



EUROPEAN COMMISSION
SECRETARIAT-GENERAL

The Secretary General

Brussels, 14 NOV. 2013
SG/B4 Ares(2013)

Mrs Benita Ferrero-Waldner

DOCUMENT 9

Also by e-mail to:

Dear Mrs Ferrero-Waldner,

Following our previous correspondence on the contract you signed on 25 February 2010 with Gamesa (my letters of 9 and 24 July and your letters of 15 and 18 July 2013), I am enclosing, at President Barroso's request, the Ad hoc Ethical Committee's ex-post opinion, of 1 October 2013.

The President would appreciate to know your views on the overall Committee's opinion before the question of compliance with the Code of Conduct will be assessed.

Furthermore, in relation to paragraphs 18 and 19 of the Committee's opinion on your function as a consultant of Gamesa in the field of strategy and international relations, it would be useful if you could explain precisely what is covered by the clause in the last paragraph of "*Estipulación primera*" of the above referred contract according to which '*BFW manifiesta y garantiza a Gamesa que no se encuentra incurso en causa de incompatibilidad que la impida la prestación regular de los servicios contratados y las funciones institucionales asumidas con este contrato*'.

More precisely, the President would appreciate to receive a written statement from you and Gamesa on your shared interpretation of this clause, in order to ascertain whether the latter has been applied and will continue to be applied as enabling you to refuse, on a case-by-case basis, to undertake a specific task or mission which would exceed the integrity and discretion required by article 245 of the TFEU.

Yours sincerely

Catherine Day

Encl: Ad hoc Ethical Committee's Opinion

Cc: President Barroso; Mr Romero Requena (Director General of the Legal Service)

DOCUMENT 11

From: I (SJ)
Sent: Wednesday, January 29, 2014 5:58 PM
To: (SG)
Cc: (SJ); (SG);
Subject: RE: Projet de Décision suite à un avis du Comité Ethique ad Hoc

Accord du SJ sous réserve des remarques de détail ci-jointes.



BFW GAMESA 2 -
 projet de déci...

La proposition de I de faire un point général en réunion de la Commission semble utile, vu que certains Commissaires commenceront à quitter bientôt.

Bien à vous,

From: (SG)
Sent: Tuesday, January 28, 2014 6:12 PM
To: (SJ)
Cc: (SJ); (SG);
Subject: FW: Projet de Décision suite à un avis du Comité Ethique ad Hoc
Importance: High

On behalf of

ARES(2013)196063

Chers collègues,

Vous vous souviendrez que la Commission doit encore adopter une décision concernant une activité non notifiée par Mme B Ferrero Waldner, communiquée à la Commission par le Médiateur européen le 4 juillet 2013.

Vous trouverez ci-joint un projet de décision préparé par le SG (qui n'a pas encore reçu l'accord de Mme Day) ainsi que:

- (1) Le document anonyme communiqué par le médiateur 'contrato...'
- (2) L'avis délivré par le Comité éthique ad Hoc le 1^{er} octobre 2013
- (3) La lettre de Mme Day du 14 novembre 2013, demandant des informations complémentaires à Mme BFW
- (4) La réponse de Mme BFW du 18 décembre 2013, accompagnée d'une déclaration de Gamesa de la même date

Merci au SJ de bien vouloir examiner ce projet et apporter toutes les modifications qu'il jugera opportunes.

NB: Considération d'opportunité plus 'politique'

Il n'est pas opportun dans une décision individuelle visant un ancien membre de la Commission, d'introduire ou ajouter des considérations ou un dispositif destiné aux membres du Collège actuel.

Il serait cependant regrettable de ne pas profiter de cette occasion pour rappeler les obligations des membres du Collège en terme de notifications de leurs activités post mandat.

Ceci serait également utile pour protéger l'image de la Commission et vis-à-vis du Médiateur: la commission a tiré des leçons de cette affaire...

Une mention au PV de la Commission, indiquant qu'à cette occasion les membres de la Commission ont eu l'occasion de discuter de la portée de l'obligation de notifier leurs futures activités post retraite serait donc à envisager.

