

# Complaint about maladministration

## Part 1 - Contact information

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**On behalf of (if applicable):**

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

European Commission

## Part 3 - What is the decision or matter about which you complain? When did you become aware of it? Add annexes if necessary.

This complaint by Friends of the Earth Europe (FoEE) and Corporate Europe Observatory (CEO) is made in response to the rejection of a complaint by FoEE and CEO about maladministration by the European Commission, which was filed because of:

- The European Commission's failure to adhere the Rules on Special Advisers to the Commission (C(2007) 6655) before appointing Dr Edmund Stoiber as special adviser to Commission President Jean-Claude Juncker

The Commission's response was sent to us on 12 June 2015.

Annexes submitted with this complaint:

1. Letter FoEE and CEO to Secretary General on the appointment of Dr Stoiber, December 18 2014
2. Reply from the Secretary General, 11 February 2015
3. Declaration of activities of Dr Stoiber part 1, 7 January 2015
4. Declaration of activities of Dr Stoiber part 2, 2 February 2015

5. Declaration of honour of Dr Stoiber 7 January 2015
6. Response Secretary General to FoEE and CEO questions, 16 February 2015
7. Letter FoEE and CEO to Secretary General requesting reconsideration, 25 May 2015
8. Response Secretary General on request for reconsideration, 12 June 2015
9. a&b Rules for the appointment of special advisors from 2007 and 2014
10. Statement of Assurance, 9 February 2015

## **Part 4 - What do you consider that the EU institution or body has done wrong?**

In our view, the European Commission is guilty of maladministration for the following reason:

- Contrary to the requirements set out in point 5 and 6 of the Rules on Special Advisers to the Commission, the Commission failed to ensure that there is no conflict of interest before announcing the appointment of a special adviser.

In its answer, the European Commission argued that it followed the relevant procedures (“Although the appointment was announced on 18 December 2014, it was only on 4 March 2015 that the administrative procedure was completed”).

However, FoEE and CEO would like to turn to the European Ombudsman to reiterate our complaint for maladministration.

Contrary to the Rules on Special Advisers to the Commission (“the Rules”), the Commission has failed to ensure that there is no conflict of interest before announcing the appointment of a special adviser. In point 5 of the Rules on Special Advisers to the Commission, a clear process to screen and avoid conflicts of interests is laid out in which the Commission needs to follow before appointing special advisers. The Commission failed to follow “the Rules” when announcing the appointment of Dr Edmund Stoiber as special advisers, before the procedures laid out in “the Rules” had been initiated. The decision on the appointment of Dr. Stoiber should have been made at the end of the process; instead it was announced before the process had started.

Doing the necessary checks if there is a potential conflict of interest and deciding on the statement of assurance only after the appointment and public announcement of Mr. Stoiber prevents an unbiased check and makes the exercise one of ticking-the-box. This is all the more relevant as the statement of assurance recognises that there “may be a potential risk for the Commission’s good name because of Dr Stoiber’s activities for Deloitte Germany, ProSiebenSat.1 and Donner & Reuschel Privatbank”. It further states that the President is willing to accept this potential risk. Considering that the President himself publically announced the appointment of Mr. Stoiber, the Commission had no other choice than accepting this potential risk. However, in our view the sequencing of events precluded an unbiased and critical assessment.

## **Breach of the Rules on Special Advisers to the Commission**

### Chronology of events

On 18 December 2014 the appointment of Dr Edmund Stoiber as special adviser to President Juncker on better regulation issues was announced with a press statement.<sup>[1]</sup> In the statement the Commission explicitly said: “Today, the President of the European Commission, Jean-Claude Juncker, appointed Dr Edmund Stoiber as Special Adviser on Better Regulation.” On the same day, Dr Stoiber held an official meeting with Commission President Juncker and First Vice-President Timmermans.<sup>[2]</sup>

On 7 January 2015 Dr Stoiber signed a declaration of activities, listing paid and unpaid positions currently held, and a declaration of honour.

On 2 February 2015 Dr Stoiber signed an addition to the declaration of activities, adding his paid position on the advisory board of the private bank Donner & Reuschel.

On 9 February 2015, Sandra Kramer, Director of President Juncker’s Cabinet, signed a statement of assurance of non-conflict of interest in the case of Dr. Stoiber. The statement recognises that there “may be a potential risk for the Commission’s good name because of Dr Stoiber’s activities for Deloitte Germany, ProSiebenSat.1 and Donner & Reuschel Privatbank. However, the President is willing to accept this potential risk”.

On 4 March 2015, the College of Commissioners adopted a decision to appoint special advisers, including Dr Stoiber.

