23 July 2012 – Annexe 7.

8. On the handling of the case of Eline Post dated 1 December 2011. A Commission reply was received dated 15 February 2012 – Annexe 8.
9. On the handling of the case of Derek Taylor dated 21 February 2012. A Commission reply was received dated 12 April 2012 – Annexe 9.
10. On the handling of the case of Mårten Westrup dated 25 October 2011, 24 November 2011 and 9 February 2012. Commission replies were received dated 14 December 2011 and 4 April 2012 – Annexes 10 and 11.
11. On Commission record-keeping dated 8 February 2012. A Commission reply was received dated 16 May 2012 – Annexe 12.
12. The Complainants wrote to Commissioner Šefčovič to set out our concerns on these areas on 12 September and 24 November 2011 and replies were received on 20 December 2011 and 21 February 2012 – Annexe 13 and 14.

Overall, the Complainants have been disappointed by the approach of the Commission as set out in the responses received. Many of the responses have been quite generic and the Complainants do not consider that the Commission has adequately responded to our concerns or treated them very seriously.

The only real indication that the Complainants have had that the Commission considers that something could be improved in this area was in a letter from the Commission dated 4 April 2012. In their response, the Commission indicated that the Complainants' work showed that “in a few cases, former members of staff, in particular contract agents, did not comply with their obligations to inform the Institution in due time [of their new proposed activities, in order to seek approval]. The Commission is therefore willing to continue and increase its awareness-raising activities.”⁷²

Nonetheless, the Complainants believe that far more needs to be done by the Commission to handle the risk of conflicts of interest arising from revolving door job moves and sabbaticals, which is why this complaint is being submitted.

7. If the complaint concerns work relationships with the EU institutions and bodies: have you used all the possibilities for internal administrative requests and complaints provided for in the Staff Regulations? If so, have the time limits for replies by the institutions already expired?

Yes (please specify)

No X

8. Has the object of your complaint already been settled by a court or is it pending before a court?

Yes (please specify)

No X

9. Please select one of the following two options after having read the information in the box below:

Please treat my complaint publicly X

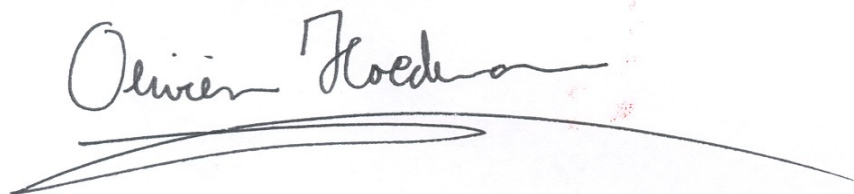
I require that my complaint be treated confidentially

10. Do you agree that your complaint may be passed on to another institution or body (European or national), if the European Ombudsman decides that he is not entitled to deal with it?

Yes X

No

Date and signature:

A handwritten signature in black ink that reads "Olivier Hoedeman". The signature is written in a cursive style and is underlined with a long, sweeping horizontal line.

Olivier Hoedeman

16 October 2012

Detail on cases

The following 10 cases have all been the subject of a detailed complaint to the Commission. The Commission responses to each complaint can be found as annexes.

Case: Pablo Asbo

Pablo Asbo worked at DG Competition on mergers for six years until March 2011 when he became Associate Director for Competition at Avisa Partners.⁷³ Pablo Asbo applied for authorisation of this post retrospectively on 21 September 2011, and it seems likely that this was in response to an access to documents request (Gestdem 2011-4618) to the Commission from Corporate Europe Observatory dated 5 September 2011. A letter from Michel Magnier, a director at DG-HR at the Commission, to Pablo Asbo dated 3 November 2011 says “I regret that you have not introduced your request for authorisation in accordance with the provision of Article 16”.⁷⁴ No sanctions were implemented for this breach in the rules. However, the Commission has admitted that Pablo Asbo received no specific reminder of his obligations when he left. In a letter to CEO dated 15 March 2012, the Commission wrote that “I confirm that there have been no specific or individual communications with ... Mr Asbo with regard to obligations under Article 16 of the Staff Regulations before September 2011. ... For your information, all agents working in the Directorate-General for Competition receive a copy of the Ethical Code of the Directorate-General for Competition as well as a presentation of the obligations under the Staff Regulations.”⁷⁵

Pablo Asbo's work at Avisa Partners was unregulated and unscrutinised under Staff Regulations Article 16 until Michel Magnier's letter dated 3 November 2011 set out the conditions upon which the Commission authorised this post, and conflicts of interest could have arisen during this time.

In this letter, Pablo Asbo was authorised to continue in his post at Avisa Partners but told to “avoid any situation of conflicts of interest in your new function, particularly you will abstain from dealing with cases (or new cases linked to old ones) on which you have worked in the frame of your functions at DG COMP, and more particularly on the cases listed in the attachment”.⁷⁶ M.4769 Sumitomo Chemicals/ Itochu Corporation/ Tokyo INK Manufacturing Company/ AK&N was a case listed on this attachment. At the time of Pablo Asbo's application to the Commission, Sumitomo Chemicals was also listed on Avisa Partners' Transparency Register entry as a client.^v The Complainants consider that the Commission should have been proactive in identifying this situation, considering this information and at least asking Pablo Asbo and/ or Avisa Partners questions about it. For example, was Pablo Asbo working directly for Sumitomo? What if Pablo Asbo were not

^v Avisa Partners has assured Corporate Europe Observatory that Mr Asbo has not and will not work on any cases that he has dealt with at the Commission. Avisa stresses that since March 2010 they have not been doing lobbying consultancy work for Sumitomo Chemicals, one of the companies that Mr Asbo was banned from working for, despite the fact that, at the time, Avisa Partners' declaration on the EU's Transparency Register listed Sumitomo Chemicals as a client. This information was removed from their entry in April 2012. Furthermore, Avisa states that they never worked for Sumitomo on a competition case, and never approached that company with a view to assisting them on a competition case, either before or after the arrival of Mr Asbo.

working for Sumitomo Chemicals directly, but someone in his team was?

In access to document request Gestdem 2011-4618, all documentation regarding Pablo Asbo's move from DG Competition to Avisa Partners was requested. If indeed all information has been supplied to us, we are also surprised that the Commission did not seek further clarification from Pablo Asbo about his new functions considering the lack of detail on his application form. For example, under 'description of work contemplated', Pablo Asbo simply wrote "Consulting European Affairs".⁷⁷ No apparent clarification was sought by the Commission about what this might entail.

The Commission says that it did consult Avisa's website.⁷⁸ This website states that: "Former senior EU Commission officials founded this bespoke public affairs consultancy in 2007. Providing deep and trusted knowledge of how to navigate the EU institutions, it comprises an eclectic and highly-skilled team of senior consultants and advisors." Avisa also recruits their clients using the line "You're concerned a competitor or customer has or could complain to the Commission's DG Competition or DG Trade?"⁷⁹ The Complainants consider that the Commission should employ a good degree of scrutiny when considering revolving door moves to Brussels-based consultancies, especially when there is a track record of employing ex-Commission staff.

Despite the ban on Pablo Asbo working on specific cases upon which he had worked whilst at the Commission, we consider that this would not be sufficient to prevent the risk of wider conflicts of interests from developing, nor would the conditions prevent former officials from using their Commission contacts and insider know-how about the internal working processes to benefit their employers and clients. The Complainants consider that a cooling-off period would have been more appropriate in this revolving door case.

