

## COMPLAINT ABOUT MALADMINISTRATION

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On behalf of (if applicable): Corporate Europe Observatory (CEO)  
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- 2. Against which European Union (EU) institution or body do you wish to complain?

European Parliament	<input type="checkbox"/>	European Investment Bank	<input type="checkbox"/>
Council of the European Union	<input type="checkbox"/>	European Central Bank	<input type="checkbox"/>
European Commission	<input checked="" type="checkbox"/>	European Personnel Selection Office (EPSO)	<input type="checkbox"/>
Court of Justice of the European Communities (*)	<input type="checkbox"/>	European Anti-Fraud Office (OLAF)	<input type="checkbox"/>
European Court of Auditors	<input type="checkbox"/>	European Police Office (Europol)	<input type="checkbox"/>
European Economic and Social Committee	<input type="checkbox"/>	Other Union body (please specify)	<input type="checkbox"/>
Committee of the Regions of the European Union	<input type="checkbox"/>		
  
- (\*) Except in its judicial role.
  
- 3. What is the decision or matter about which you complain? When did you become aware of it?

The decision by the European Commission to appoint and re-appoint (2007- 2009) Mr. Pat Cox as a Special Adviser to Commissioner Kuneva without having secured the absence of conflicts of interest. The implications of Mr. Cox's numerous commercial activities for his ability to act as a Special Adviser were not assessed in full accordance with the Commission's Rules on Special Advisers and no precautionary measures were taken to prevent conflicts of interest in this role.

The rules that were introduced in January 30, 2007 (ADMIN-A-5/sg D(07)1309) appear not to have been properly implemented in the case of Mr. Cox. The case also indicates a need for the rules to be strengthened so that they can effectively secure the absence of conflicts of interests in Special Advisers.

More specifically the complaint concerns:

A) The claim by Commissioner Kuneva that she was *'fully aware of Mr Cox's activities when'* she *'examined his possible conflicts of interest'* before appointing him as her special adviser. [23/06/2009, D (09)/320/vassalos.doc, <http://archive.corporateeurope.org/docs/temp/response-kuneva.tif> ]

B) Similarly, the claims by Commissioner Kallas that:

- *'Mr. Cox transmitted the Declaration of Activities and the other required documents to the Commission before taking up his duties and before the renewals of his mandate in 2008 and 2009'*,
- that *'when taking the decision to engage Mr. Cox as Special Adviser, the Commission (and in particular Commissioner Kuneva) was well aware of his activities and acted in full compliance with the applicable rules'*
- and that, *'it was fully justified to state the absence of conflicts of interest'*.

[23/06/2009, MR/hm D(2009)339, <http://archive.corporateeurope.org/docs/temp/response-kallas-1.tif> , <http://archive.corporateeurope.org/docs/temp/response-kallas-2.tif> ]

C) The fact that DG ADMIN notified Commissioner Kuneva that there was no conflict of interests without at that point in time having received a 'Declaration of activities' signed by Mr. Cox. This was clearly the case when Cox was re-appointed for 2009 and probably also for 2007 and 2008.

D) The decision by the Members of the Commission to appoint Mr. Cox as a Special Adviser on the basis of all the aforementioned.

E) By May 2009, when we sent a first letter to Mrs Kuneva and Mr Kallas on this case, Mr. Cox's CV that was published on the Commission's Special Advisers website didn't include his paid activities for APCO, Microsoft and Pfizer. By that time it seems that he hadn't even submitted his declaration of activities.

Commissioner Kallas justified the incompleteness of this CV saying that on-line CVs *'are not intended to give an exhaustive description of each single activity'* but *'to give an overview to the public, by listing the essential steps of the Adviser's professional careers and his main activities'*

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

A) Mrs Kuneva stated that she was *'fully aware of Mr Cox's activities when'* she *'examined his possible conflicts of interest'* in 2009, but this seems unlikely to be the case. Her statement of assurance that there is no conflict of interest was signed January 7, 2009 whereas the Declaration of Activities of Mr Cox for 2009 is only signed only five months later, on June 23 2009 (document we received by the Secretary General on 29/10/2009 – SG.E.3/MIA/cr – Ares(2009) 300441). Her Cabinet had to return these documents signed to DG ADMIN by January 23 (Response 15/12/2009 – (2009) /JB/sj/D-607) This apparently didn't happen. Mr. Cox's Declaration on Honour (stating no conflict of interest) was signed by Mr. Cox on January 9, two days after Kuneva's statement. ([http://ec.europa.eu/civil\\_service/docs/special\\_advisers/cox\\_declaration\\_en.pdf](http://ec.europa.eu/civil_service/docs/special_advisers/cox_declaration_en.pdf))

**Consequently, Mrs. Kuneva could not be fully aware on the activities of Mr. Cox and have examined potential conflicts of interest when she signed her statement of assurance on January 7, 2009** (24/09/2009 – ADMIN/A5/SG/D(2009)23486)

We are not assured that the procedure was implemented adequately for the years 2007 and 2008 either.

