

The European Ombudsman
Mr P. Nikiforos Diamandouros
1 ave du Président Robert Schuman
BP 403
67001 Strasbourg cedex

by post and e-mail

29 May 2007

COMPLAINT 2740/2006/TN

Dear Mr Diamandouros

Thank you for your letter dated 4 April enclosing the response from the President of the European Commission regarding our complaint about misleading and defamatory statements by the spokesperson of Commissioner Verheugen on 4 May 2006. I appreciate the opportunity to comment on this response before you take your decision. My comments relate firstly to the Commission's opinion regarding its defamatory statement, and secondly to its misleading response regarding the individual cases of 'revolving doors' named in our report.

1. I regret that the European Commission persists in reducing the facts presented in our 24-page report 'Toxic Lobby'¹ to what it describes as the "unjustified calling into question of the integrity" of four individuals. Our report exposes the persistent and pervasive influence of the chemicals industry on the reform of European chemicals policy. In scrutinising the lobbying tactics of the chemicals industry, our report also addresses the issue of 'revolving doors', the movement of individuals from public service jobs to lobbying jobs and vice versa. On page 13 of the report, we briefly address the issue of revolving doors, providing the examples of four individuals who have in close succession been employed by the chemicals industry and the Directorate General Enterprise of the European Commission. Contrary to the interpretation of the European Commission, the text does not call into question the integrity of these individuals nor allege that they committed any fault while in public office. Rather, it focuses on the interest of companies and lobby organisations to hire former officials which then lobby "the same institution and colleagues with whom they used to work". We mentioned the employment history of several individuals so that our observations about revolving doors between the European Commission and the chemicals industry can be verified. I note that, in its opinion, the European Commission does not dispute the accuracy of the facts as we presented them.

Rather than accepting that the practice of revolving doors could constitute a problem, and redressing it in line with efforts to improve transparency of the EU institutions, the European Commission instead seeks to tarnish the reputation of the messenger, in this case Greenpeace.

2. I also note that the European Commission now explicitly acknowledges that two of the individuals named in our report - Mr Burgstahler and Mr Mingasson - *did* work on REACH. This comes ten months late and only partially clarifies the obscure statement of last May by the spokesperson of Mr Verheugen. He said that two of the individuals named in our report had "never actually worked on REACH" and repeatedly refused to clarify which two individuals he was referring to. The Director General of DG Press similarly omitted to provide detailed factual and transparent information on this issue, in response to our written complaint to the Commission.

I remain very concerned that, in its response to your inquiry, the European Commission tries to argue that neither of the other two individuals - Ms Perenius and Ms Jensen-Korte - worked on REACH, and that, therefore, the spokesperson's statement was therefore "a fair reflection of the situation". I believe that this argument of the Commission is inaccurate and misleading.

¹ Toxic Lobby, 4 May 2006, <http://www.greenpeace.org/eu-unit/press-centre/reports/toxic-lobby>

It is noteworthy that, in its reply to your inquiry, the Commission employs a very narrow definition of 'work', limiting 'working on REACH' to having the prime responsibility for drafting the legislative proposal and for subsequent negotiations. Based on this definition, it considers that officials who worked on aspects of REACH, within a Commission unit dedicated to REACH, and who officially represented the European Commission on REACH, cannot really be considered to have 'worked on REACH'. It is difficult to see how this definition relates to common sense and understanding.

I believe that the Commission's resorting to such an artificial definition breaches good administrative behaviour and the requirement for objectivity in several instances:

- The Commission's use of a very narrow, artificial definition of 'work', which it uses in its statements on the revolving door cases, is contrary to the general use of the word². The use of a special definition in this case thus goes against the legitimate and reasonable expectation of the public that the administration communicates clearly, consistently and transparently.
- The Commission statement supposes that only the draftsman and official negotiator of a legislative proposal has influence on that proposal. This does not reflect the reality of policy-making within the European Commission. In this respect, I would like to refer to the expert opinion of Professor Ludwig Krämer, former head of unit at the European Commission:

"Inside an administration which deals with chemicals, there are discussions on the different issues, within the administrative unit itself and between such a unit and the director and director general. It is thus not decisive that a specific official is not the actual draftsman of REACH. He has many opportunities to convey his opinion – and if he has practical experience as he comes from industry, this will even have more weight."³

Regarding the specific cases of Ms Perenius and Ms Jensen-Korte, the Commission argues in its reply that the fact that Ms Perenius was named as the contact person for REACH in an official European Commission publication [previously disclosed by Greenpeace] does not mean that she actually worked on REACH. I note that the Commission does not explain why Ms Perenius should be named as a contact for an issue on which she did not work. Furthermore, the Commission argues that Ms Perenius cannot be considered to have worked on REACH, since she left the European Commission and joined the European Chemicals Industry Council (CEFIC) before the Commission began drafting the legislative proposal in 2001.