Case: John Bruton

John Bruton left the Commission on 31 October 2009 after five years in post as EU Ambassador to the US via DG RELEX. He started work at IFSC Ireland in September 2010⁸⁰ and in December 2010, he also took up a post as senior adviser to the Brussels-based lobby consultancy Cabinet DN⁸¹. Cabinet DN's client list for the year 2011 includes US multinational AT&T which provided 13 per cent of its turnover as well as other US companies such as NYSE Euronext.⁸² John Bruton also applied for, and secured, permission for work at Montpellier RG, American Oriental Bio Engineering, Gerson Lehman Group, McDermott, Will and Emery, and Ingersoll Rand.

On his website in a blog post dated 24 March 2011, John Bruton published the following statement: "Last December it was brought to my attention by the Commission that, under their rules, I ought to have sought their consent for any professional activities I undertook in the two years after I ceased to be in their employment. I was unaware of this requirement, as it had not been brought to my attention by the Commission either in the discussions that took place before I accepted the post in 2004, or at any time thereafter until December 2010. While I was aware that such requirements applied to former Commissioners, I was not aware that it applied to persons in my position"⁸³.

We note that John Bruton's application for authorisation for his post with McDermott, Will

and Emery is dated 23rd January 2011. It does not make clear when this work was carried out, but John Bruton makes it clear that the work had been completed at the time of his application.

The Commission authorised all of John Bruton's new professional activities provided that, for two years, he was not in contact with former colleagues at DG RELEX regarding files and matters he dealt with while in his EU role, and that he did not deal with cases or provide consultancy services concerning files with which he dealt while in Washington.⁸⁴

The Complainants question whether an adequate assessment of possible conflicts of interest was made in this case. In particular, when asked to express its view on the application, the European External Action Service (the successor to DG RELEX) commented that "some of his replies are somewhat vague...".⁸⁵ We are not aware of any efforts made by the Commission to encourage the EEAS to clarify matters with John Bruton, even though, in the words of the Commission, "this service [EEAS] is in the best position to ask further questions of the person if necessary".⁸⁶ We are not aware that the Commission made any efforts itself either; no such correspondence has been released to us via our access to document request. Furthermore, whilst the Commission tells us that the Legal Service "pays careful attention to any case where a prohibition or restriction is proposed",⁸⁷ in this case, the approval of the Legal Service (via Julian Currall) was granted in only 34 minutes, notwithstanding the fact that he was sent numerous attachments of information relating to John Bruton's new roles.⁸⁸

Overall, considering the potential scope of John Bruton's new roles, the broad agenda of his former ambassadorial role, and his undoubtedly extensive contact book and insider know-how, these restrictions seem inadequate to prevent the risk of conflicts of interest from arising. The Complainants consider that the Commission should have put measures in place to specifically prevent Mr Bruton from providing lobbying advice to his employers and / or clients on files and matters which he had not directly dealt with whilst Ambassador. The Complainants are also of the opinion that a more extensive restriction to prevent officials such as Mr Bruton from lobbying former colleagues at EEAS / DG RELEX or other parts of the Commission on other files and matters would have been more effective.

In addition, we note that in his authorisation requests for the roles at American Oriental Bio Engineering, Gerson Lehman Group and Cabinet DN, he expects to have some contact with "other Commission departments". In fact, for the completed post at McDermott, Will and Emery, he writes that "I spoke to people in the Commission to find out their views on the subject". All of this is evidence that John Bruton was, and would likely continue to be in touch with the Commission under the auspices of his new professional activities and we consider that it was maladministration to not better investigate and then regulate these contacts, particularly with departments outside DG RELEX. After all, it seems to us highly likely that, acting in the role of the EU Ambassador to the US, he would have developed strong contacts with many others within the Commission outside of DG RELEX.

We consider that a full two year cooling-off period for all lobby jobs would have been appropriate in this case considering the seniority of the official, the wide scope of his EU ambassadorial role, and the nature of his subsequent work in Brussels, including his new

role in providing advice to an EU public affairs agency.

Case: Mogens Peter Carl

Mogens Peter Carl was a Commission official of long-standing. From 2000-2005, he was director-general at DG Trade. He then became director-general at DG Environment from November 2005 until July 2008. He then took a leave of absence to advise the French government on environment and climate change policy before returning to DG Environment before his retirement on 1 August 2009. In November 2009, Mogens Peter Carl applied for authorisation to become a senior adviser at Kreab Gavin Anderson which he duly did in February 2010.

Kreab is a major lobby consultancy which has “around 50 EU experts in our Brussels office focused on helping our clients to understand and influence EU decision making” with four fifths of its staff involved in activities covered by the lobby register.⁸⁹ Kreab says that it is “especially focused on financial services, environment [sic], energy and the internal market”.⁹⁰ Its single biggest client in 2010 was Scania (the vehicle manufacturer), which accounted for approximately 12 per cent of KGA Brussels' overall turnover.⁹¹ Upon his appointment, Karl Isaksson the managing partner of KGA in Brussels said: “Mogens brings with him a formidable wealth of experience in European public affairs as well as great knowledge about environment, energy and trade policy, all greatly important areas for our clients.”⁹²

The Complainants are concerned that the Commission has failed to actively and critically assess whether there are potential conflicts of interest related to Mogens Peter Carl's move to become a lobbyist at KGA, and that they failed to intervene to secure the absence of conflicts of interest related to his move to become a lobbyist at KGA. His employment at Kreab is clearly related to the work he carried out during the last three years of his service (the timeframe mentioned in the Staff Regulations), much of which was in powerful roles at DG Environment.

The meeting of the Commission's 'Joint Committee' or COPAR held on 8 January 2010 discussed a specific case where an official had applied for permission to undertake a new activity under Article 16 of the Staff Regulations. The minutes from this meeting have been released via access to documents although the name of the specific individual concerned has been redacted. Nonetheless, considering the nature, detail and timing of the discussion, we believe that the official concerned was Mogens Peter Carl. According to the minutes, the staff representatives considered that they could not formulate their opinion without seeing a full dossier of information. They expressed concern about the nature of the proposed work and demanded to see more information.⁹³ It is not known whether further information was provided or not, but ultimately COPAR approved the move.

In the Complainants' view, the Commission could – and should - have introduced a cooling-off period before allowing Mogens Peter Carl's job move.

Case: Petra Erler

In February 2010, Dr Petra Erler, who was Head of Cabinet to Commissioner Verheugen (DG Enterprise and Industry), left the Commission. In April 2010, alongside Professor

Verheugen, she established the European Experience Company (EEC) which offers its clients “creative solutions and the best strategy for your success in dealing with European institutions”.⁹⁴ Petra Erler became Managing Director of the European Experience Company, while former Commissioner Verheugen is a 50 per cent shareholder.⁹⁵

Yet Petra Erler only applied for authorisation from the Commission to undertake this activity on 30 August 2010, at least four months later, in contravention of the requirements of Article 16. Her belated application appears to have been prompted by media coverage of her case.

In her application for authorisation she writes: “I regret if I have not fully complied with art 16 staff regulation, since I was not aware that this duty was applicable to me and unfortunately was also not made aware.”⁹⁶

The Commission's reply to Dr Erler's request for authorisation says “we take note of the regret you have expressed regarding the late notification of this new activity...”⁹⁷ There is no evidence that this failure was met with a sanction, despite the seniority of Petra Erler's role at the Commission, the controversial nature of her new activities, the publicity that this case attracted at the time, and the requirement that the Commission should ensure full adherence to the rules by all staff at all times. Additionally, DG Enterprise and Industry is a DG where concern about conflicts of interest should be taken especially seriously considering the nature of its work.

