



Defensor del Pueblo Europeo

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**Recomendación de la Defensora del Pueblo Europeo en los casos 500/2015/
PHP, 561/2015/ PHP, 570/2015/ PHP, 577/2015/ PHP, 619/2015/ PHP, 635/2015/
PHP y 650/2015/ PHP**

Estimada Señora Palomar:

Adjunto la recomendación y la sugerencia que he enviado al Comité Económico y Social Europeo (CESE), en el marco de la investigación de su reclamación.

Adjunto el texto original en inglés. Le enviaremos la versión en español tan pronto como sea posible.

Le saluda atentamente,

Emily O'Reilly
Defensora del Pueblo Europeo

Adjunto:
Copia de la recomendación y de la sugerencia



Emily O'Reilly
European Ombudsman

Recommendation

of the European Ombudsman concerning the alleged failure by the European Economic and Social Committee to ensure that a member declared all relevant interests (inquiry into complaints 500/2015/ PHP, 561/2015/ PHP, 570/2015/ PHP, 577/2015/ PHP, 619/2015/ PHP, 635/2015/ PHP and 650/2015/ PHP)¹

The case concerned the manner in which the European Economic and Social Committee (EESC) adopted an own-initiative opinion on electromagnetic hypersensitivity. In its plenary session, the EESC Assembly rejected a draft opinion prepared by one of its Sections and adopted instead a counter-opinion presented just the day before the plenary session. The complainants argued that the opinion should be withdrawn as the author of the counter-opinion had not declared to the EESC his connections with organisations linked to telecommunications companies. Moreover, they argued that the EESC Assembly was not given sufficient time to examine the counter-opinion and, as a result, the procedure followed did not comply with the applicable rules. Thus, they complained to the Ombudsman.

The Ombudsman inquired into the issue and found that the case brought to light systemic risks that could compromise the transparency and legitimacy of the procedures followed by the EESC. In particular, the Ombudsman concluded that the EESC must, in all cases, ensure that its work is carried out openly and transparently. She also observed that, in this case, it was difficult to accept that the EESC Assembly had been given sufficient time to examine the counter-opinion.

The Ombudsman has recommended that the EESC should: (i) ensure that its members make a complete declaration of all relevant interests in a timely

¹ Made in accordance with Article 3(6) of the Statute of the European Ombudsman - Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom), OJ 1994 L 113, p. 15.



manner; and (ii) require that declarations of interests be updated on a yearly basis and that if new circumstances arise, the EESC should examine the matter and require that the information be updated, if necessary.

The Ombudsman has also suggested that the EESC should always seek to ensure that its members are provided with sufficient time to examine documents before a vote is taken.

The background to the complaints

1. The inquiry concerns the manner in which the European Economic and Social Committee (EESC)² adopted an own-initiative opinion in relation to electromagnetic hypersensitivity.³ Electromagnetic hypersensitivity is, it is argued, linked to exposure to electromagnetic field sources,⁴ such as mobile phone masts, cordless phones and Wi-Fi routers.
2. The EESC meets in plenary sessions, where opinions are adopted by a simple majority on the basis of section opinions. The section opinions are drafted by "study groups", usually composed of twelve members who may be assisted by four experts.
3. In this case, the draft opinion was prepared by the Section for Transport, Energy, Infrastructure and the Information Society (TEN). However, at the plenary session of 21 and 22 January 2015, the Assembly rejected that draft opinion and adopted (by 138 votes to 110, with 19 abstentions) a counter-opinion prepared by a member of the EESC who is also a member of the TEN. A counter-opinion is an amendment or amendments that "*set out a generally divergent view to the section opinion*".⁵
4. The individual in question was appointed a member of the EESC as a "consultant on ethical, social and environmental issues" by a Member State, and was registered by the EESC as a member within the category of "consumers and environment" in Group III (various interests).
5. The complainants⁶ then complained to the EESC that the EESC member who had drafted the counter-opinion had failed to declare to the EESC that he was working for two organisations with links to telecommunications companies. They noted that the fact that the EESC member was appointed as a "consultant on ethical, social and environmental issues" might have misled other EESC members about the interests he was representing.

