



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

DOCUMENT 37

Brussels, **14 NOV. 2014**
SG/B3 Ares(2014)

URGENT

Note to the Members of the Ad-Hoc Ethical Committee

Mr Nikolaus Van der Pas
Mr Rafael García-Valdecasas
Mr Terry Wynn

Subject: Former Commissioner Algirdas Semeta's planned post-office occupation

Please find enclosed former Commissioner Algirdas Semeta's e-mail sent to me on November 13 (with its enclosure), requesting the Commission's urgent clearance of his envisaged assignment as Ukrainian Business Ombudsman.

This position of "Business Ombudsman Institution" is foreseen in the Memorandum of Understanding for the Ukrainian Anti-Corruption Initiative and presents therefore a possible link with former Commissioner Semeta's portfolio as Commissioner in charge of in charge of Taxation and Customs Unit, Audit and Anti-Fraud.

May I ask you to provide the Commission with your opinion on this activity with regard to the Code of Conduct for Commissioners and to treat this matter with all possible urgency.

Thank you in advance for your swift cooperation.

Catherine Day

Encl: Mr Semeta's e-mail of 13.11.2014 (+ enclosure)
Template for the Ad hoc Ethical Committee's opinion

Opinion of the Ad-Hoc Ethical Committee regarding former Commissioner Algirdas Semata, delivered at the Commission's request of 14 November 2014, Ref. Ares(2014)3803334.

1. By email of 13 November 2014, Mr Algirdas Semata informed Ms Catherine Day, Secretary General of the European Commission that "I was selected as a preferred candidate to become Business Ombudsman in Ukraine (...). This is a completely new, independent position, which will be established in accordance with the Memorandum of Understanding for Ukrainian Anti-Corruption Initiative signed on 12 May 2014 by the Government of Ukraine, EBRD, OECD and 5 Ukrainian business organisations (...). I accepted this offer subject to the clearance by the European Commission."
2. In her email of 14 November 2014, Ms Day asked the Ad-Hoc Ethical Committee to give its opinion on Mr Semata's request, taking into account that "This position of "Business Ombudsman Institution" is foreseen in the Memorandum of Understanding for the Ukrainian Anti-Corruption Initiative and presents therefore a possible link with former Commissioner Semata's portfolio as Commissioner in charge of in charge of Taxation and Customs Unit, Audit and Anti-Fraud."
3. The Committee notes that the Business Ombudsman Institution is foreseen in the Memorandum of Understanding of the Anti-Corruption Initiative for Ukraine, bringing together: the Government of Ukraine, the European Bank for Reconstruction and Development, the Organisation for Economic Co-Operation and Development, the American Chamber of Commerce in Ukraine, the European Business Association, the Federation of Ukrainian Employers, the Ukrainian Chamber of Commerce and Industry and the Ukrainian League of Industrialists and Entrepreneurs.
4. The Committee notes that according to the Memorandum of Understanding, the Group of Parties of the Anti-Corruption Initiative for Ukraine, listed above, act as governing body of the Business Ombudsman Institution and is therefore the Ombudsman's employer.
5. The Committee notes that the functions and competences of the Business Ombudsman Institution are described as follows in the Memorandum of Understanding:
 - a. "Receives, examines, and facilitates the resolution of complaints by business of unfair treatment including corruption; and
 - b. Ascertains the systemic causes of the unfair treatment of business and corruption, and shares its findings with the public and the appropriate public authorities."
6. Furthermore, the Committee notes that "The Business Ombudsman Institution is independent of government and all other stakeholders".
7. The Committee concludes that there is indeed a link between former Commissioner Algirdas Semata's intention to accept the nomination as "Ukraine Business Ombudsman" and his previous responsibilities as Commissioner in charge of "Taxation and Customs Union, Audit and Anti-Fraud". It can be argued that the main motivation for Mr Semata to accept the nomination, and for the "Parties to the MoU for the Anti-Corruption Initiative for Ukraine" to offer it, is his privileged knowledge, experience and insight obtained during his time of office. The business community is one of the "Parties" and could expect to gain specific benefits from Mr Semata's former insider position.
8. The Ad-Hoc Ethical Committee considers that such arguments must be weighed against

- a) the context of the selection and nomination procedures, which require unanimous agreement of all the "Parties to the MoU for the Anti-Corruption Initiative for Ukraine": Government, Business representatives and International Financial Institutions;
- b) the independence of the Ombudsman of any of the stake holders, as well as his obligation to ensure transparency by publishing his findings;
- c) the overall framework of the position of the EU and a wide international community in support of the strengthening of Ukraine's democratic development and integrity in which the fight against corruption is recognized as an essential element;
- d) the challenging conditions in Ukraine under which the position and the Institution of the Ombudsman must be created, fulfilled and operated.