According to the EEC's own website, the company undertakes activities on behalf of clients, such as: “intensive management seminars ... in cooperation with experts from European institutions; analytical background papers and strategy recommendations in the area of EU-policy; support for your public relations endeavours in European affairs”.⁹⁸

We note that the EEC's website also says that “We will not engage in any kind of lobbying activity. We are committed to dialogue, and believe in the right strategy and the strength of the argument.”⁹⁹ We further note that Petra Erler tells the Commission in her application that “the company is and will not be engaged in any lobby activities”.¹⁰⁰

Yet, the European Transparency Register describes lobbying as “activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and decision-making processes of the EU institutions”.¹⁰¹ It is hard to see how the work of the EEC, as described above and on its website, would not fall within this definition of lobbying. We consider that this should have provoked significant concerns about the risk of a potential conflict of interest arising in this case.

Yet the Commission wrote to Petra Erler that they were “pleased to authorise this activity”, attaching two conditions to this authorisation: she should not establish contact with or approach the services that came under the authority of Commissioner Verheugen or any former colleagues who were members of the cabinet; she should not advise companies who have been addressees or beneficiaries of any individual decision prepared by the services under the authority of Commissioner Verheugen.¹⁰²

We consider that the conditions applied to Petra Erler were too narrow and would not

prevent the risk of conflicts of interest from arising. Commissioners' senior staff including Heads of Cabinet are surely involved in a wide number of issues which stretch far beyond the scope of their immediate portfolio. Yet there were no wider restrictions or a cooling-off period placed on her to account for this.

Our concern that this revolving door case was not treated as seriously as it should be, appear to be backed up by the views of the staff members of the Joint Committee / COPAR who also strongly objected to approval being given in this case. The meeting of the 'Joint Committee' or COPAR held on 5 October 2010 discussed a specific case where an official had applied for permission to undertake a new activity under Article 16 of the Staff Regulations; these minutes have been released via access to documents.

At the conclusion of the meeting on 5 October 2010 which included a lengthy discussion on this case, the staff representatives on COPAR gave a unanimously negative opinion about the approval of this case, citing concerns about possible conflicts of interest and how ambiguities about the case had not been sufficiently tackled. This led to the minutes of the meeting recording that there was a divided opinion (“un avis partagé”).¹⁰³ Yet a mere two days later on 7 October 2010, Michel Magnier at the Commission wrote to Petra Erler to say that her proposed new activity was approved, subject to the restrictions outlined above.¹⁰⁴

We consider that it was maladministration that the Commission did not take into account the strong views expressed by the staff representatives of COPAR by either refusing to approve the proposed activity, or at least taking some more time to reconsider it in the light of the significant objections raised. This maladministration is especially worrying in the context where there is a good deal of ambiguity about the terms 'consultancy' and 'lobbying' which are at the heart of this case and which should have been fully probed. After all, one person's 'lobbyist' is another person's 'consultant'. The staff representatives of the committee were right to raise this point and to expect a thorough response from Commission officials.

In response to a letter sent by Corporate Europe Observatory on 11 June 2012 regarding the case of Petra Erler, the Commission replied on 13 September 2012 rejecting the suggestion that their application of Art. 16 was inadequate or that maladministration had occurred.¹⁰⁵ They emphasised that the “right to work is an overriding principle” including “to pursue a freely chosen or accepted occupation” and “to make the fullest use of the skills and experience the person has acquired”. The Commission appears to ignore the distinction between an individual's *chosen or accepted occupation* and an occupation that is *acceptable* vis-a-vis their legal obligations, undertaken with prior informed consent as part of undertaking the work of a public official, to abstain from situations that create potential conflicts of interest. In terms of acceptable occupations, immediately becoming a lobby consultant for hire by any private client, on dossiers previously worked on in an official capacity, is clearly one such situation. Nonetheless, the Commission argues that as Art. 16 “is an exception to this general principle and must thus be interpreted in that light,” a “blanket general prohibition on future employment with other employers in the same or a related field would be contrary to this general principle”. This response seems misdirected, as the Complainants have at no point suggested such a blanket or general prohibition.

The Commission further argues that having taken into account the opinion of the various stakeholders (DG Enterprise, the Secretariat General, the Legal Service and the Joint Committee) and “Ms Erler's declaration that any form of lobbying of the Commission in the course of her new activity would be excluded, the Appointing Authority took a balanced decision that imposed restrictions complying with the general principle of proportionality.” They further stated that the restrictions were substantial, and that Corporate Europe Observatory's proposal for wider restrictions “would impose an unreasonable burden upon her which would infringe article 16 of the Staff Regulations and her fundamental right to work.”

The problem with this response is the apparent failure to consider whether Erler's new activity would be “directly or indirectly influencing the formulation or implementation of policy and decision-making processes of the EU institutions”, but instead taking at face value the statement that she would not be involved in any form of lobbying. Furthermore, simply stating that a balanced decision was taken does not assuage concerns about the rapidity with which it was taken after serious objections were raised by one of the key stakeholders, the Joint Committee, of which the Commission notes that “the members representing personnel were not in favour.” Nonetheless, the Commission simply asserts that “the opinion of the Joint Committee is not the conclusive element in a Decision.”

With respect to the four month delay in applying for permission, the Commission states that in cases of non-compliance with statutory obligations, “the situation is examined to ascertain whether this is the result of administrative oversight on the part of the person concerned or is of a more serious nature. Several criteria are examined: good or bad faith, the existence of damages etc”, and that Erler's case was not considered to fall into the more serious category. It has already been noted that Ms Erler had stated that she was not aware this duty was applicable to her and “unfortunately was also not made aware”. Given these facts, it is difficult to see how good practice and full implementation of the Staff Regulations will ever become a reality, if the Commission neither ensures its staff are made aware of their obligations, especially at such a high level, nor establishes any repercussions whatsoever when they are not met.

Nonetheless, with respect to all points raised in the letter, the Commission rejects the accusation of maladministration as completely unsubstantiated, and asserts that “you have not provided any evidence to show and inadequate implementation of Article 16”. The Complainants find the Commission's assertions to be an unsatisfactory response to the substantive evidence presented and concerns raised.

Case: Marcus Lippold

Prior to joining the Commission, Marcus Lippold had a long career in the oil industry. He joined ExxonMobil in 1992 to become Head of Department for Financial Reporting and Analysis for the company's Central European activities, followed by several management positions in the areas of Finance, Marketing and Information Technology. His most recent positions before joining the European Commission were Fixed Assets Manager for Europe, ExxonMobil Hungary BSC and ERP Systems Change Manager for Finance, ExxonMobil CAS.¹⁰⁶

Now, Marcus Lippold's role at Directorate General for Energy makes him responsible for international energy relations. This encompasses the coordination of bilateral oil dialogues and international cooperation (OPEC and non-OPEC countries) and the Oil and Gas dimension in international forums (G8, G20, IEA etc.), with a special focus on energy dialogues with the OPEC Secretariat, Saudi Arabia, UAE, GCC, IEF and the Arctic Forum. He also coordinates the adoption of EU energy legislation in the Energy Community countries (Balkans, Ukraine, Turkey).¹⁰⁷

Previously he was a senior energy economist at DG-Tren working on oil and coal related legislation. His portfolio included European oil upstream and downstream sectors and related refinery products and product markets. In 2009, he led a study assessing the competitive aspects of the oil product markets in the EU 27.¹⁰⁸

It is clear that Marcus Lippold's Commission work has brought him into contact with, and continues to bring him into contact with, the oil and fuel industry; for example, he moderated two sessions at the European Fuels Conference 2011¹⁰⁹.

Marcus Lippold is also involved in the discussions on the implementation of the EU's Fuel Quality Directive. The Directive sets a carbon intensity reduction target for transport fuels but no rules have been set so far as to how to measure the carbon intensity of fossil fuels. The Climate Commissioner (Connie Hedegaard) has proposed default values for fuels from different feedstock such as oil, gas or tar sands. Canada and the oil industry oppose the inclusion of a tar sands value, so does Energy Commissioner Günther Oettinger. It is clear that there is not yet a common view on this important issue across the whole Commission but the Complainants consider that there is a risk that the internal Commission debate to agree a policy for the public interest could be distorted if a former oil-industry staffer is able to participate as an official who has not been scrutinised for possible conflicts of interest.