² The EESC is a consultative body that gives representatives of Europe's socio-occupational interest groups and others a formal platform to express their points of view on EU issues. Its opinions are forwarded to the Council, the European Commission and the European Parliament.

³ TEN/559 Electromagnetic hypersensitivity.

⁴ World Health Organisation: <http://www.who.int/peh-emf/publications/facts/fs296/en/>

⁵ Rule 51(7) of the Rules of Procedure of the EESC.

⁶ Initially, the Ombudsman received seven separate complaints from Associations and individual persons from different Member States. After this inquiry was launched, the Ombudsman received five additional complaints on the same matter. All of these complaints are now being dealt with in this inquiry.



6. The complainants also stated that the counter-opinion had been sent to EESC members just the day before the plenary session, which meant that the EESC members were not given sufficient time to review it before the vote. The complainants requested the EESC to annul the vote on electromagnetic hypersensitivity as it was, in their view, undermined by a "conflict of interest".

7. In its reply, the EESC stated that the vote could not be annulled because it complied with its internal rules. Regarding the alleged "conflict of interest", the EESC pointed out that its members "*shall not be bound by any mandatory instructions. They shall be completely independent in the performance of their duties, in the Union's general interest*".⁷ This implied that members enjoy significant freedom in the performance of their EESC duties.

8. The complainants were not convinced by the EESC's arguments and turned to the Ombudsman.

The inquiry

9. The Ombudsman opened an inquiry into the complaints and identified the following allegations and related claims:

Allegations

- 1) The EESC does not properly examine issues of potential "conflicts of interests" of its members, and failed to act when faced with an alleged "conflict of interest" of one of its members in this case.
- 2) The EESC failed to follow the established procedure when adopting its opinion on electromagnetic hypersensitivity.

Claims

- 1) The EESC should, in general, deal properly with potential "conflicts of interests" of its members and, in particular, address the matter of the alleged "conflict of interest" of one of its members.
- 2) The EESC should annul the vote held on electromagnetic hypersensitivity.

10. In the course of the inquiry, the Ombudsman received the opinion of the EESC on the complaint and, subsequently, the comments of the complainants in response to the EESC's opinion. She also inspected the EESC's file. The Ombudsman's recommendation and suggestion takes into account the arguments and opinions put forward by the parties.

⁷ Article 300(4) of the Treaty on the Functioning of the European Union (TFEU).



Allegation that the EESC does not properly examine potential "conflicts of interests" of its members

Arguments presented to the Ombudsman

11. In its opinion, the EESC stated that EESC members represent different interests present in civil society. It also pointed out that they do not participate in the EESC's activities on a full-time basis. Rather, they continue to carry out their professional activities as members of civil society.

12. The EESC said that neither its Rules of Procedure nor the Members' Statute refer to "conflicts of interests" of its members. Article 5a of the Members' Statute refers, however, to the members' declaration of financial interests:

"All members shall declare their financial interests, stating the name of the organisation which proposed them for EESC membership and the paid posts or activities which they hold or perform. Members shall complete such a declaration as soon as they take up their posts with the EESC, the form provided for this purpose being part of their personal file kept at the EESC; this shall be updated by the member concerned whenever necessary and made accessible to the public via the internet."

13. The EESC stated that this provision implies that the EESC must "*ensure that the different interests of its members are public and widely known*". In this case, the member who drafted the counter-opinion had submitted a declaration upon his appointment. That declaration did not refer to any organisation he belonged to. However, the declaration was later updated, *after* the adoption of the counter-opinion, making reference this time to the organisations to which the member in question was linked.

14. The EESC also stated that the Assembly is in charge of dealing with potential issues of "conflicts of interests" of its members. Where necessary, the matter may be referred to the "quaestors", who have an advisory role regarding decisions or measures potentially affecting members. The quaestors' duties comprise, amongst others, ensuring the proper implementation of the Members' Statute and resolving cases of doubt or dispute arising from the application of the Members' Statute.⁸

15. The EESC then noted that when the counter-opinion was presented at the plenary session, the EESC member who had drafted it was publicly accused, by another member, of not having declared some relevant interests. However, despite this information being brought before the EESC Assembly, the Assembly decided to vote on the opinion. Therefore, the EESC contended, the opinion was validly adopted.