The Committee's opinion

In view of these considerations, the Ad-Hoc Ethical Committee concludes that

- a) the position of "Ukraine Business Ombudsman" is essentially one of independent service in the public interest;
- b) by accepting his selection and nomination, if confirmed, former Commissioner Semata acts in conformity with the Code of Conduct for Commissioners.

Date: 18 November 2014

Nikolaus van der Pas, Chair

Rafael Garcia-Valdecasas

Terry Wynn



COMMISSION EUROPÉENNE

SECRETARIAT GÉNÉRAL

Bruxelles, le 21 novembre 2014

C(2014) 9025

COMMISSION INTERNE

OJ 2107

**ACTIVITES APRES CESSATION DE FONCTION
D'UN MEMBRE DE LA COMMISSION**

Communication de M. le PRESIDENT

**Cette question est inscrite à l'ordre du jour de la 2107^{ème} réunion de la Commission
le 25 novembre 2014.**

Destinataires : Membres de la Commission

MEMORANDUM FROM THE PRESIDENT TO THE COMMISSION

According to Article 245(2) of the Treaty on the Functioning of the European Union, the Members of the Commission give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and, in particular, their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Further to this Treaty provision, the Code of Conduct for Commissioners (C (2011) 2904 final) establishes a specific procedure for the assessment of planned occupations which former Commissioners intend to take up during the eighteen months after they have ceased to hold office. The Commission shall examine the nature of the planned occupation and, if the activity is related to the content of the Commissioner's portfolio, it shall seek the opinion of the Ad hoc Ethical Committee.

With his notification of 13 November 2014 to the Secretary-General of the Commission, former Commissioner Algirdas Semeta informed the Commission that he had been selected to become the holder of the function of "Business Ombudsman Institution" in Ukraine (hereafter Ukraine Business Ombudsman) and that he had accepted this offer subject to the European Commission's clearance. He underlined in his request that this position would enable him to contribute practically to the improvement of business climate, to combatting corruption and to the promotion of European values in Ukraine.

The Business Ombudsman Institution was created in the context of the Memorandum of Understanding (signed on 12 May 2014) of the Anti-Corruption Initiative for Ukraine, whose contracting parties are the Government of Ukraine, the European Bank for Reconstruction and Development, the Organisation for Economic Co-Operation and Development, the American Chamber of Commerce in Ukraine, the European Business Association, the Federation of Ukrainian Employers, the Ukrainian Chamber of Commerce and Industry and the Ukrainian League of Industrialists and Entrepreneurs.

The mandate of the Business Ombudsman Institution is to "(a) receive, examine, and facilitate the resolution of complaints by business of unfair treatment including corruption; and (b) ascertain the systemic causes of the unfair treatment of business and corruption, and share its findings with the public and the appropriate public authorities."

In view of the link between this activity and former Commissioner Semeta's responsibilities in the field of "Taxation and Customs Union, Audit and Anti-Fraud", the opinion of the Ad hoc Ethical Committee was requested on 14 November 2014, in line with section 1.2 of the Code of Conduct for Commissioners.

The Ad hoc Ethical Committee delivered its opinion on 18 November 2014.

The Committee noted that the "Group of Parties" foreseen in the Memorandum of Understanding acts as governing body of the Business Ombudsman Institution and is therefore the Ombudsman's employer. It also noted that the Business Ombudsman Institution is independent of Government and all other stakeholders.

The Committee stated that *"it can be argued that the main motivation for Mr Semeta to accept the nomination, and for the Contracting Parties of the Anti-Corruption Initiative for Ukraine to offer it, is Mr Semeta's privileged knowledge, experience and insight"*

obtained during his time as Commissioner in charge of Taxation and Customs Union, Audit and Anti-Fraud. The Committee also noted that *"the business community is one of the "Parties" and could expect to gain specific benefits from Mr Semeta's former insider position"*.