On 15 May 2012, Corporate Europe Observatory requested "all correspondence, including emails, and notes/ minutes from any meetings which discuss Marcus Lippold's employment at DG-Energy as it relates to Articles 11 and 11a of the Staff Regulations. Specifically, what assessments have been made of Marcus Lippold's personal interests, considering his previous work for the energy industry including ExxonMobil, and are there any matters which he has been relieved from dealing with, under Article 11a 2 of the Staff Regulations." This was registered as Gestdem 2012-2389.

On 8 June 2012, the Commission replied that "there are no documents corresponding to your request about M. Lippold reference 2012-2389". This implies that the Commission has not undertaken any assessment of whether or not Marcus Lippold has a conflict of interest. The Complainants consider that this is maladministration; considering his previous career, it appears that there could be a risk of conflicts of interest in his current and recent jobs and the Commission has not recognised this, explored it and / or taken any necessary action as a result. We consider that the Commission should have proactively scrutinised Marcus Lippold's employment history for the risk of conflicts of interest. The absence of any documentation suggests that no such assessment occurred. Such assessment should be repeated whenever a staff member takes on new dossiers or

policy responsibilities.

On 7 September, the Commission responded to a letter sent by Corporate Europe Observatory and Greenpeace EU Unit on 13 July alleging that the apparent failure to assess potential conflicts of interest of Marcus Lippold (based on the absence of any documents) constitutes maladministration, stating that they reject this suggestion. According to the Commission “Mr Lippold went through a standard recruitment procedure, which includes scrutinizing his CV and an interview. At the end of the procedure, it was concluded that Mr Lippold’s experience in the oil industry was an asset for DG ENER.”¹¹⁰ They state that the “mere fact that Mr Lippold worked in the past for Exxon Mobil” does not mean he has any personal interest under Art. 11a. Moreover, they state that “There is indeed no reason why a candidate for a post should be discarded due to a previous job assignment in the industry.” The Complainants at no point claim this, but contend that previous career history - including former employers and / or clients where they relate to the official's present functions - is more than sufficient grounds to fully examine whether any impairment of independence could occur. Nor does the outcome of such an examination have to result in a candidate being discarded; it could simply lead to certain restrictions regarding particular dossiers or clients being agreed. Yet it is still far from evident, without any documentation to so demonstrate, that scrutinizing a CV and an interview constitutes a full assessment of potential conflicts of interest.

In response to concerns expressed about frequent contact with the oil and fuel industry, the Commission noted that “you do not provide any factual element suggesting that Mr Lippold's behaviour on these occasions was biased or partial.” With respect to concerns about ensuring impartiality in policymaking, specifically the EU's Fuel Quality Directive, the Commission said of Lippold that “his capacity to influence a policy debate involving a variety of actors, including at Commissioner level, should not be overestimated: like any other official, Mr Lippold carries out his tasks under the supervision of his hierarchy.” Both of these answers circumvent the fact that the onus is on the institution to ensure their staff are working in the public interest, most clearly by ensuring possible conflicts of interests have been transparently and substantively assessed. It remains the fact that this prerequisite cannot be seen to have been demonstrated.

Case: Jean-Philippe Monod de Froideville

For two years from 2007 to 2009, Jean-Philippe Monod de Froideville was a personal advisor and member of Competition Commissioner Neelie Kroes’ cabinet where he advised on mergers and acquisitions in the financial services and health-related markets. His portfolio of responsibilities whilst at DG Competition included technology & development, environment, communications and trade. He was also responsible for all matters dealing with the European Parliament including the energy package, the telecom package and the climate change package¹¹¹.

On 29 September 2009, Jean-Philippe Monod de Froideville set up a consultancy organisation called Monodceros. According to its statutes it works on “dienstverrichtingen als raadgevende kabinet in de volgende domeinen: publieke relaties, lobbying, contact met de media, raadgeving wat betreft de relatie met de politieke autoriteiten, de overheid en de Europese instellingen”¹¹² which has been translated as “advisory firm providing services in

the following: public relations, lobbying, media contacts, advice regarding relations with the political authorities, the government and the European institutions".

On 19 November 2009, Interel announced that Jean-Philippe Monod de Froideville was being appointed as "Associate director within its growing European Affairs practice".¹¹³ According to their website, he led "Interel's Competition & Trade practice providing the support to clients in the often overlapping legal, economic and political field of anti-trust, state aid, mergers and general competition policy for clients across many sectors. Moreover, he led the Technology practice supporting clients in the digital space from software companies to hardware and technology service providers"¹¹⁴. When he was recruited, Interel's Managing Director of the Brussels office said that his "strong network within the EU institutions and personal insight into the formal and informal European decision making process" would be "a tremendous asset to our clients"¹¹⁵.

According to Jean-Philippe Monod de Froideville's application, his work at Interel would "focus on the support of clients in dealing with EU issues by providing economic and political analysis. This could mean analysing market structure and market shares, value chains etc. The nature of the work will be mostly forward looking"¹¹⁶.

In this case, the Commission did seek to clarify some details with Jean-Philippe Monod de Froideville, but no evidence has been supplied to us that the Commission carried out further enquiries including with the Transparency Register or Interel directly. Considering his seniority and his previous influential role, it seems surprising that the Commission was not more probing.

We consider that if the Commission had thoroughly explored all dimensions of this role, under Article 16 of the Staff Regulations, it would have imposed a cooling-off period or at least some restrictions on the move by Jean-Philippe Monod de Froideville to Interel. His role to lead Interel's competition, trade, and technology practices represents a significant overlap with his work at DG Competition and the founding documents for Monodceros make very clear that he would be undertaking lobbying work with the EU institutions. The fact that he moved to Interel six months after he had left the Commission does not mean that this would prevent the risk of conflicts of interest from arising in the future.

The Complainants consider that restrictions and / or a cooling-off period would have been appropriate in this case.

Case: Magnus Ovilius

Magnus Ovilius was Head of Sector, Preparedness and Crisis Management at DG-Justice, Freedom and Security (functions now covered by DG-HOME) until 2008 when he left, on personal leave or sabbatical, for a post as Senior Vice President Government Relations at Smiths Group plc where he continues to be employed.

Magnus Ovilius himself describes his Commission role as Head of Sector of the department responsible for "the formulation, implementation and evaluation of European Union counter-terrorism policies including defence related aspects of counter-terrorism,

law enforcement led civil protection, critical infrastructure protection, crisis management, CBRNE policies [presumably: Chemical, Biological, Radiological, Nuclear, and Explosive], G8 Roma, Lyon meetings, and Security research".¹¹⁷

Magnus Ovilius describes his new role as being "responsible for the coordination and direction of global government relations issues and group initiatives for Smiths Detection Group".¹¹⁸ He is also Senior Vice President for Government Relations at Smiths Group plc. Smiths Detection Group describes itself as "a world-leading designer and manufacturer of sensors that detect and identify explosives, weapons, chemical agents, biohazards, nuclear and radioactive material, narcotics and contraband".¹¹⁹

For sabbaticals, the Commission has a specific definition of a conflict of interest: "A conflict of interest shall be deemed to exist where the assignment or the activity would reflect on the official's status as an official and would be detrimental to the loyalty she owes to the institution and its authorities but also where it would be incompatible with her duty to conduct herself in a manner that is beyond suspicion in order that the relationship of trust between that institution and herself may at all times be maintained".¹²⁰

The Complainants consider that there are significant risks of conflicts of interest attached to this sabbatical:

Firstly, it seems clear to us that Magnus Ovilius' role at the Commission overlaps closely with the topics involved in his role at Smiths Detection. Likewise, it is reasonable to assume that Smiths Group has a commercial interest in the policies that he used to oversee (and indeed may return to oversee when his personal leave ends). Because of this, we consider that there is a risk of conflicts of interest arising considering the definition above.