16. The complainants argued that if a member, presented to the EESC as a consultant on certain issues (in this case, ethical, social and environmental matters), is actually part of an organisation that has an interest in the matter, that person cannot be deemed to carry out his duties independently, objectively and in the EU's general interest.

⁸ Article 22 Members' Statute.



The Ombudsman's assessment leading to a recommendation

17. The reason members are appointed to the EESC is because they represent diverse sectorial interests, including those of industry. EESC members can thus have connections to specific industrial interests (including to telecommunications companies). However, it is important that EESC members declare all the interests they represent. If such information is not made public, the procedure for the adoption of EESC opinions would not be transparent. Thus, the EESC's legitimacy, as a body representing diverse interests in EU society, would be undermined.

18. The Ombudsman notes that when the member who drafted the counter-opinion was publicly accused by civil society organisations of not having declared some relevant interests, he immediately sought guidance from the EESC. The EESC replied that its legal service could not deal with "private matters" and suggested that he raised this issue with the quaestors.

19. The EESC argued that it is the responsibility of each member to sign a declaration of interests, and that neither its Rules of Procedure nor the Members' Statute refer to "conflicts of interests" of its members. From this statement, it appears to the Ombudsman that the EESC was unwilling to take any action or assume any responsibility as regards this matter. This appears to contradict the EESC's statement that it must ensure that the different interests of its members are public and widely known (see above, paragraph 13).

20. In this case, the Ombudsman observes that the interests of the EESC member who drafted the counter-opinion were made known during the debate on the opinion by the EESC Assembly. Nevertheless, the Ombudsman notes that the fact that the interests of the member were made public only on the day of the EESC vote was not due to any institutional safeguards in place at the EESC. Rather, those interests became known only as a result of questions raised by another EESC member during the debate leading to the vote.

21. The Ombudsman thus considers that the EESC's position in this case fell short of the obligation⁹ to have in place measures that **ensure, in all cases**, that the work of its members and of its sections is actually carried out openly and transparently.

22. Where the Ombudsman finds maladministration, she tries to find a solution which will put the complainant back into the position he or she would have been in had there not been any maladministration. However, in this case, the interests of the EESC member who drafted the opinion were made known during the debate on the opinion and before the resulting vote. The EESC therefore adopted that particular counter-opinion in full knowledge of the interests of the member who had drafted it. Thus, the Ombudsman sees no reason to ask the EESC to vote again on that opinion.

23. However, the fact that the interests of the particular member eventually became known **was not due to any safeguard provided by the EESC's internal**

⁹ As required by Article 15 TFEU: "In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible."



rules. On the contrary, this case has brought to light the risks that the current rules represent for the transparency and legitimacy of the EESC's work. In the Ombudsman's view, the EESC should have taken appropriate measures to ensure that such risks would never materialise.

24. The Ombudsman finds that the EESC should put in place more robust procedures requiring its members to declare, in a timely manner, **any relevant interests** they have, and not just financial interests. Relevant interests are any interests that could impact on their work with the EESC. The declarations should be updated on a yearly basis. Moreover, if a member or a third party brings to the EESC's attention new circumstances affecting the content of a declaration of interests initially submitted, the EESC should examine the matter and, where necessary, require the member concerned to update that declaration promptly. She will therefore make a recommendation on this aspect of the inquiry.

Allegation that the EESC failed to follow the established procedure when adopting its opinion

Arguments presented to the Ombudsman

25. The EESC stated that it complied fully with its Rules of Procedure when adopting the opinion.

26. As regards the fact that the counter-opinion was sent to the members just 24 hours before the voting, the EESC said that Rule 40 requires documents to be made available to the members of the Committee "*in good time*". In practice, the Bureau generally decides to include a counter-opinion in the agenda of the plenary session immediately following its own meeting, that is within 24 or 48 hours. The EESC said that this practice had never been criticised by its members. Moreover, in this case, no member complained about the documents not being distributed "*in good time*".

27. The EESC also mentioned that although the agenda is sent to the members at least fifteen days before the session, the final agenda is not adopted until the beginning of each session. Therefore, the agenda initially sent to the members is provisional.¹⁰

28. The EESC therefore concluded that the procedure had been fully respected. Moreover, the EESC pointed out that the Rules of Procedure do not provide for the possibility to annul the vote on an opinion adopted by the Assembly.