The Ad-hoc Ethical Committee noted however that the considerations stated above should be weighed against the selection and nomination procedures, which require the unanimous agreement of all parties to the Memorandum of Understanding; the independence and the transparency of the function; the overall framework of the position of the EU and a wide international community in support of the strengthening of Ukraine's democratic development and integrity in which the fight against corruption is recognized as an essential element; and finally the challenging conditions in Ukraine under which the position and the institution of the Ombudsman must be created, fulfilled and operated.

The Ad-hoc Ethical Committee concluded that (a) the position of Ukraine Business Ombudsman is essentially one of independent service in the public interest and that (b), by accepting his selection and nomination, if confirmed; former Commissioner Semeta acts in conformity with the Code of Conduct for Commissioners.

The assessment carried out at service level concluded that the activity envisaged is in line with the EU's support to the *Anti-Corruption Initiative for Ukraine* and that the selection of Mr. Semeta's for this function is a recognition of his competence, experience and independence in the field of anti-fraud and anti-corruption.

The Commission is invited:

- to examine the nature of former Commissioner Algirdas Semeta's envisaged activity as holder of the function of Business Ombudsman Institution created by the Memorandum of Understanding of the Anti-Corruption Initiative for Ukraine;
- to take note of the favourable opinion of the Ad hoc Ethical Committee;
- to decide that former Commissioner Semeta's occupation above mentioned is compatible with Article 245(2) of the TFEU.



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

DOCUMENT 41

Brussels,
SG/B3 Ares(2014)

Mr Algirdas Semeta

By e-mail to:

Dear Mr Semeta,

I am pleased to inform you that the Commission adopted a decision during its 2107th meeting of 25 November 2014 authorising you to accept the assignment as Ukraine Business Ombudsman (holder of the function of "Business Ombudsman Institution") for which you have been selected by the Group of Parties of the Anti-Corruption Initiative for Ukraine.

Yours sincerely

Best wishes

Catherine Day

Encl: Commission Decision C(2014) 9025



COMMISSION EUROPÉENNE

DOCUMENT 39

SECRÉTARIAT GÉNÉRAL

Bruxelles, le 21 novembre 2014

C(2014) 9025

COMMISSION INTERNE

OJ 2107

ACTIVITES APRES CESSATION DE FONCTION
D'UN MEMBRE DE LA COMMISSION

Communication de M. le PRESIDENT

Cette question est inscrite à l'ordre du jour de la 2107^{ème} réunion de la Commission le 25 novembre 2014.

Destinataires : Membres de la Commission

obtained during his time as Commissioner in charge of Taxation and Customs Union, Audit and Anti-Fraud. The Committee also noted that *"the business community is one of the "Parties" and could expect to gain specific benefits from Mr Semeta's former insider position"*.

The Ad-hoc Ethical Committee noted however that the considerations stated above should be weighed against the selection and nomination procedures, which require the unanimous agreement of all parties to the Memorandum of Understanding; the independence and the transparency of the function; the overall framework of the position of the EU and a wide international community in support of the strengthening of Ukraine's democratic development and integrity in which the fight against corruption is recognized as an essential element; and finally the challenging conditions in Ukraine under which the position and the institution of the Ombudsman must be created, fulfilled and operated.

The Ad-hoc Ethical Committee concluded that (a) the position of Ukraine Business Ombudsman is essentially one of independent service in the public interest and that (b), by accepting his selection and nomination, if confirmed; former Commissioner Semeta acts in conformity with the Code of Conduct for Commissioners.

The assessment carried out at service level concluded that the activity envisaged is in line with the EU's support to the *Anti-Corruption Initiative for Ukraine* and that the selection of Mr. Semeta's for this function is a recognition of his competence, experience and independence in the field of anti-fraud and anti-corruption.

The Commission is invited:

- to examine the nature of former Commissioner Algirdas Semeta's envisaged activity as holder of the function of Business Ombudsman Institution created by the Memorandum of Understanding of the Anti-Corruption Initiative for Ukraine;
- to take note of the favourable opinion of the Ad hoc Ethical Committee;
- to decide that former Commissioner Semeta's occupation above mentioned is compatible with Article 245(2) of the TFEU.

