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From:	Ms Emily O'Reilly, European Ombudsman
date of receipt:	6 January 2020
To:	Secretary General of the Council
No. prev. doc.:	12824/19; 12879/19
Subject:	Recommendation of the European Ombudsman in case 1069/2019/MIG on sponsorship of the Presidency of the Council of the European Union

Delegations will find in Annex a copy of a letter sent by the European Ombudsman to the General Secretariat of the Council concerning complaint 1069/2019/MIG of 15 July 2019.

COMPLAINT / *CA*



European Ombudsman

IN 000560 2020
16.01.2020

Emily O'Reilly
European Ombudsman

Mr Jeppe Tranholm-Mikkelsen
Secretary-General
Council of the European Union

jur.ombudsman@consilium.europa.eu
cc. Ms Thérèse Blanchet

Strasbourg, 06/01/2020

Complaint 1069/2019/MIG

Subject: Recommendation of the European Ombudsman in the above case on sponsorship of the Presidency of the Council of the European Union

Dear Mr Tranholm-Mikkelsen,

Please find enclosed my recommendation in the above case, made in accordance with Article 3(6) of the Statute of the European Ombudsman.

My recommendation is as follows:

The Council of the EU should issue guidance to Member States on the issue of sponsorship of the Presidency, to mitigate the reputational risks to the EU.

In accordance with the Statute of the European Ombudsman, the Council shall send a detailed opinion before 6 April 2020.

A copy of my recommendation will be sent to the complainant.

Finally, please find enclosed a copy of the complainant's comments on the Council's reply to its complaint.

Yours sincerely,

Emily O'Reilly
European Ombudsman

Enclosure:

- Recommendation to the Council of the European Union
- Complainant's comments on the Council's reply to the complaint

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European Ombudsman

Emily O'Reilly
European Ombudsman

Recommendation

of the European Ombudsman in case 1069/2019/MIG on sponsorship of the Presidency of the Council of the European Union

Made in accordance with Article 3(6) of the Statute of the European Ombudsman¹

This case concerns the sponsorship of the Presidency of the Council of the EU. The complainant considered that the Council should regulate or prohibit sponsorship.

The Council argued that the sponsorship of the Presidency is the sole responsibility of the Member State government responsible for the Presidency, and that it could therefore not address the matter.

The Ombudsman notes that the Presidency is part of the Council, and must operate in a neutral and impartial manner. When the Presidency organises a meeting or another activity, whether in Brussels or in its home Member State, the wider European public is bound to perceive this activity as linked to the Council and the EU as a whole.

As such, the Council's stance that it has no responsibility when it comes to sponsorship of the Council Presidency, which ignores the risk of reputational damage to the neutrality of the Presidency, constitutes maladministration. The Ombudsman therefore makes a recommendation that the Council issue guidance to Member States on the issue of sponsorship of the Presidency to mitigate the reputational risks to the EU.

Background to the complaint

1. Every six months a different Member State holds the Presidency of the Council of the European Union.² During that period, the Member State³:

- organises and chairs meetings of the Council;
- makes proposals to achieve agreement amongst the Member States on draft policy and legislation;
- represents the Council in its relations with the other EU institutions and bodies; and

¹ 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): <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:31994D0262>.

² In accordance with Article 16(9) of the Treaty on European Union.

³ See Handbook of the Presidency of the Council of the European Union, page 9: <http://www.mvep.hr/files/file/2018/181212-handbook-of-the-presidency-02-2018-1.pdf>.



- negotiates on behalf of the Council to reach agreements on legislative files with the European Parliament.

2. The Council and the Member State holding the Presidency share responsibility for costs linked to holding a Council Presidency. This means that a Member State holding the Presidency may incur expenses that are not covered by the EU budget.

3. It has become increasingly common that Member States seek commercial sponsorship to cover the costs of holding a Council Presidency. This sponsorship often involves allowing companies to present their names and logos alongside official Council Presidency logos and to state that they “support” the Council Presidency.

4. During the first six months of 2019, Romania held the Council Presidency. A number of private companies sponsored the Romanian Presidency, including automobile manufacturers, a telecommunications company, energy companies, a brewer’s association and a soft drinks company.

5. The complainant, the non-profit organisation *foodwatch*, took issue with the sponsorship by the soft drinks company, and the issue of sponsorship of the Presidency of the Council in general.

6. In June 2019, it complained to the Council about its failure to regulate such sponsorship.

7. The Council informed the complainant that it could not address or comment on the matter as, it argued, the issue was solely the responsibility of the Member State in question.

8. Dissatisfied with the Council’s reply, the complainant turned to the Ombudsman.

The inquiry

9. The Ombudsman opened an inquiry into whether the Council was justified in refusing to address the issues raised by the complainant. The inquiry looked into the commercial sponsorship of the Presidency of the Council in general (and not the specific example of sponsorship during the Romanian Council Presidency).

10. In the course of the inquiry, the Ombudsman received the reply of the Council on the complaint and, subsequently, the comments of the complainant in response to the Council’s reply.



Arguments presented to the Ombudsman

11. The complainant argued that commercial sponsorship of the Presidency of the Council may lead to reputational damage and conflicts of interest, and could undermine public trust. It argued that sponsors may have business interests concerning issues that are the subject of policy- or law-making deliberations during the term of a Presidency. The complainant also stated that the requirement that Member States holding the Presidency of the Council be neutral should be interpreted broadly and should include the public interest.

12. The Council stated that the Presidency is formally part of the Council. However, it distinguished between: (i) the Presidency's activities under the Council's Rules of Procedure, which are essentially activities *of the Council* and in relation to which the Presidency has a duty to be neutral and impartial; and (ii) *other activities* of the Presidency, which are not formally part of the Council's activities, such as informal meetings of ministers or cultural events. The latter, the Council contended, are financed by and fall within the responsibility of the Member State concerned. The Council thus argued that the management or organisation of these *other activities*, including possible sponsorship, does not fall within its remit and that it could not take action in relation to these activities.