### Rules governing the appointment of Special Advisers

Points 5 and 6 of the Rules on Special Advisers to the Commission state:

*Furthermore, when appointing an adviser, each Member of the Commission must ensure that there is no conflict of interest between the future duties of his or her special adviser and any outside activities they may have. Each request for the appointment of a special adviser made to DG ADMIN must therefore be accompanied by the following three documents:*

- *sworn statements and declarations of activities by the special adviser (forms attached in annex): prospective special advisers must sign a declaration on their honour (sworn statement) stating that they are aware of the relevant articles of the Staff Regulations (Articles 11 and 11a) and that there is no conflict of interest with the duties they are about to undertake. They must also fill in and sign a declaration of activities, which DG ADMIN will check on behalf of the authority empowered to conclude contracts of employment (AECC), before they take up their duties, in order to ensure that there is no conflict of interest;*
- *statement of assurance by the Member of the Commission (model attached in annex): on the basis of the declarations received, the Members of the Commission responsible must establish that there is no conflict of interest regarding the special advisers they have chosen and must confirm their appointment requests. DG ADMIN then checks that there is no conflict of interest between the special adviser’s future duties and any outside activities on the basis of the documents provided by the Members of the*

*Commission. The special advisers may be asked to provide further information for this purpose.*

*The proportionality principle is observed when checking that there is no conflict of interest on the basis of Articles 11 and 11a of the Staff Regulations, which apply by analogy to special advisers. This information is passed to the Members of the Commission concerned to assist them in making a final decision on their appointment request. DG ADMIN notifies the Member of the Commission with responsibility for Personnel and Administration of the outcome of this check.*

[...]

*Having consulted the Legal Service and DG BUDG, and having duly informed the budgetary authority, the Commission, on a proposal from the Vice-President responsible for Personnel and Administration, in agreement with the President, appoints at the beginning of each year (at the end of March) paid and unpaid special advisers by oral procedure (Administrative and Budgetary Matters) and instructs DG ADMIN to proceed with their appointment. The allocation of the reserve during the second half of the year is also adopted by oral procedure and according to the same arrangements.*

As “the Rules” clearly state, before appointing a special adviser a thorough check for a conflict of interest needs to be carried out. However, in the documents received by FoEE and CEO under an access to documents request, Commission President Juncker and First Vice-President Timmermans announced the appointment publicly before the administrative process to carry out the conflict of interest check has been initiated. The Commission thus did not follow its own rules and procedures and therefore engaged in maladministration.

#### Response of the European Commission

On 25 May 2015 FoEE and CEO sent a letter to the Secretariat General raising the same concerns as outlined above and requesting further information about the conflict of interest check and the appointment process of Dr Stoiber (see Annex 7).

In its response dated 12 June 2015, the European Commission argues that:

*Although the appointment was announced on 18 December 2014, it was only on 4 March 2015 that the administrative procedure was completed. In accordance with the first paragraph of point 6 of the Commission Rules on Special Advisers (C(2007) 6655), Dr. Stoiber was appointed by a decision by the College of Commissioners on 4 March 2015 (PV(2015) 2118).*

The Commission thus argues that the announcement of the appointment on 18 December 2014 by the Commission did not in fact constitute Dr Stoiber’s appointment. Instead, it claims, Dr Stoiber was appointed only in March 2015 by a decision of the College of Commissioners, after all conflict of interest checks had been carried out.

FoEE and CEO believe this is incorrect as the press announcement on December 18 2014 states clearly that Dr Stoiber was appointed as Special Advisor. He held an official meeting with Commission President Juncker and First Vice-President Timmermans on the day of the appointment and has been approached by at least one interest group on issues of better

regulation in February 2015, before the College of Commissioners decision in March 2015.[\[3\]](#)

In FoEE's and CEO's view, the appointment by President Juncker and its official announcement pre-empted and prejudiced the conflict of interest check and the College decision. By announcing the appointment with a press release and a public appearance of Commission President Juncker and First-Vice President Timmermans, the Commission created the perception that Stoiber had been fully appointed at that point. Nothing in the press release or the public appearance point to the fact that a conflict of interest check had to be carried out, upon which the appointment depended. Nor was it made clear that the appointment itself could only be made by a decision by the College of Commissioners.

The Commission thus created the appearance – and in fact said – that Dr Stoiber had already been appointed in December 2014. It thus prejudiced both, the conflicts of interest check and the decision by the College, by *de facto* appointing Dr Stoiber. The conflict of interest check and the College decision could thus not be made in an open-ended way, because a negative decision would have brought considerable reputational damage to the European Commission in general and President Juncker and First Vice-President Timmermans in particular. In prejudicing its own decision in contravention of internal rules, the Commission is thus responsible for maladministration.