Via an access to documents request (1049/2001) we obtained the correspondence of Mr. Cox with Mrs Kuneva's cabinet between 2007 and 2009. (Response 15/12/2009 – (2009) /JB/sj/D-607)

Commissioner Kuneva's Cabinet sent an email to Mr. Cox on March 13, 2007 with *'all the relevant documentation that need[ed] to be filled out in order to finalise [his] appointment as Special Adviser'*. This email had several documents attached but not a 'Declaration of activities' or a 'Declaration on the honour' by Mr. Cox that he had no conflict of interest. According to the rules that have been put in force and communicated to the heads of the Commissioners' cabinets on January 30, 2007 (ADMIN-A-5/sg D(07)1309) the Cabinet should have requested Mr. Cox to fill in these two documents.

For 2008, the Cabinet asked Mr. Cox to fill in the two mentioned declarations but the signed version was not among the documents we received as a result of our access to documents request.

**This could mean either that these documents were not signed in time for 2007 and 2008 either and so the admission of Mr. Cox as a Special Adviser was also in violation of the rules for these years, or that the Commission's response to our 1049 request [(2009) /JB/sj/D-607] was unjustifiably incomplete. Both cases imply maladministration.**

We only obtained – through another access-to-documents request - the delayed 'Declaration of Activities' for 2009. This declaration mentions that Mr. Cox had at that time gainful activities with Microsoft, Michelin and Pfizer and also with the lobby consultancy APCO which has a wide range of lobby activities focusing on the European Commission.

The 'Rules on Special Advisers to the Commission' stress that *'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'*.

These articles stress that an official and by analogy a special adviser:

*- shall not without the permission of the appointing authority accept from any government or from any other source outside the institution to which he belongs any honour, decoration, favour, gift or payment of any kind [...]*

*- shall not, in the performance of his duties [...] deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests*

*- may neither keep nor acquire, directly or indirectly, in undertakings which are subject to the authority of the institution to which he belongs or which have dealings with that institution, any interest of such kind or magnitude as might impair his independence in the performance of his duties.*

Mr. Cox received salary from Microsoft, Michelin, Pfizer and APCO (consultancy lobbying on behalf of numerous industry clients) which have a clear interest in the way EU consumer policies are communicated. The Commission's Secretary General, Catherine Day wrote us on October 20 2009 that she *'can agree that the companies [we] mentioned such as APCO, Microsoft, Michelin or Pfizer, may be interested in the formulation of consumer policies'* but Mr. Cox advised *'mainly on how to communicate them to the outside world'* and his role did not *'include an intervention in the decision making process'*. (SG/B.4/DCB/D(2009))

Staff regulations say Mr. Cox shouldn't *'deal with a matter'* in which he has a direct or indirect financial interest. As a Special Adviser to Mrs Kuneva, Mr. Cox dealt with consumer policies and the

communication of these policies. Even if he was not in any way involved in drafting policy, the communication of consumer policy would be a field of interest to the companies from which Mr. Cox was receiving a salary. This fact impaired his independence as Special Adviser. It cannot be convincingly argued that Mr. Cox's advice was fully independent of the interest of companies like APCO, Microsoft, Michelin or Pfizer with whom he has a financial relation.

**Even if the 'Declaration of Activities' would had been provided in time to Mrs. Kuneva's Cabinet, this would not have been sufficient basis to conclude that there was no conflict of interest.**

**In our opinion, the way Mrs. Kuneva's cabinet dealt with Mr. Cox's appointment as Special Adviser is a case of maladministration.**

B) Mr Kallas statement that '*Mr. Cox transmitted the Declaration of Activities and the other required documents to the Commission before taking up his duties and before the renewals of his mandate in 2008 and 2009*' seems in contradication with the actual timeline.

Mr. Cox was listed on the Commission's website as appointed adviser of Mrs. Kuneva for 2009 long before he transmitted his Declaration of Activities in June that year.

