

Written follow-up questions from CONT to EEAS regarding Mr David O'Sullivan post-retirement activities

During the CONT hearing on 16th November 2020, MEP Daniel Freund asked Ms Helga Schmidt about the case of Mr David O'Sullivan. In her answers, Ms Schmidt referred to the case of former diplomat Gerhard Sabathil, which is not related to the case at hand. We are therefore sending you the questions again in writing and would kindly ask for a timely answer.

Mr. O'Sullivan used to be the head of the EU delegation to Washington and left the service in February 2019. He then asked the EEAS for permission to work as a self-employed consultant. The EEAS granted permission - under the condition not to engage in lobbying for his clients for the next 12 months on matters for which he had been responsible in the EEAS the three years before leaving service. In November 2019, Mr O'Sullivan joined the lobbying firm Steptoe & Johnson¹ - this time without seeking authorization as far as we understand. According to the website of Steptoe, he is very clearly working on topics that he has previously worked on in the EEAS.²

- ***When a former staff member does become a lobbyist, the EEAS Appointing Authority's decision on that staff member's post-office occupation will not be public unless the person concerned was a senior staff member. Do you share with the relevant services in your own institution and the other EU institutions the conditions you have imposed on the former staff member's new occupation - given that this information is not public?***

Other EU Institutions are not sharing the conditions imposed on their former staff members' new gainful occupations. However, contrary to what suggested by the question, the information on EEAS cases is in the public domain and available.

In line with Decision ADMIN (2018) 2 of the High Representative on 'Types of Posts and Post Titles', Heads of Delegation in grade AD 14 to AD 16 are considered as 'Senior Officials' within the meaning of the third paragraph of Article 16 of the Staff Regulations. Mr. O'Sullivan was a permanent official in grade AD 16 when he retired on 28 February 2019.

As a former Senior Official of the EEAS, in accordance with the fourth paragraph of Article 16 of the Staff Regulations, information about his post-service occupational engagements was published in the 2019 EEAS Annual Report on the Publication of Information

¹ Mr O'Sullivan joined Steptoe & Johnson LLP Brussels at least on 26 November 2019: <https://www.steptoe.com/en/news-publications/former-senior-eu-official-ambassador-to-the-us-david-osullivan-joins-steptoe-in-brussels.html>

² Steptoe advertises Mr O'Sullivan as an insider of the EU institutions with insider knowledge working for them on the fields of his former role in the EEAS: <https://www.steptoe.com/en/lawyers/david-osullivan.html>
Steptoe's clients include many big corporations, including Chinese firm Huawei: <https://www.opensecrets.org/federal-lobbying/firms/summary?cycle=2020&id=D000022267>
Six of Steptoe's clients are also mentioned in their entry of the EU Transparency Register: <https://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=596796520126-28>

Concerning Occupational Activities of Senior Officials After Leaving the Service (Article 16.4 of the EU Staff Regulations)³. The Report is herewith attached for ease of reference.



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- ***In the case of former senior officials, the publication of the Appointing Authority's decision can (in line with the Staff Regulation) take place up to one year after the restriction is imposed. Once the Appointing Authority has taken a decision and has imposed restrictions on the new occupational activity, do you share this information immediately with relevant services so they can ensure the restrictions are not violated? Do you agree that it would make sense to publish the decisions well before the restrictions expire?***

According to the fourth paragraph of Article 16 of the Staff Regulations, “each institution shall publish **annually** information on the implementation of the third paragraph, including a list of the cases assessed.” (emphasis added)

In line with the above provision, the EEAS now publishes information on the implementation of the third paragraph of Article 16 of the Staff Regulations in the form of an Annual Report. This is similar to the practice followed by other EU institutions, including the Council and the Commission. The EEAS will publish its 2020 Annual Report within the first trimester of 2021. For the most sensitive cases, preliminary consultation regularly takes place with the services concerned and the relevant information/decisions are properly shared with them ahead of the formal decision.

Any change to this practice should be based on an eventual amendment of the relevant provisions of the Staff Regulations. The EEAS will respect and implement the will of the legislator.

- ***What action will you take in the specific case of Mr O’Sullivan who seems to be pursuing a lobby activity without having asked for prior authorisation (see footnotes)?***

First, it should be highlighted that on 25 October 2019, the Appointing Authority, after obtaining the positive opinion of the EEAS Joint Committee, granted permission for Mr. O’Sullivan to carry out the occupational engagement of ‘self-employed consultant’, provided that he respects the following conditions:

- J Mr O’Sullivan was requested, in accordance with the third paragraph of Article 16 of the Staff Regulations, not to engage, during the 12 months after leaving the service, in any lobbying or advocacy on behalf of his clients, on matters for which he was responsible during the last three years in the service, including on matters dealt with by him for and on behalf of the Commission in his capacity as Head of Delegation;

³ EEAS(2020) 284 Working document of the European External Action Service of 15/6/2020:
<https://www.europa.eu/public-register/?fuseaction=search.documents>