MEMORANDUM FROM THE PRESIDENT TO THE COMMISSION

According to Article 245(2) of the Treaty on the Functioning of the European Union, the Members of the Commission give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and, in particular, their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.

Further to this Treaty provision, the Code of Conduct for Commissioners (C (2011) 2904 final) establishes a specific procedure for the assessment of planned occupations which former Commissioners intend to take up during the eighteen months after they have ceased to hold office. The Commission shall examine the nature of the planned occupation and, if the activity is related to the content of the Commissioner's portfolio, it shall seek the opinion of the Ad hoc Ethical Committee.

With his notification of 13 November 2014 to the Secretary-General of the Commission, former Commissioner Algirdas Semeta informed the Commission that he had been selected to become the holder of the function of "Business Ombudsman Institution" in Ukraine (hereafter Ukraine Business Ombudsman) and that he had accepted this offer subject to the European Commission's clearance. He underlined in his request that this position would enable him to contribute practically to the improvement of business climate, to combatting corruption and to the promotion of European values in Ukraine.

The Business Ombudsman Institution was created in the context of the Memorandum of Understanding (signed on 12 May 2014) of the Anti-Corruption Initiative for Ukraine, whose contracting parties are the Government of Ukraine, the European Bank for Reconstruction and Development, the Organisation for Economic Co-Operation and Development, the American Chamber of Commerce in Ukraine, the European Business Association, the Federation of Ukrainian Employers, the Ukrainian Chamber of Commerce and Industry and the Ukrainian League of Industrialists and Entrepreneurs.

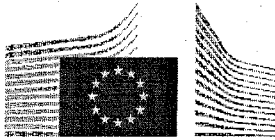
The mandate of the Business Ombudsman Institution is to "(a) receive, examine, and facilitate the resolution of complaints by business of unfair treatment including corruption; and (b) ascertain the systemic causes of the unfair treatment of business and corruption, and share its findings with the public and the appropriate public authorities."

In view of the link between this activity and former Commissioner Semeta's responsibilities in the field of "Taxation and Customs Union, Audit and Anti-Fraud", the opinion of the Ad hoc Ethical Committee was requested on 14 November 2014, in line with section 1.2 of the Code of Conduct for Commissioners.

The Ad hoc Ethical Committee delivered its opinion on 18 November 2014.

The Committee noted that the "Group of Parties" foreseen in the Memorandum of Understanding acts as governing body of the Business Ombudsman Institution and is therefore the Ombudsman's employer. It also noted that the Business Ombudsman Institution is independent of Government and all other stakeholders.

The Committee stated that *"it can be argued that the main motivation for Mr Semeta to accept the nomination, and for the Contracting Parties of the Anti-Corruption Initiative for Ukraine to offer it, is Mr Semeta's privileged knowledge, experience and insight"*



EUROPEAN COMMISSION
SECRETARIAT-GENERAL
The Secretary General

DOCUMENT 42

Brussels, 26 NOV. 2014
SG/B3 Ares(2014)

Note to the Members of the Ad-Hoc Ethical Committee

Mr Nikolaus Van der Pas
Mr Rafael Garcia-Valdecasas
Mr Terry Wynn

Subject: Commission Decision on former Commissioner Algirdas Semeta's function as Ukrainian Business Ombudsman

Please find enclosed, for your information, Commission Decision C(2014) 9025, adopted at its 2107th meeting of 25 November 2014, about former Commissioner Algirdas Semeta's envisaged function as Ukraine Business Ombudsman.

I take this opportunity to thank you for the Committee's opinion of 18 November 2014.

Catherine Day

Encl: Commission Decision C(2014) 9025



COMMISSION EUROPÉENNE

DOCUMENT 39

SECRETARIAT GÉNÉRAL

Bruxelles, le 21 novembre 2014

C(2014) 9025

COMMISSION INTERNE

OJ 2107

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obtained during his time as Commissioner in charge of Taxation and Customs Union, Audit and Anti-Fraud. The Committee also noted that *"the business community is one of the "Parties" and could expect to gain specific benefits from Mr Semeta's former insider position"*.

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