Secondly, Magnus Ovilius is now the Senior Vice President responsible for government relations, which is a post which implies that he will be undertaking lobbying, advising on lobbying and / or overseeing the development of lobbying strategies. Magnus Ovilius himself is listed as the person with legal responsibility for the declaration of Smiths Group on the EU's Transparency Register.¹²¹ Additionally, we understand that he met with the organisation responsible for air safety in the Commission on 12 March 2010. The Commission has also said that: "He [Magnus Ovilius] has been in contact with Commission services as representative of a security equipment manufacturer, in the framework of *consultations undertaken on a regular basis* with a wide range of external stakeholders [emphasis added]."¹²²

The Complainants consider that this sabbatical post should have been subject to much higher restrictions, as allowed for by the rules, and potentially should have been prevented entirely. The Commission (Stefano Manservigi) states that it "added a restriction to the approval of Magnus Ovilius' first request i.e. he was not allowed to get in contact with colleagues from the former Directorate General Justice, Freedom and Security for a period of six months".¹²³ But in fact, this restriction is an automatic requirement of the Commission Decision and does not constitute an added restriction.

Considering the potential conflicts of interest arising in this case, we consider that the

Commission, as a minimum, should have used its power to place extra conditions on Magnus Ovilius. Such conditions could have extended the timeframe of the lobbying ban, as well as widening the ban by including other DGs. After all, Magnus Ovilius had worked at the Commission for 12 years when he went to Smiths Group, and it is likely that he would have had contacts with, and insights into, the work of several other DGs which could benefit Smiths Group, such as DG Transport.

We consider that the Commission should have been far more rigorous in applying the Commission's 'decision on outside activities and assignments', and should have been more sensitive to the potential conflicts of interest arising when a staff member goes on sabbatical to be employed in a sector related to his EU post and particularly where there is a lobbying element to the new work. The Complainants consider that this sabbatical post should have been subject to much higher restrictions, as indicated by the rules, and potentially that it should have been prevented entirely.

But instead, the Commission only seems to consider a narrow range of risks can arise from sabbaticals. In response to the Complainants' complaint on this case, the Commission implied that they are really only concerned about the risk of conflicts of interest when there is a possible breach of "professional secrecy" or where an official proposes to work on the "very same files" with their new employer.¹²⁴

Case: Eline Post

Eline Post worked as an assistant case handler (temporary agent) at DG Competition from 2005 until December 2010 when she became a senior consultant on competition matters at Avisa Partners.

Eline Post applied for authorisation of this post retrospectively, more than eight months after starting. A letter from Michel Magnier at the Commission to Eline Post dated 10 November 2011 says "I regret that you have not introduced your request for authorisation in accordance with the provision of Article 16". No sanctions were implemented for this breach in the rules. However, Eline Post received no specific reminder of her obligations when she left. In a letter to Corporate Europe Observatory, the Commission wrote that "I confirm that there have been no specific or individual communications with Ms Post ... with regard to obligations under Article 16 of the Staff Regulations before September 2011. ... For your information, all agents working in the Directorate-General for Competition receive a copy of the Ethical Code of the Directorate-General for Competition as well as a presentation of the obligations under the Staff Regulations."¹²⁵

As a result of the delay in her application for authorisation, Eline Post's work at Avisa Partners was unregulated until Michel Magnier's letter dated 10 November 2011 set out the conditions upon which the Commission authorised this post, and the risk of conflicts of interest could have arisen during this time.

In this letter, Eline Post was authorised (to continue) in her post at Avisa Partners but told to "avoid any situation of conflicts of interest in your new function, particularly you will abstain from dealing with cases (or new cases linked to old ones) on which you have worked in the frame of your functions at DG COMP, and more particularly on the cases

listed in the attachment”.¹²⁶ vi

The Avisa Partners website lists Eline Post as having “worked at the European Commission's DG for Competition as a case-handler for 6 years. She has a profound understanding of all aspects relating to the life-cycle of cartel cases with particular emphasis on settlements and leniency. In addition, she has made a vital contribution to the overall organization, implementation and development of anti-trust and cartel policy.”¹²⁷ It says that she has specific responsibility for “competition” and “financial services”.¹²⁸

In September, Corporate Europe Observatory asked for all documentation relating to Commission decisions made about the proposed job move by Eline Post from the Commission to Avisa Partners in 2010 via Gestdem 2011-4780. In the light of the papers received, we consider that the Commission did not undertake a thorough analysis of the risk of conflicts of interest arising in this case. Eline Post's application describes her work as “assisting consultants on European Union affairs”, although she gives no further information about what topics. She also expects to have further direct or indirect contacts with the Commission but again no further information is given.¹²⁹ Yet no apparent clarification was sought by the Commission about what this might entail. There is no evidence to show that they explored which topics, cases or clients she would work on and what her future contacts might be with the Commission.

After all, Article 16 of the Staff Regulations is concerned with preventing conflicts of interest. When a case handler from DG Competition goes to work for a firm such as Avisa Partners, it is highly likely that they are being recruited, at least in part, on the basis of their deep understanding of how competition matters are handled by the Commission. As Avisa's website says, “Former senior EU Commission officials founded this bespoke public affairs consultancy in 2007. Providing deep and trusted knowledge of how to navigate the EU institutions, it comprises an eclectic and highly-skilled team of senior consultants and advisors.”¹³⁰

Despite the ban on Eline Post working on specific cases which she worked on whilst at the Commission, we consider that this would not be sufficient to prevent the risk of wider conflicts of interests from developing and to specifically prevent former officials from using their Commission contacts and insider know-how about the Commission's working processes to benefit their employers and clients. The Complainants consider that a cooling-off period would have been more appropriate.

Case: Derek Taylor

Derek Taylor worked for the Commission for 25 years, most recently as Energy Adviser to DG Energy and Transport, until he left on 31 May 2009. On 9 September 2011, Derek Taylor applied to the Commission for authorisation of several professional activities. These were the creation of DMT Energy Consulting sprl, which has “annual or long term contracts” with Bellona (an NGO working on energy issues), Burson-Marsteller and the Global CCS (Carbon Capture and Storage) Institute.

^{vi} Avisa Partners has declared to Corporate Europe Observatory that Eline Post has not and will not work on any case she dealt with while at DG Competition.

It appears that DMT Energy Consulting was created on 12 August 2009 and Derek Taylor joined Burson-Marsteller on 31 August 2009, at least two years before he had applied for authorisation from the Commission. In fact, it appears that he only applied for authorisation after Corporate Europe Observatory had requested access to copies of Derek Taylor's authorisation paperwork on 16 August 2011 via gestdem 2011-4407.

Corporate Europe Observatory also asked (via gestdem 2011/5540) for "all correspondence (including emails) from the Commission to Derek Taylor regarding his departure from the Commission in June 2009 and his obligations under Article 16 of the Staff Regulations". The Commission has not provided any evidence that paperwork exists which indicates that he was directly reminded, before September 2011 about his obligations under Article 16. Of course, he was an experienced member of staff at the Commission having worked there for 25 years¹³¹ and all staff have a responsibility to familiarise themselves with the Staff Regulations and the ethical obligations for officials and ex-officials contained within it. Nonetheless, the Commission could easily have reminded Derek Taylor about his obligations once he announced his intention to retire. In fact, the Commission has shared no evidence that it was vigilant in enforcing Article 16 with him since he left the Commission on 31 May 2009.