29. The complainants argued that since the opinion had been sent to EESC members just the day before the plenary session, the members did not have sufficient time to examine it.

¹⁰ Rule 46 of the Rules of Procedure of the EESC.



The Ombudsman's assessment

30. The Rules of Procedure of the EESC state that the documents necessary for the deliberations shall be made available to the members "in good time". In this regard, the Ombudsman must assess whether the "good time" requirement was properly interpreted and applied.

31. The Ombudsman verified during the inspection that the counter-opinion was discussed at the Bureau meeting on 20 January 2015, and that the Bureau classified it as a counter-opinion.¹¹ According to the EESC, the Bureau decided to include the counter-opinion in the agenda of the plenary session which was scheduled for the following day. The final agenda was approved at the beginning of the plenary session.

32. As regards the EESC's explanation that as a matter of practice the Bureau includes counter-opinions on the agenda 24-48 hours before the plenary session, the Ombudsman notes that the Rules of Procedure mention that the Bureau shall meet before each session, and where appropriate during a session, to organise the proceedings.¹² There is no requirement, however, that the issues discussed in a Bureau meeting should be included in the agenda of the next plenary session.

33. The Ombudsman observes that a counter-opinion is not a simple or partial amendment. It is, on the contrary, an amendment that sets out "*a generally divergent view to the section opinion*". Therefore, the Ombudsman finds it difficult to share the EESC's understanding that in this case the counter-opinion was made available to the members "in good time". In fact, providing members with only one day, or even less time, to examine not just one or more proposed amendments, but a counter-opinion that goes against an opinion already discussed and agreed at section level, carries the inherent risk that the members may not always have sufficient time to look at all the relevant information.

34. Although the Ombudsman understands that the EESC is in charge of its own internal rules, and it appears that no member raised any objection at the beginning of the meeting to putting and taking a vote on the counter-opinion, the Ombudsman also considers that the Rules of Procedure (and, in particular, Rule 40) aim at ensuring that documents that will be voted on are given sufficient consideration. Given the extremely short period of time during which the counter-opinion was made available to members, there was a serious risk that the Assembly would have refused to vote on it.

35. Thus, the Ombudsman finds it difficult to accept that the counter-opinion was circulated "in good time". She is therefore of the view that the EESC should see to it that, in the future, the EESC members are always provided with enough time to examine documents on which they will be asked to vote.

¹¹ Rule 51(7) of the Rules of Procedure of the EESC: "*Any amendment or amendments which aim to set out a generally divergent view to the section opinion shall be described as a counter-opinion.*

The bureau shall be the body with the authority to decide on such a description. It shall take its decision after consulting the president of the section concerned.

The bureau may decide, after this consultation, to refer the draft opinion, together with the counter-opinion, back to the specialised section for further study. In urgent circumstances, the Committee president shall have authority to do this."

¹² Rule 45(1) of the Rules of Procedure of the EESC.



The recommendation

On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendations to the European Economic and Social Committee:

The EESC should:

- **review the relevant rules in order to ensure that its members make, in a timely manner, a complete declaration of all relevant interests. This should cover any interests which could have an impact upon their work with the EESC;**
- **require that declarations of interests be updated on a yearly basis. Moreover, if a member or a third party brings to the EESC's attention new circumstances that may affect the content of the declaration of interests initially submitted, the EESC should examine the matter and update that information in a timely manner where necessary.**

The suggestion for improvement

On the basis of the inquiry into this complaint, the Ombudsman makes the following suggestion to the European Economic and Social Committee:

The EESC should:

- **seek to ensure that its members are always provided with enough time to examine documents on which they will be asked to vote.**

The European Economic and Social Committee and the complainants will be informed of the Ombudsman's recommendation and suggestion for improvement. In accordance with Article 3(6) of the Statute of the European Ombudsman, the European Economic and Social Committee shall send a detailed opinion by 16 December 2016. The detailed opinion could consist of the acceptance of the recommendation and a description of how it has been implemented. The European Economic and Social Committee shall also refer to any measure it has adopted to implement the Ombudsman's suggestion for improvement.

Strasbourg, 19/09/2016,

Emily O'Reilly
European Ombudsman