We are also not convinced by the claim that '*the Commission (and in particular Commissioner Kuneva) was well aware of his activities and acted in full compliance with the applicable rules*'.

Neither Mrs. Kuneva, nor DG ADMIN or the College of the Commissioners acted in full compliance with the rules when appointing Mr Cox as Special Adviser for 2009, as he hadn't transmitted his Declaration of Activities.

Moreover (taking into account Mr. Cox's gainful activities, which were included in his 2009 Declaration of Activities), even if this document would have been delivered in time, it would not have been justified to state the absence of conflicts of interest.

**With these three statements Mr. Kallas misinformed the public. This misinformation is a case of maladministration.**

C)

**DG ADMIN should not have notified Commissioner Kuneva that there was no conflict of interests in 2009 without having received a 'Declaration of activities' signed by Mr. Cox.**

D)

**The approval of Mr Cox's appointment for 2009 by the College of Commissioners on the basis of a incomplete file compiled by DG ADMIN and Mrs Kuneva's Cabinet is a case of maladministration.**

E) Commissioner Kallas justified the incompleteness of this CV saying that on-line CVs '*are not intended to give an exhaustive description of each single activity*' but '*to give an overview to the public, by listing the essential steps of the Adviser's professional careers and his main activities*'

According to the Rules on Special Advisers '*each Member of the Commission*' should accompany the documents necessary for the approval of the appointment '*by an up-to-date CV for the special adviser*'. The rules also provide that '*Once their appointment has been approved, a list of the spe-*

*cial advisers, together with their sworn statements and curriculum vitae (which must not contain information of a private nature, such as family situation, private address, etc.), are posted on the Commission's Europa website.'*

The whole rationale of the 2007 rules was to *'replace all previous decisions in this matter<sup>2</sup> and are intended primarily to update, in the interests of transparency'*. So the rationale of putting the CV on-line is to provide basic information to the citizens regarding the independence and thus suitability of those appointed as Special Advisers. In that respect, employment with a lobby consultancy like APCO and industry giants like Microsoft and Pfizer – who all have stakes in consumer policies – is not a detail but in fact the most relevant activities that the citizen should be made aware of. Consequently, an incomplete CV that doesn't even include these main activities of the Special Adviser – Mr. Cox – is useless and arguably even misleading towards the citizens.

**Putting online an incomplete CV that doesn't include the most important activities of Mr. Cox that are relevant to his work as a Special Adviser is useless and it arguably even provides citizens with misleading information.**

5. What, in your view, should the institution or body do to put things right?

A) The Commission should acknowledge that the appointment of Mr. Cox as Mrs. Kuneva's Special Adviser for 2009 was not handled according to the Rules on Special Advisers.

B) The Commission should prove that Mr. Cox's appointment for 2007 and 2008 was done according to these rules by disclosing all the relevant documents.

C) The Commission should reassure the public that it is serious about avoiding conflicts of interest. This should include developing pro-active screening of potential conflicts of interest before appointing Special Advisers to the Commissioners. All Declarations of Activities should be published on the relevant EC webpage and the Commission should ensure that these declarations indeed include all information relevant to allow the public to assess the absence of conflicts of interest ([http://ec.europa.eu/civil\\_service/about/who/sa\\_en.htm](http://ec.europa.eu/civil_service/about/who/sa_en.htm))

D) The Commission should give a broad interpretation to the terms 'policies', 'policy fields' and 'policy matters'. A clear definition of what constitutes a conflict of interest is needed. Somebody working for a company with clear interest in a certain policy field or matter should not be admissible as a Special Adviser in the same policy field. The Rules on Special Advisers should include a clause in line with DG SANCO's guidelines on Conflicts of Interest: *'Someone who [...] work for an organisation with a 'vested interest' on a particular policy issue [...] should simply not be appointed'*.

E) Special Advisers CVs published in the website should include **all** their paid activities.

6. Have you already contacted the EU institution or body concerned in order to obtain redress?

Yes (Letters to Catherine Day – | x |  
29/09/2009 and 23/09/2009, Letters to  
Commissioners Kallas and Kuneva –  
31/08/2009 and 29/05/2009, Access to  
documents to Commissioner Kuneva's  
Cabinet 31/10/2009 and the Secreteriat  
General 31/07/2009)

No

| |

- 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?

It does not concern work relationships.

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

Yes (please specify) ☐

No ☒

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

Please treat my complaint publicly ☒

I require that my complaint be treated confidentially ☐

- 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 ☒

No ☐

**Date and signature:**

Friday, 19 February 2010



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