Furthermore, information regarding Derek Taylor's new assignments is and was publicly available on the Burson-Marsteller Brussels website¹³², on his publicly-available Linked-in profile¹³³, and he has been speaking at events where Commission officials were also present and presenting¹³⁴. If the Commission had been vigilant in the implementation of Article 16, this information would have been easy to find.

When the Commission replied to Derek Taylor's authorisation request on 20 October 2011, Michel Magnier from DG Human Resources simply wrote "I regret that you have not introduced your request for authorisation in accordance with the provisions of Article 16...". The Commission did not apply a sanction regarding this very serious breach of Article 16 of the Staff Regulations by Derek Taylor. After all, this is not just a mere matter of technicalities. For the period between 12 August 2009 when DMT Energy Consulting was set up, until 9 September 2011, more than two years, Derek Taylor's professional activities were entirely unregulated by the Commission.

Indeed, the Complainants are also rather surprised that, of all the correspondence released to us which concerns the internal Commission consultation on whether or not to authorise Derek Taylor's activities, it is only some members of the Joint Committee (COPAR) who express concerns about this significant breach.¹³⁵

The Complainants are surprised to read in Derek Taylor's application that, in answer to the question "Will you receive remuneration or other pecuniary advantages", he writes "No". We were also surprised to see that in the 20 October 2011 reply to Derek Taylor, Michel Magnier wrote "Thank you for your request ... regarding the performance of non remunerated professional activity". From this it appears that the Commission concurs with Derek Taylor's statement that this work is unremunerated.

Yet, information publicly available (via the website of the National Bank of Belgium) shows that between 12 August 2009 and 31 December 2010, DMT Energy Consulting had a post-

tax profit of 95 975 Euros and that only Derek Taylor and a Ms Christine Taylor are listed as directors and shareholders.¹³⁶ Even if he has not yet drawn a salary or a dividend from DMT Energy Consulting, it seems clear that his company was earning significant sums.

Article 16 of the Staff Regulations applies to activities “whether gainful or not”. We agree with this approach, but also consider that, in general, remunerated activity is likely to provoke a higher risk of conflicts of interest than unremunerated. In this case, it appears that there are questions as to whether or not the work in question is remunerated and how this should be interpreted. The Complainants consider that the Commission should have clarified this issue as part of its efforts to carry out an assessment which was as thorough as possible. It raises questions about how effective the Commission was in obtaining and scrutinising all the relevant information before coming to its final decision.

There are other areas where we consider that the Commission should have undertaken a more thorough assessment of this case.

Donatienne Claeys Bouuaert of the Commission’s Secretariat General was sent an email with several attachments to consider in relation to Derek Taylor’s proposed activities at 13.21 on 29 September 2011. She apparently replied at 13.29 on the same day with a three word answer “merci et OK”. It seems to us that, considering only eight minutes passed between Donatienne Claeys Bouuaert receiving the first email and her replying, she can have given only the most cursory of looks at the papers before signalling that she had no problems with them. The Commission says that the Secretariat-General is consulted on such cases while the main assessment is carried out by the former service of the official concerned.¹³⁷ It seems appropriate to expect that the Secretariat-General would scrutinise the applications carefully, rather than simply to provide a rubber stamp, especially in a case like this where there has already been a significant breach of the rules.

More generally, based on the documents released via 2011-5540 and 2011-5904, we have failed to find evidence that the Commission fully explored the potential conflicts between Derek Taylor’s former role at DG Energy and his new roles at Burson-Marsteller, Bellona and the Global CCS Institute. There is no evidence that the Commission communicated with Derek Taylor’s new employers to understand his proposed roles more, or asked to see DMT Energy’s contracts with them. There is also no evidence that the Commission consulted the EU Transparency Register and / or other external sources of information to explore the clients of Burson-Marsteller (or any other future employer) and their areas of work and what possible conflicts of interest might arise from these, before granting authorisation.

Finally we consider that the Commission should be extra vigilant when considering a case of a senior official who has been undertaking professional activities for over two years without securing the appropriate permission. Yet, the Commission does not seem to have put any extra resources or processes in place to explore the facts in this case.

The Complainants consider that there was a high risk that conflicts of interest could arise in this case.

We argue this for several reasons. Derek Taylor works for Burson-Marsteller Brussels as an adviser on energy issues.¹³⁸ That is a role which is extremely close to his role at the Commission where he was also a senior energy adviser. According to the Burson-Marsteller Brussels' entry in the EU lobby register, their 2011 clients included ExxonMobil, European Small Volume Car Manufacturers Alliance, Camfil Farr, Neste Oil, GE Energy and many others likely to have a strong interest in the insights of a former senior energy adviser with 25 years experience of working at the Commission.¹³⁹

Meanwhile, Derek Taylor's work at Bellona and the Global CCS Institute covers exactly the same areas of policy which he worked on whilst at the Commission which included working on nuclear issues but also on other aspects of energy policy with an emphasis on coal, 'clean coal' technologies, carbon capture and storage, and the environmental costs and benefits of their use. Derek Taylor describes his future activities as "consulting/ advising on energy and energy related issues with emphasis on low-carbon energies".¹⁴⁰ He has been active in representing GCCSI at various events including where senior EU officials have also been present.¹⁴¹ In his application, he makes clear that he will have contacts with the European institutions, including DG Energy, DG Environment, DG Climate and DG Research. Furthermore, Derek Taylor makes clear that he also had "contacts while working with the Commission with all the organisations with whom DMT Energy presently has contracts".

All of this increases the risk of conflicts of interest arising in this case and the Complainants consider that the Commission should have been proactive in investigating these further and regulating them via a cooling-off period.

Case: Mårten Westrup

Mårten Westrup was contracted by DG Enterprise as a Legal Officer from 1 February 2007 until 16 April 2008. His duties included assisting in drafting motor vehicle regulations and participating in DG Enterprise's work on competition policy and the automotive industry. During this time he contributed to several policy documents including¹⁴²:

- Two information notes to the Environment Council on emissions from heavy duty vehicles dated 15 June 2007 and 21 February 2008
- An impact assessment on a Commission proposal to reduce the carbon dioxide emissions from passenger cars – 19 December 2007

Mårten Westrup then worked as a Policy Officer from 1 January 2009 until 30 September 2010 in DG Enterprise. His duties included contributing to the development of horizontal issues such as space policy, including the drafting of briefings, speeches and other policy documents. There he contributed to a range of policy documents including¹⁴³:

- "An integrated industrial policy for the globalisation era putting competitiveness and sustainability centre stage" – 28 October 2010
- Proposals for regulations concerning the European Earth Observation Programme (GMES) – 20 May 2009, followed by the Regulation itself – 20 October 2010
- DG Enterprise's work programmes for 2010 and 2011 on space issues.

When Mårten Westrup left DG Enterprise after a total of 27 months' work between 2007 and 2010, he moved to a role at BusinessEurope where he took up a position as adviser to

its Industrial Affairs Committee (with specific responsibility for climate change). BusinessEurope represents major industry and business groups from across the EU and it has many interests in the work of the Commission including DG Enterprise, as well as in the specific work that Mårten Westrup was responsible for whilst he was at DG Enterprise. Fifty major companies “enjoy an important status within BusinessEurope” as they are (paying) members of BusinessEurope’s Corporate Advisory and Support Group. These include three car companies (Daimler, Hyundai, Toyota), plus a range of energy companies (Areva, BP Europe, Enel, ExxonMobil, GDF Suez and others).¹⁴⁴

Considering the policy-making insights and the contacts that Mårten Westrup would have gained whilst at DG Enterprise, we consider that there was a risk of a conflict of interest resulting from this job move.

