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**NOTE**

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| From:           | General Secretariat of the Council   |
| To:             | Working Party on Information   |
| No. prev. doc.: | 5476/20  |
| Subject:        | Ombudsman complaint 1069/2019/MIG - Commercial sponsorship of Presidencies of the Council - Detailed Opinion |

1. Upon a complaint from Foodwatch International, the Ombudsman addressed on 15 July 2019 a letter to the Secretary General of the Council and to the President of the European Council related to commercial sponsorship of the Presidencies (document ST 12824/19).
2. In its reply to the Ombudsman, approved by Coreper on 23 October 2019 (document ST 12879/19) , it was explained that a distinction should be made between i) the activities from the Presidency in the context of its duties related to the provisions of the Treaty and the Council Rules of procedure for which the Presidency has the duty to be neutral and impartial and ii) other Presidency activities which do not fall within the institutional framework of the Council (such as cultural, touristic and scientific events or informal meetings) which remain under the responsibility of the Member State as such.



3. In her draft Recommendation of 6 January 2020 (document ST 5315/20), the Ombudsman notes that, although it is held by a Member State, the Council presidency is functionally a part of the Council and thus of the EU administration.
  4. Following the discussion in the meeting of the Working Party for information of 31 January 2020, delegations are invited to examine the attached draft detailed opinion to the Ombudsman for subsequent submission to Coreper and Council.
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**DRAFT DETAILED OPINION  
OF THE COUNCIL OF THE EUROPEAN UNION  
IN COMPLAINT 1069/2019/MIG**

**Commercial sponsorship of Presidencies of the Council of the European Union**

**I. THE INQUIRY**

1. By letter of 15 July 2019, the European Ombudsman opened an inquiry into a complaint submitted by *Foodwatch International* regarding the fact that the Council does not have in place guidelines when it comes to Council Presidencies being sponsored by private companies.
2. The Council replied to the European Ombudsman in a letter dated 23 October 2019. The Council explained in that letter that in exercising the role vested in it by the Treaties and the Council's Rules of Procedure, the Presidency has the duty to be neutral and impartial as this is already explained in the practical advice given to Presidencies by the General Secretariat of the Council. However, the Council noted the practice that Member States holding the Presidency use this period to promote themselves and organise activities, which do not fall within the institutional framework of the Council such as cultural, touristic and scientific events, or informal meetings, which need to be distinguished from meetings of the Council, and in which no decision can be taken. Those activities remain under the responsibility of the Member State concerned. The Council bears no responsibility for organising those activities.
3. The Ombudsman in her letter of 6 January 2020 considered that the Council's stance that it has no responsibility when it comes to commercial sponsorship of a Council's Presidency and its consequent inaction amounts to maladministration. She recommends that the Council should issue guidance to Member States on the issue of sponsorship of the Presidency, to mitigate the reputational risks to the EU.



## II. SUMMARY OF MAIN OBSERVATIONS AND COMMENTS

4. At the outset, the Council wishes to clarify that it understands that the Ombudsman letter of 6 January 2020 concerns a "Draft Recommendation" issued in accordance with Article 3(6) of the Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties<sup>1</sup>. It is not and it cannot be a "Recommendation", which the Ombudsman can only issue after the Council has presented its detailed opinion or the three months to do so have elapsed. The Council regrets the practice of calling a "Recommendation" what is only a draft Recommendation, a practice which misleads the citizens and which erroneously seems to place the Council in the position of already reacting to a Recommendation, instead of the real situation which is that the Council, in this detailed opinion, expresses its views on the findings of the Ombudsman before she adopts a Recommendation.
5. The Council wishes to reiterate its position already expressed in its reply of 23 October 2019, that a distinction should be made between different categories of activities that the Member State holding the Presidency organises. On the one hand there are those falling within the Presidency's responsibility provided for in the Treaty and the Council Rules of Procedure (e.g. coordinating and chairing meetings in the Council and its preparatory bodies, setting the draft agenda for the meetings' work, suggesting compromise solutions and negotiating on behalf of the Council to reach agreements on legislative files with other institutions). On the other hand, activities such as cultural, touristic and scientific events (e.g. concert, exhibitions, conferences etc.) and informal meetings. These latter activities are not Council activities nor Council meetings, take very often place in the territory of the Member State holding the Presidency and are not organised by the Council. The Council cannot take responsibility for the organising or the financing of these activities which are outside the powers vested on the Council by the Treaties. In that regard, the Council stresses that, in accordance with Article 13 (2) TEU, it shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them.

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<sup>11</sup> Adopted by Parliament on 9 March 1994, OJ L 113 of 4.5.1994.



6. Contrary to the views of the Ombudsman, the Council considers that the aforementioned distinction between activities of the Presidency of the Council and activities of the Member State holding the Presidency outside the institutional framework is clear and may be perceived by the wider public.
7. The Council considers that it is for the Member State holding the Presidency to finance activities falling outside the institutional framework organised by it and that it is for that Member State to decide how to finance those activities. Nevertheless, even if the decision to seek sponsorship for the organisation of such activities is a matter for the Member State authorities, any reputational risks for the Council and the European Union should be avoided.
8. In this context, the Council considers it appropriate to provide general guidance for Member States which hold or will hold the Presidency of the Council to assess and evaluate the possible recourse to sponsorship for organising and financing during the Presidency's semester activities such as cultural, touristic and scientific events (e.g. concert, exhibitions, conferences etc.) and informal meetings in order for them to take well founded and transparent decisions if and when having recourse to such sponsorship. Such guidance should address the need to avoid any actual or perceived conflict of interests and any possible reputational risks for the Council and the European Union arising out of the sponsorship.

### III. CONCLUSIONS

In light of the above, taking into account the Ombudsman's particular concerns as regards the reputational risk to the EU possibly caused by sponsorship of activities organised by Member States while holding the Presidency of the Council, outside the powers vested on the Presidency of the Council by the Treaties, the Council indicates that it has the intention to issue general guidance for use by future Council Presidencies.