Elle pourrait, si cette idée est retenue, être libellée de la manière suivante:

"The Commission also underlined the scope of the notification obligation foreseen in paragraph 1.2 of the current Code of Conduct for Commissioners

(C(2011) 2904), which implies that all the outgoing Members of the current College must notify to the Commission, in due time, all their envisaged occupations during a period of eighteen months after they have ceased to hold office".

Merci

MEMORANDUM FROM THE PRESIDENT TO THE COMMISSION

1. According to Article 245(2) of the Treaty on the Functioning of the European Union (TFEU), the members of the Commission, when taking up their duties, shall 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.
2. Further to this Treaty provision, the Code of Conduct for Commissioners adopted on 24 November 2004 (SEC (2004) 1487/2) enacted a specific procedure for the assessment of the activities to be performed by former Commissioners. Under this code, when Commissioners intend to engage in an occupation during the year after they have ceased to hold office, whether at the end of their term or upon resignation, they shall inform the Commission in good time. The Commission shall, then, examine the nature of the planned occupation and if the activity is related to the content of the Commissioner's portfolio during his or her full term of office, it shall seek the opinion of the Ad hoc Ethical Committee.
3. In her letters of 29 October 2009 and 15 December 2009 to the President of the Commission, Commissioner Ferrero-Waldner informed the Commission that she intended to accept, as from the end of the term of her Commission-office (start of 2010) four remunerated professional activities. One of the activities mentioned in her second letter was the Spanish company Gamesa Corporación Tecnológica (hereafter mentioned as "Gamesa")
4. The Commission considered that the post-office occupations envisaged by Mrs Ferrero-Waldner might present a link with her former portfolio as Commissioner in charge of external relations and neighbourhood policy and consulted the Ad hoc Ethical Committee on the compatibility of the envisaged activities with article 245(2) of the TFEU. The Ad hoc Ethical Committee delivered four opinions on 14 January 2010, one of these on Mrs Ferrero-Waldner's envisaged activity with Gamesa. The Ad hoc Ethical Committee considered that this activity appeared to have no link with Mrs Ferrero-Waldner's former portfolio and did not entail any executive power. On this basis, the Commission concluded that this activity was compatible with Article 245(2) of the TFEU.
5. On 4 July 2013, the office of the European Ombudsman handed to the Secretariat General of the Commission a copy of an anonymous document it had received on 6 May 2013, bearing a Spanish stamp and postmark but without indication of the identity of the sender. The document was a copy of a services contract (*contrato de arrendamiento de servicios profesionales*) concluded on 25 February 2010 between Mrs Ferrero-Waldner and Gamesa whereby the latter hired/engaging Mrs Ferrero-Waldner Gamesa. By letter dated 4 July 2013, the European Ombudsman informed the President of the Commission about this document and invited the Commission to comment on this issue.

6. The Secretary General of the Commission wrote on 9 July 2013 to Mrs Ferrero-Waldner to invite her to provide the Commission with the relevant information about this contract, which had not been notified to the Commission.
7. Mrs Ferrero-Waldner replied with a letter dated 18 July 2013 confirming the existence of such contract and explaining that why she had not considered it necessary to notify such post-office activity to the Commission essentially because the contract in question was developing in detail her professional activities.
8. On 19 July 2013, the Secretary General wrote to the European Ombudsman, acknowledging receipt of his letter of 4 July to President Barroso. The European Ombudsman wrote back to the Commission on 14 August 2013 requesting the Commission to be kept informed on any follow-up.
9. The Ad hoc Ethical Committee was requested on 25 July 2013 to deliver its opinion on the compatibility of this activity with Article 245 of the TFEU and with the Code of Conduct for Commissioners and on the extent of Mrs Ferrero-Waldner's notification obligations under the Code of Conduct for Commissioners.
10. The Ad hoc Ethical Committee adopted its opinion on 1 October 2013.
11. As regards the extent of Mrs Ferrero-Waldner's notification obligations, the Committee concluded that the contract should have been notified to the Commission "in good time", pursuant to paragraph 1.1.1 of Code of Conduct for Commissioners of 24 November 2004,

Gamesa,

which the Commission had already considered compatible with article 245(2) of the TFEU.
12. As regards the scope of the activities covered by agreed in the contract of 25 February 2010 between Mrs Ferrero-Waldner and Gamesa, the Committee considered the two components of this activity: first, Mrs Ferrero-Waldner's