A letter from the Commission to the Complainants states that Mårten Westrup's work at DG Enterprise was “highly technical” and that his duties at BusinessEurope were of a “different nature”. It also sets out that his former units were not involved in granting subsidies to BusinessEurope.¹⁴⁵ However, we consider that this information (while important) is not, in and of itself, enough to rule out the risk of a conflict of interest from arising in this case and to warrant exemption from Article 16 of the staff regulations. Yet, Mårten Westrup was exempted from consideration under Article 16 of the Staff Regulations when he moved from DG Enterprise to BusinessEurope on the grounds that he was a contract agent deemed to have not had access to 'sensitive information'.¹⁴⁶

We note that the Commission has told us that Mårten Westrup was “transparent about his intention to work for BusinessEurope after leaving the Commission. He informed his superiors ... before accepting the job offer”.¹⁴⁷

Documents obtained by the Complainants detail how Mårten Westrup, whilst at BusinessEurope, used his contacts with his former colleagues at DG Enterprise to promote BusinessEurope's position on climate change issues. Mårten Westrup, together with others at BusinessEurope, successfully enlisted the help of DG Enterprise to resist a proposal by DG Climate Action to ban industrial gas offsets in the European Emissions Trading System (ETS).¹⁴⁸

In an email sent to DG Enterprise staff on 8 November 2010 whilst he was working for BusinessEurope, Mårten Westrup referred to a recent gathering at a former colleague's good-bye drink and expressed his wish to continue cooperation in his new capacity after his time at DG Enterprise. He forwarded a note with BusinessEurope's position on the plans to restrict offsets in the ETS. He explained that although an official version would be sent shortly to the Cabinet by his colleague Philippe de Buck, he was sending it in advance as “*We hope there is still time to consider this note before the ISC [Inter Service Consultation] ends. If not, it may be useful for the negotiations leading up to the adoption of the draft Decision*”.¹⁴⁹

In 2011 Mårten Westrup returned to the Commission (DG Energy) to work as a Policy Officer in the unit handling 'energy policy & monitoring of electricity, gas, coal and oil markets'.¹⁵⁰ We are aware that he has been quoted in the media regarding the Commission's energy policy and specifically the important Energy 2050 Roadmap¹⁵¹ and

that he has also been present at Commission meetings to discuss the Energy 2050 Roadmap¹⁵². On behalf of its members, BusinessEurope takes a specific interest in energy policy, as a simple look at their website will make clear, and Mårten Westrup's specific responsibilities at BusinessEurope relating to climate change cannot be considered unrelated to his DG-Energy role.

The Commission says that Mårten Westrup went through a standard selection process¹⁵³ and, of course, it is clear that the Commission would have known about his employment at BusinessEurope. We consider that the Commission should be proactive in scrutinising all new staff for possible conflicts of interest and that that would be an appropriate way to implement Article 11a. Yet the Commission is not proactive in scrutinising staff in this way and they should not have waited until he himself raised this matter with DG Energy. We understand from information supplied under gestdem 2011-5663 that Mårten Westrup himself approached the Commission about whether or not he had a particular conflict of interest and that the Commission decided that he does not. We assume that the possible conflict of interest in question was Mårten Westrup's previous employment at BusinessEurope, but the specific paperwork has not been released to us.

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<http://www.ombudsman.europa.eu/en/resources/publicserviceprinciples.faces>
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- 9 European Ombudsman. 2011. *Draft recommendations of the European Ombudsman in his inquiry into complaint 775/2010/ANA against the European Food Safety Authority (EFSA)*
<http://www.ombudsman.europa.eu/en/cases/draftrecommendation.faces/en/11089/html.bookmark>
- 10 A copy of this form was released to CEO under access to documents request Gestdem 2012-0118 and can be viewed here: <http://www.asktheeu.org/en/request/41/response/110/attach/3/Leaving%20form.pdf>
- 11 DG-Human Resources' *Practical guide to staff ethics and conduct*. Undated.
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- 13 Letter from Juraj Nociar, European Commission to the Complainants dated 21 February 2012.
- 14 Information taken from the activity reports of the Investigation and Disciplinary Office of the Commission (IDOC). 2008, 2009, 2010, 2011.
- 15 Information from Mr Asbo's Linked-in profile viewed on 17 August 2012:
<http://www.linkedin.com/in/pabloasbo>
- 16 Letter from Marc Maes, European Commission to Corporate Europe Observatory dated 15 March 2012.
- 17 Information from IFSC Ireland website viewed 17 August 2012: <http://www.ifsc.ie/article.aspx?idnews=45721>
- 18 Information from Cabinet DN's website viewed 17 August 2012: <http://www.cabinetdn.com/our-team/john-bruton>
- 19 Information from John Bruton's website viewed on 4 July 2012: <http://www.johnbruton.com/2011/03/my-professional-activities.html>
- 20 Information from Petra Erler's application for authorisation under Article 16, Staff Regulations, dated 30 August 2010.
- 21 Letter from Marc Maes, European Commission to Corporate Europe Observatory dated 15 March 2012.
- 22 Letter from Irene Souka, European Commission to the Complainants dated 12 April 2012.
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- 27 Information from John Bruton's applications for authorisation to engage in an occupation after leaving the Commission dated 22 + 23 January 2011.
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- 30 Letter from Irene Souka, European Commission to the Complainants dated 4 April 2012.
- 31 Email from Julian Currall, Legal Services to DG Human Resources dated 10 February 2011 at 14.20, as a reply to an email sent by Marie-Claire Lievens of DG-HR dated 10 February 2011 at 1.46pm.
- 32 Information from Eline Post's 'application for authorisation to engage in an occupation after leaving the Commission' dated 5 October 2011.
- 33 Information from the National Bank of Belgium: <http://bcc.nbb.be/BCCIA0101/WEB/actions/Frames?LangIndex=E>
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- 35 European Ombudsman. 2011. *Decision of the European Ombudsman closing his inquiry into complaint*

476/2010/ANA against the European Commission.

- 36 Information from "Commission decision on outside activities and assignments" dated 29 June 2004.
- 37 Information from access to documents request Gestdem 2012-2491:
http://www.asktheeu.org/en/request/definition_of_conflicts_of_inter
- 38 Information from two parliamentary questions tabled by Nessa Childers MEP and answered by Commissioner Sefcovic: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-008839&language=EN> and <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-6232&language=EN> and <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-008839&language=EN>
- 39 <http://www.ifsc.ie/article.aspx?idnews=45721> viewed 17 August 2012.
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<http://www.european-experience.de/english>
- 43 Letter from Michel Magnier, European Commission to Petra Erler dated 7 October 2010.
- 44 Information from minutes of Joint Committee / COPAR meeting held in Brussels on 5 October 2010.
- 45 Information from letter from Michel Magnier, European Commission to Petra Erler, dated 7 October 2010.
- 46 Information from EU Transparency Register viewed 30 May 2012:
<http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=1078390517-54>
- 47 Information from EU Transparency Register, viewed 6 July 2012:
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- 48 Interel press release 19 November 2009: http://www.interelgroup.com/ePub/easnet.dll/ExecReq/Page?eas:dat_im=0317CB&eas:template_im=01FA30
- 49 Information from the National Bank of Belgium: http://www.ejustice.just.fgov.be/cgi_tsv/tsv_rech.pl?language=fr&btw=0819021973&liste=Liste
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- 57 Information from "Ethics Guidelines for DG-Markt Staff 2011"
- 58 Information from "Practical guide to staff ethics and conduct". DG-Human Resources. Undated.
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- 62 Letter from Irene Souka, European Commission to the Complainants dated 16 May 2012.
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- 71 Public Administration Committee - Third Report. *Business Appointment Rules*
<http://www.publications.parliament.uk/pa/cm201213/cmselect/cmpubadm/404/40402.htm> 25 July 2012:
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- 74 Letter from Michel Magnier, European Commission to Pablo Asbo dated 3 November 2011.
- 75 Letter from Marc Maes, European Commission to Corporate Europe Observatory dated 15 March 2012.
- 76 Letter from Michel Magnier, European Commission to Pablo Asbo dated 3 November 2011.
- 77 Information from Pablo Asbo's 'application for authorisation to engage in an occupation after leaving the Commission' dated 21 September 2011.