- J Mr. O'Sullivan was reminded of the statutory obligation to refrain from any unauthorised disclosure of information received in the line of duty during his work at the EEAS, unless that information has already been made public or is accessible to the public (Article 17 of the Staff Regulations), and, in this context, to refrain from exploiting insights of confidential nature in policy, strategy or internal processes that he may have acquired in the line of service and that have not yet been public or are not commonly available in the public domain;
- J Mr. O'Sullivan was, in addition, required to follow the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits from any new employer or its clients. He was informed that the aforementioned duty includes refraining from advising or working on behalf of any of his clients on particular files or matters (for example: contracts, policy files, grants, cases, claims, investigations, ongoing legislative procedures), in which he participated personally and substantially and that would entail relying upon information received in the line of duty that have not been made public. It also includes refraining from dealing, directly or on behalf of his future clients, with cases in which he was involved as Head of Delegation in Washington on behalf of the Commission, including related or subsequent cases and/or court proceedings;
- J With specific regard to his consultancy activity, Mr. O'Sullivan was requested to refrain from having professional contacts for his clients with his former colleagues in the EEAS;
- J Mr. O'Sullivan was finally reminded of the obligation, within 2 years after leaving the service, to inform the EEAS if he intends to engage also in any new occupational activity. He was reminded of the fact that any activity must comply also with other statutory obligations, notably Article 19 of the Staff Regulations, concerning the unauthorised disclosure of information received in the line of duty in any legal proceedings, and with Articles 19, 20 and 21 of the Commission Decision C(2018) 4048 on outside activities and assignments and on occupational activities after leaving the Service, as transposed by EEAS Decision ADMIN(2018) 23, which took effect on 1 September 2018.

Second, following the inquiry of MEP Daniel Freund during the CONT hearing on 16th November 2020, the EEAS Director-General for Budget and Administration sent a letter to Mr. O'Sullivan on 7 December 2020. In this letter, Mr. Di Vita reminded Mr. O'Sullivan of his statutory obligations under Article 16 of the Staff Regulations and requested him provide information on the following:

- J Is there any relation between the services Mr. O'Sullivan provides for Steptoe and Johnson LLP and the work he carried out during the last three years of his service in the EEAS?
- J Do the services Mr. O'Sullivan provides for Steptoe and Johnson LLP involve work on specific files for which he was responsible during the last three years of his service in the EEAS?

- J Are the services Mr. O'Sullivan provides for Steptoe and Johnson LLP risk harming his reputation and that of the EEAS, for example by retroactively casting doubt on his impartiality while he was still in service, thereby tarnishing the EEAS image?
- J Do the services Mr. O'Sullivan provides for Steptoe and Johnson LLP involve representing outside interests vis-à-vis of the EEAS?
- J Has Mr. O'Sullivan been involved in any lobbying or advocacy directly or on behalf of his client, Steptoe and Johnson LLP, during the period from 1 March 2019 to 29 February 2020, or has Mr. O'Sullivan made any professional contacts during that same period with any of his former colleagues in the EEAS or in the Commission?

Mr. O'Sullivan replied to the letter of Mr. Di Vita on 9 December 2020. He confirmed in his reply that all the answers to each question raised by Mr. Di Vita are negative.

- ***On the basis of which information did you assess the case of Mr O'Sullivan?***

The EEAS ethics procedures follow the Commission well-established procedures. The EEAS ethics correspondent verifies the information provided (e.g. via the Transparency Register) and requests additional information where necessary. He/she also consults the geographical or thematic departments the Applicant worked for during his/her last three years of service, the EEAS Legal Affairs Division, the EEAS Joint Committee and, where relevant, other EU institutions.

In the case of Mr. O'Sullivan, the EEAS followed the above procedure. Mr. O'Sullivan submitted his application to ask permission, on 13 September 2019, to engage in an occupational activity as 'self-employed consultant'. After checking the veracity of the facts provided by Mr. O'Sullivan in his application, the opinions of the EEAS Legal Affairs Division and the EEAS Joint Committee were obtained and the relevant Unit of DG Human Resources and Security of the Commission was consulted at working level.

- ***We understand Mr O'Sullivan believes that he obtained the permission as self-employed lobbyist and that his professional activity for Steptoe would be covered by this permission. Yet, the advertisement of Steptoe includes fields of Mr O'Sullivan's work during the last 3 years of this work. Do you see a risk that a permission to work as self-employed Consultant might circumvent the rule to seek explicit authorization for new employment? Did you assess Steptoes advertisement of Mr O'Sullivan standing ready to work in areas of his former work during the last three years creating the strong impression that the EU Staff Regulation can be circumvented or broken without consequences?***

The EEAS set clear conditions for agreeing to Mr O'Sullivan occupational activities and cannot be held responsible for what a private firm puts on their website. The concerns expressed may be relevant but they should be addressed at the level of the legislator and by harmonizing the practices and implementation modalities across the institutions. The EEAS has a limited role to play in this regard but it stands ready to support any initiative that brings more transparency to and public trust in the EU.

- ***What measures are you taking to ensure that the Staff Regulation is applied in the same way in the EEAS as it is in the other institutions?***

By virtue of Article 1b(a) of the Staff Regulations, the EEAS is treated as an institution of the Union for the purposes of the Staff Regulations. Therefore, the Staff Regulations apply to the EEAS, its officials and other servants in the same way as to other institutions of the Union.

As far as the implementing provisions giving effect to certain provisions of the Staff Regulations are concerned, the EEAS initially transposed a number of Commission Decisions to become operational. However, certain specificities of each institution may require the adoption of specific implementing provisions. The EEAS is a functionally autonomous body of the Union, mandated to manage the Union's external service (currently 143 delegations worldwide), which justifies some self-standing, EEAS-specific implementing provisions to be adopted.

Also, the EEAS actively participates in the CPQS, the College of Heads of Administration and the Staff Regulations Committee, in order to ensure uniform implementation of the Staff Regulations together with the other institutions, agencies and bodies.

In the field of Rights and Obligations (Title II of the Staff Regulations), the EEAS transposed the latest Commission Decision C(2018)4048 on outside activities and assignments and on occupational activities after leaving the service.

The Commission's online training modules (e.g. 'Ethical principles in the EEAS', available in EU-Learn in EN-FR) based on/adapted to the latest implementing provisions of the Commission have also been taken over by the EEAS and used extensively in staff training.[NB: can we be more specific, or give one example?]

Furthermore, the EEAS Ethics correspondent consults the Commission's relevant services on a regular basis whenever questions of implementation arise.