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and, second, Mrs Ferrero-Waldner's function as
13. The Committee concluded that Mrs Ferrero-Waldner's activity in relation to the could be viewed as compatible with Article 245(2) of the TFEU.
14. The Committee also concluded that some of the tasks involved in Mrs Ferrero-Waldner's function consultancy service provider could be considered as compatible with article 245(2) of the TFEU, insofar as they the advice given remained strategic and general.
15. However, the Committee considered that

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missioner in charge of external relations and neighbourhood policy.

16. The Ad hoc Ethical Committee also mentioned that, had the contract been notified, the Committee would have advised the Commission to require further commitments from Mrs. Ferrero-Waldner and a narrower definition of the scope of her task as a consultancy service provider for Gamesa.

17. In view of the Ad hoc Ethical Committee's opinion, the Secretary-General wrote to Mrs Ferrero-Waldner on 14 November 2013 to obtain more precise information on what was covered by a clause included in the above referred contract reading:

More precisely, Mrs Ferrero-Waldner was asked provide the President with a written statement, from herself and from Gamesa, on their shared interpretation of this clause, in order to ascertain whether the latter might enable Mrs Ferrero-Waldner to refuse, on a case-by-case basis, to undertake a specific task or mission which would exceed the duties of integrity and discretion required by article 245(2) of the TFEU. Mrs Ferrero-Waldner replied on 18 December 2013, confirming that the above referred provision had been put in the contract in the clear understanding of the requirements of the Code of Conduct for Commissioners and that she clearly showed the will to respect the compatibility clause contained in paragraph 1.1.1 of the Code, and applicable to former Commissioners.

19. Mrs Ferrero Waldner also ~~stated~~^{gave evidence} that both Gamesa and herself interpreted the above mentioned paragraph in the spirit of article 245(2) of the TFEU, thus accepting that she could have refused a task or a mission that might have exceeded the integrity and discretion required by article 245 of the TFEU. This point was confirmed in the letter dated 18 December 2013 sent to the Secretary General of the Commission by the General Secretary and Chief Corporate Officer of Gamesa.

20. With her letter of 18 December, Mrs Ferrero-Waldner also informed that she left Gamesa at the end of February 2012.

21. Mrs Ferrero-Waldner further declared that

her previous position as Commissioner in charge of external relations, either in her function as 1 or within the framework of her service contract. Mrs Ferrero-Waldner recalled that she was particularly asked to

Mrs Ferrero-Waldner added that

22. With regard to the fact that she hads not notified her contract of 25 February 2010 to the Commission, Mrs Ferrero-Waldner acknowledged that she should probably have informed the Commission thereof, in view of the fact that its scope

pproved by the Commission on 19 January 2010. She also expressed her regrets for the awkward situation created but reiterated that, at the time of the conclusion of the contract, she was of the firm opinion that she had fulfilled all her duties and requirements with regard to paragraph 1.1.1 of the Code of Conduct for Commissioners (SEC(2004) 1487/2).

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The Commission is invited to:

- take note of the Ad hoc Ethical Committee's opinion of 1 October 2013 as well as Mrs Ferrero-Waldner's and Gamesa's letters to the Secretary-General of the Commission of 18 December 2013 (enclosed?);
- conclude that Mrs Ferrero-Waldner should have notified in good time to the Commission her intention to accept a second assignment with Gamesa, since it was not covered by the decision adopted by the Commission on 19 January 2010, and take note of Mrs Ferrero-Waldner's expression of regret for not having notified this additional assignment and for the awkward situation created;
- conclude that, in view of the clarifications provided by Mrs Ferrero-Waldner and by Gamesa, the scope of the service contract of 25 February 2010, in particular taking into account the way in which it was actually ~~and the manner it was~~ implemented, can be considered as compatible with Article 245(2) of the TFEU (former Article 213(2) ;
- take note that Mrs Ferrero-Waldner left Gamesa at the end of February 2012;
- ask the Secretary-General to inform Mrs Ferrero-Waldner, and the European Ombudsman about this decision.