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- 82 Information from EU Transparency Register, viewed 6 August 2012: <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=91124993695-29>
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- 88 Email from Julian Currall, Legal Services to DG Human Resources dated 10 February 2011 at 14.20, as a reply to an email sent by Marie-Claire Lievens of DG-HR dated 10 February 2011 at 1.46pm.
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- 94 Information from the European Experience Company website viewed on 4 July 2012: <http://www.european-experience.de/english>
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- 106 Information from Marcus Lippold's Linked-in profile, viewed 27 June 2012: <http://be.linkedin.com/pub/marcus-lippold/1/ab/a91>
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- 109 Information from: <http://www.theenergyexchange.co.uk/s986/>
- 110 Letter from Phillip Lowe, DG Energy, European Commission, received on 7 September 2012, see Annexe 5.
- 111 Information from Interel press release dated 19 November 2009: <http://www.interelgroup.com/ePub/easnet.dll/ExecReq/Page?>

[eas:dat_im=0317CB&eas:template_im=01FA30](#)

- 112 Information from the National Bank of Belgium: http://www.ejustice.just.fgov.be/cgi_tsv/tsv_rech.pl?language=fr&btw=0819021973&liste=Liste
- 113 It can be noted that Jean-Philippe Monod de Froideville is no longer working at Interel, but since March 2012 is working at Expedia as Director for Corporate & Government Affairs EMEA. Jean-Philippe Monod de Froideville has emphasised, in an email of 15 October 2012 to CEO, that in this new role he is "working in a completely new field (tourism) with no overlap in any of my Commission activities while in the Cabinet."
- 114 Information from the Interel website, viewed 9 July 2012: <http://www.interel.eu/en/monod.htm>
- 115 Information from Interel press release dated 19 November 2009: http://www.interelgroup.com/ePub/easnet.dll/ExecReq/Page?eas:dat_im=0317CB&eas:template_im=01FA30
- 116 Information from Jean-Philippe Monod de Froideville to Joos Stragier, DG Competition dated 16 November 2009.
- 117 Information from Magnus Ovilius' Linked-in profile, viewed 9 July 2012: <http://www.linkedin.com/pub/magnus-ovilius/32/4b/288>
- 118 Information from Magnus Ovilius' Linked-in profile, viewed 9 July 2012: <http://www.linkedin.com/pub/magnus-ovilius/32/4b/288>
- 119 Information from Smiths Group website, viewed 9 July 2012: <http://www.smiths.com/smiths-detection.aspx>
- 120 Information from "Commission decision on outside activities and assignments" dated 29 June 2004.
- 121 Information from EU Transparency Register, viewed 9 July 2012: <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=30523216596-22>
- 122 Information from a parliamentary question tabled by Martin Ehrenhauser MEP and answered by Commissioner Malmström: <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2011-012493&language=EN>
- 123 Letter from Stefano Manservisi, European Commission to Corporate Europe Observatory dated 20 February 2012.
- 124 Letter from Stefano Manservisi, European Commission to the Complainants dated 23 July 2012.
- 125 Letter from Marc Maes, European Commission to Corporate Europe Observatory, 15 March 2012.
- 126 Letter from Michel Magnier, European Commission to Eline Post, 10 November 2011.
- 127 Information from Avisa website, viewed 9 July 2012: <http://www.avisaeu.com/bios>
- 128 Information from Avisa website, viewed 9 July 2012: <http://www.avisaeu.com/bios>
- 129 Information from Eline Post's 'application for authorisation to engage in an occupation after leaving the Commission' dated 5 October 2011.
- 130 Information from Avisa website, viewed 9 July 2012: http://www.avisaeu.com/about_us
- 131 Information from Derek Taylor's online profile at the Global CCS Institute viewed 9 July 2012: <http://www.globalccsinstitute.com/users/derektaylor>
- 132 Information from Burson-Marsteller website viewed 13 June 2012: <http://burson-marsteller.be/about/team/senior-consultants/#profile.Derek%20Taylor>
- 133 Information from Derek Taylor's Linked-in profile, viewed 13 June 2012: <http://www.linkedin.com/pub/derek-taylor/30/717/a33>
- 134 Information from the 2nd Annual Brussels Carbon Capture and Storage Summit 2011. January 26 2011: http://www.eu-ems.com/speakers.asp?event_id=61&page_id=415#s375
- 135 Email from Stephanie Vande Broeck to Commission colleagues dated 12 October 2011, 11.27am.
- 136 Information from the National Bank of Belgium: <http://bcc.nbb.be/BCCIA0101/WEB/actions/Frames?LangIndex=E>
- 137 Letter from Irene Souka, European Commission to Friends of the Earth Europe dated 12 April 2012.
- 138 Information from Burson-Marsteller website viewed 13 June 2012: <http://burson-marsteller.be/about/team/senior-consultants/#profile.Derek%20Taylor>
- 139 Information from EU Transparency Register, viewed 9 July 2012: <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=9155503593-86>
- 140 Information from Derek Taylor's 'application for authorisation to engage in an occupation after leaving the commission' dated 9 September 2011.
- 141 Information from the 2nd Annual Brussels Carbon Capture and Storage Summit 2011. January 26 2011: http://www.eu-ems.com/speakers.asp?event_id=61&page_id=415#s375
- 142 Information received from access to documents request 2011/4582.
- 143 Information received from access to documents request 2011/4582.
- 144 Information from BusinessEurope website: <http://www.businesseurope.eu/content/default.asp?PageID=604> Viewed 4 July 2012.
- 145 Letter from Thinam Jakob, European Commission to the Complainants dated 14 December 2011.
- 146 Letter from Thinam Jakob, European Commission to the Complainants dated 14 December 2011.

- 147 Letter from Thinam Jakob, European Commission to the Complainants dated 14 December 2011.
- 148 Information from Corporate Europe Observatory website:
http://www.corporateeurope.org/sites/default/files/sites/default/files/article/CDM_ban_delay_final.pdf
- 149 Information from email sent on 8 November 2010 by Business Europe's Mårten Westrup to Didier Herbert and Joachim Ehrenberg, DG Enterprise. Attachment: Clean Development Mechanisms and Joint Implementation in the revised EU Emissions Trading Scheme. Obtained by CEO through Access to Documents regulations.
- 150 Information from Commission website, viewed 9 July 2012:
http://ec.europa.eu/staffdir/plsql/gsys_fonct.properties?pLang=EN&pSernum=776354
- 151 Parliament.com. 24 November 2011. *EU's energy roadmap criticised as 'overambitious'*.
<http://www.theparliament.com/policy-focus/energy/energy-Article/newsArticle/eus-energy-roadmap-criticised-as-overambitious/>
- 152 Information from Commission website, viewed 9 July 2012:
http://ec.europa.eu/energy/energy2020/roadmap/doc/energy_roadmap2050_advisory_group_minutes_2011_12_12.pdf
- 153 Letter from Thinam Jakob, European Commission to the Complainants dated 14 December 2011.