What the Commission omits to state is that Ms Perenius was in charge of Directive 76/769 on the restriction of marketing and use of dangerous chemicals, which became an integral part of REACH. She was also directly involved in the White Paper Strategy for a future Chemicals Policy, which the Commission published in February 2001. Anyone familiar with the EU decision-making process knows that the drafting of new legislation is preceded by significant preparatory work. In the case of REACH, the drafting process of the legislative proposal was preceded in 1998 by a Commission report on the functioning of existing chemicals legislation (SEC (1998) 1986), and in 2001 by the White Paper Strategy for a future Chemicals Policy (COM (2001) 88). The White Paper of 2001 set out the main principles and the structure, including the name, of REACH. The Commission's argument that Ms Perenius did not work on REACH is untenable.

Regarding Ms Jensen-Korte, the Commission acknowledges that Ms Jensen-Korte works in the REACH Unit and delivered a speech at a conference in Vienna which addressed a number of REACH issues [previously disclosed by Greenpeace] but again argues that these elements do not suffice to consider that Ms Jensen-Korte worked on REACH.

I note with concern that the Commission is very selective in the information that it supplies to your inquiry. It focuses on the – in this context irrelevant – responsibility of Ms Jensen-Korte for the work on the Global Harmonised System, and completely leaves out any information on her responsibilities related to REACH. According to our research, largely based on inside information, Ms Jensen-Korte participated in high level meetings on REACH within the Commission and also regularly represented the Commission on REACH externally. This information seems to be confirmed by several copies of emails which Greenpeace has

² The Commission does not otherwise employ this special definition of 'work'. See, for example, the Commission's web pages on 'working for the European Commission' (http://ec.europa.eu/civil_service/job/index_en.htm).

³ Ludwig Krämer, expert opinion submitted to Greenpeace in the context of our investigation on revolving doors in the European Commission.

obtained through an access to documents request (attached, for your information). This written communication between the lobbying firm Burson-Marsteller and the office of Mr Geert Dancet, head of the REACH unit at DG Enterprise, suggests very clearly that in 2005 Mr Dancet delegated to Ms Jensen-Korte responsibility for some face-to-face meetings with the chemicals industry, following industry requests to discuss “the draft REACH regulation” and “the state of play of the proposal”. It beggars belief that the Commission continues to defend its claim that Ms Jensen-Korte did not ‘work’ on REACH.

Conclusions

a. Our report provides several plain examples of revolving doors, where individuals have in close succession been employed by the chemicals industry and the European Commission’s Directorate General Enterprise. None of the facts exposed in our report have been contradicted in the Commission’s response. The Commission should retract its accusation that our report contained “unfounded” allegations and that it was based on “sloppy research” for the simple reason that the Commission has failed to prove its case. In damaging our reputation with this slur, the Commission breached good administrative behaviour. It compounds this breach by refusing to rectify its error.

b. The Commission’s statement that two of the individuals named did not work on REACH was not a fair reflection of the situation. Just as Mr Burgstahler and Mr Mingasson, so both Ms Perenius and Ms Jensen-Korte worked on REACH – Ms Perenius through her involvement in legislation and policy papers that paved the way for the REACH proposal; Ms Jensen-Korte as Commission representative in meetings with the chemicals industry, for example. The Commission statement was therefore inaccurate and misleading.

Greenpeace continues to denounce the lack of transparency surrounding the practice of revolving doors, a practice which, at the very least, appears to give private interests privileged access to public decision-making.

I look forward to your decision in this case. Please contact me if I could be of any further assistance to your inquiry.

Yours sincerely,



Jorgo Riss

Encs: copies of four e-mails (in 3 scanned documents) showing correspondence between office of Mr Geert Dancet and staff of public relations firm Burson-Marsteller, representing Japanese chemical industry.