#### Missing activities from the Assurance from President Jean-Claude Juncker of non-conflict of interest

Further questions arise from the Commission's evaluation of a potential conflict of interest of Dr Stoiber. In his declaration of activities from 7 January 2015, Dr Stoiber lists the following paid positions:[\[4\]](#)

Lawyer with advisory mandate

Chair of the advisory board of ProSiebenSat.1 Media AG

Chair of the advisory board of Deloitte Germany

Supervisory board of FC Bayern München AG

Supervisory board of NÜRNBERGER Allgemeine Versicherungs-AG

Supervisory board of NÜRNBERGER Lebensversicherungs AG

Supervisory board of NÜRNBERGER Krankenversicherungs AG

Supervisory board of NÜRNBERGER Beteiligungsaktiengesellschaft

On 2 February 2015 Dr Stoiber added his position as head of the advisory board of Donner & Reuschel Privatbank as a paid position (see Annex 4).

In an "Assurance from President Jean-Claude Juncker of non-conflict of interest" ("the Assurance"), Sandra Kramer, Director of President Juncker's Cabinet, states:

*"There may be a potential risk for the Commission's good name because of Dr Stoiber's activities for Deloitte Germany, ProSiebenSat.1 and Donner & Reuschel Privatbank.*

However, the President is willing to accept this potential risk and also considers it to be acceptable for the Commission as a whole. He therefore wishes to proceed with the offer of a contract to Dr Edmund Stoiber.

Please give any information regarding possibilities for the President of reducing this risk of potential conflict of interest, whether real or apparent:

*This risk may be sufficiently reduced by ensuring that Dr Stoiber does not, in his capacity as Special Adviser, deal with any matters concerning Deloitte, ProSiebeSat.1 or Donner & Reuschel Privatbank.”*

It is unclear why the Commission decided to omit Dr Stoiber's activities for the Nürnberger Insurance group from the positions he holds that could risk a potential conflict of interest. Nürnberger Insurance group is one of Germany's largest insurance companies with annual revenue of € 5 billion and more than € 26 billion of investments.<sup>[5]</sup> Nürnberger Insurance group is affected by a large number of EU regulations that could be subject to the better regulation initiative and it is completely unclear, why Dr Stoiber has been excluded from dealing with matters concerning some of his other positions, but not his role at Nürnberger Insurance group.

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[1] [http://europa.eu/rapid/press-release\\_IP-14-2761\\_en.htm](http://europa.eu/rapid/press-release_IP-14-2761_en.htm)

[2] <http://ec.europa.eu/avservices/video/player.cfm?sitelang=en&ref=I096993>

[3] [http://www.apotheke-adhoc.de/pageactions/seite-drucken/?L=0%253Ft%253Ft%253Ftx\\_ttnews%255Bttnews%255D%253D24214%3Ft%3D1%3Ft%3D1&tx\\_ttnews%5Bttnews%5D=38459](http://www.apotheke-adhoc.de/pageactions/seite-drucken/?L=0%253Ft%253Ft%253Ftx_ttnews%255Bttnews%255D%253D24214%3Ft%3D1%3Ft%3D1&tx_ttnews%5Bttnews%5D=38459)

[4] Translated into English, for the German original see Annex 3

[5] [https://www.nuernberger.de/ueber\\_uns/die\\_nuernberger/versicherungsgruppe/wir\\_ueber\\_uns/index.html](https://www.nuernberger.de/ueber_uns/die_nuernberger/versicherungsgruppe/wir_ueber_uns/index.html)

## **Part 5 - What, in your view, should the institution or body do to put things right?**

In its answer to FoEE and CEO, the Commission did not acknowledge that maladministration had occurred (see Annex 8). In FoEE's and CEO's view, the Commission needs to acknowledge that maladministration had taken place. Furthermore, the Commission should put additional safeguards in place that credibly ensure that an infraction of the Commission's own rules, as outlined above, will not occur in the future. It is also necessary for the Commission to clarify how it will also ensure sufficient reduction of the risk of conflict of interest regarding Dr Stoiber's role in Nürnberger Insurance.

## **Part 6 - Have you already contacted the EU institution or body concerned in order to obtain redress?**

Yes (please specify)

Yes, see Annex 1, 2, 6, 7, 8.

**Part 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?**

Not applicable

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

No

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

Please treat my complaint publicly

**Part 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