MessageFrom: ENTR /G/1 REACH
Sent: lundi 18 avril 2005 10:55
To: 'Sabine_Wimpissinger@be.bm.com'
Cc: JENSEN-KORTE Uta (ENTR)
Subject: RE: 10314 FW: JCCE, request for a meeting on REACH

Dear Mrs. Wimpissinger,
Thank you very much for your message, we appreciate to see Mr. Masayuki Sato from the JCCE. We suggests, if it suits for Mr. Sato, to visit us for approximately half an hour on the 21 of April at 10:00 am at our office in the Ave des Nerviens 105 to discuss the state of play of REACH.

Kind regards,

Geert Dancet
Head of Unit
European Commission
DG Enterprise and Industry
G1 REACH

This e-mail contains the personal opinions of the author and does not necessarily reflect the official opinion of the Commission. L'opinion exprime ici est un avis personnel qui ne reflète pas nécessairement le point de vue officiel de la Commission.

-----Original Message-----

From: Sabine_Wimpissinger@be.bm.com [mailto:Sabine_Wimpissinger@be.bm.com]
Sent: Wednesday, April 13, 2005 5:03 PM
To: DANCET Geert (ENTR)
Cc: Will_Parker@be.bm.com
Subject: Fw: JCCE, request for a meeting on REACH

Dear Mr Dancet,

I am writing to you on behalf of the Japanese Chemicals Companies Council in Europe (JCCE). Mr. Masayuki Sato from the JCCE will be in Brussels in the week starting 18 April and I would like to ask you whether you would be available for a short meeting to discuss the JCCE concerns and their position on the draft REACH legislation.

As the discussion moves forward in the EU institutions, the JCCE would be interested in finding out about the Commission plans and the state of play of the proposal. Your view on the JCCE position would also be very useful to us.

We will contact your office in the coming days to see if we can find a time for a meeting that is agreeable to you.

Kind regards

Sabine Wimpissinger
BKSH/Burson-Marsteller
Consultant to JCCE

Avenue de Cortenberg 116
B-1000 Bruxelles
Tel: +32-2-743 6611
Fax: +32-2-735 8528

JANSSENS-SLEDSSENS Hedwige (ENTR)

From: JANSSENS-SLEDSSENS Hedwige (ENTR)
Sent: jeudi 7 juillet 2005 14:35
To: 'Ludovica_Gambone@be.bm.com'
Cc: JENSEN-KORTE Uta (ENTR)
Subject: Meeting with Mr Masatoshi Ogura

Dear Ms Gambone,

Referring to our today's telephone conversations, I can herewith confirm you that a meeting is scheduled with Mr Masatoshi Ogura and Ms Jensen-Korte, staff member of Unit ENTR/G/1, on Friday, 15 July 2005 from 12:00 until 12:30 hrs. The meeting will take place on the following address : Avenue des Nerviens, 105, room 2/93; 1040 Brussels. The building is located opposite to the Museum (parc du Cinquantenaire).

Kind regards,

Hedwige Janssens-Sledsens
Secretary to G. Dancet
ENTR/G/1

Tracking:	Recipient	Read
	'Ludovica_Gambone@be.bm.com'	
	JENSEN-KORTE Uta (ENTR)	Read: 8/07/2005 9:05

JANSSENS-SLEDESENS Hedwige (ENTR)

From: JANSSENS-SLEDESENS Hedwige (ENTR) on behalf of DANCET Geert (ENTR)
Sent: vendredi 21 octobre 2005 12:20
To: "Will_Parker@be.bm.com"
Subject: RE: Request for a meeting with JCCE

Tracking:

Recipient	Read
'Will_Parker@be.bm.com'	
DANCET Geert (ENTR)	Read: 21/10/2005 12:37
JENSEN-KORTE Uta (ENTR)	

Dear Mr Parker,

I thank you for your e-mail requesting us to plan another meeting to discuss the issue of REACH.

May I for this reason kindly ask you to call Mrs Uta Jensen-Korte (tel. 02/296 41 31) to find a mutually agreeable time for a meeting.

Best regards,

Geert Dancet
European Commission
Directorate General Enterprise and Industry
REACH Unit - ENTR/G1
Office : N105 - 02/56
B - 1049 Brussels
Tel. : +32.2.296.09.93
Fax : +32.2.298.84.42
E-mail : Geert.Dancet@cec.eu.int

"This e-mail contains the personal opinions of the author and does not necessarily reflect the official opinion of the Commission"