13. The Council also took the view that there are safeguards in place that could alleviate the complainant's concerns, namely the Presidency's duty to be impartial and neutral, and the fact that certain meetings are financed by the Council and held on its premises.

14. The complainant replied that the Presidency's duty to be neutral and impartial extends to all its activities, and that the public does not make a distinction between the different types of activities the Presidency organises.

The Ombudsman's assessment leading to a recommendation

15. The Ombudsman notes that, although it is held by a Member State, the Council Presidency is functionally a part of the Council and thus of the EU administration.

16. The Presidency has an important and influential role to play in the EU policy- and law-making process. For example, it proposes compromise positions on draft policies and legislation to the Member States and it negotiates, on behalf of the Council, with the European Parliament to agree draft legislation. Regarding non-legislative proposals, it may also decide whether Council deliberations are held in public or which new proposal should be prioritised.⁴ Thus, it exercises power on behalf of the Council. In exercising this power, the Presidency is required to be neutral and impartial.

⁴ In accordance with Article 8 of the Council's Rules of Procedure: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32009D0937>.



17. Given the Presidency's role, there is a risk that commercial sponsorship could be perceived, by the wider public, as giving a sponsor some influence over EU policy- and law-making. The European Parliament has raised similar concerns.⁵

18. The distinction the Council draws between different categories of activities that the Presidency organises may be useful for clarifying, from an internal administrative perspective, whether certain expenses are the responsibility of the Council or the Member State holding the Presidency. However, such a distinction is not perceptible or relevant to the wider public. When the Presidency organises a meeting or another activity, the public is bound to perceive this activity as, in some way or another, linked to the Council and the EU administration as a whole. That the public would do so is understandable, expected and unavoidable.

19. It is good administration to take due account of this reality by taking prudent and reasonable measures - beyond the "safeguards" mentioned by the Council - to eliminate, or at least to mitigate, the reputational risks involved.

20. It falls to the Council to seek to mitigate the risks associated with commercial sponsorship. The Council already provides the Member States with practical, procedural and strategic advice on the Presidency. The Council could extend this advice to include guidance to the Member States on the issue of commercial sponsorship. Such guidance could, for example, relate to the transparency of commercial sponsorship or the use of the EU logo.

21. The Ombudsman finds that the Council's stance that it has no responsibility when it comes to commercial sponsorship of a Council Presidency and its consequent inaction amounts to maladministration. The Ombudsman therefore makes a corresponding recommendation below, in accordance with Article 3(6) of the Statute of the European Ombudsman.

Recommendation

On the basis of the inquiry into this complaint, the Ombudsman makes the following recommendation to the Council:

The Council of the EU should issue guidance to Member States on the issue of sponsorship of the Presidency, to mitigate the reputational risks to the EU.

⁵ See European Parliament resolution of 23 October 2019 with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2017, Section II – European Council and Council (2018/2188(DEC)): http://www.europarl.europa.eu/doceo/document/TA-9-2019-0040_EN.html#title2.



The Council and the complainant will be informed of this recommendation. In accordance with Article 3(6) of the Statute of the European Ombudsman, the Council shall send a detailed opinion by 6 April 2020.

Emily O'Reilly
European Ombudsman

Strasbourg, 06/01/2020

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via e-mail to EO@ombudsman.europa.eu

Berlin, 25. November 2019

Complaint 1069/2019/MIG

Dear Ms Nilsson

Many thanks for sending through the response from the Council of the EU. Please find our comments from foodwatch below:

1. We appreciate the clarification from the Council in clearly stating that the Presidency is to be functionally considered as part of the Council and as such “activity cannot be dissociated from the activity of the Council.”
2. We also appreciate how the Council has underlined that “the Presidency has the duty to be neutral and impartial” and that this is included in the handbook of the Presidency and indeed, if these guidelines are upheld and respected, this can already provide some safeguards.
3. The letter then goes on to describe some possible events which take place in the Member State and to which the Council states: “are the responsibility of the Member State” and “cannot be regarded as Council activities.” Here it is difficult to understand the logic of this conclusion:
 - ⇒ If the Presidency is functionally considered part of the Council and their activities cannot be dissociated from the activity of the Council, then
 - ⇒ The duty to be “neutral and impartial” applies to the Presidency no matter where it is acting. If the event is linked to the Presidency – it is part of the Presidency.
4. This case we are speaking about is not a situation of sampling some local cheese at a cultural event, it is blatant sponsorship of the world’s largest soft drink producer of a part of the European Union which we agree is “functionally considered as part of the Council.”
5. The Council in its reply does nothing to allay the concerns that these sponsored events are surely aimed at promoting the sponsors brand so as to directly or indirectly influence the Member States’ views or behavior. If this is not the case, then what reason can be given for such sponsorship? The Council needs to take responsibility for making sure that all its meetings - formal or informal - do not facilitate such influence.

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6. Since making this complaint via the Ombudsman, there has been large support from the European Parliament to get rules in place for the Council Presidencies. On 22/10 the EP voted overwhelmingly in favour of the *“Council adopt(ing) guidelines in order to promote the financial transparency and independency of the Presidencies.* https://www.europarl.europa.eu/doceo/document/A-9-2019-0010_EN.html?redirect

7. We are also aware of the *“New strategic agenda 2019-2024¹”* as agreed by the European Council in June 2019 which includes the following commitments: *“Our Institutions will work in accordance with the spirit and the letter of the Treaties. They will respect the principles of democracy, rule of law, transparency and equality between citizens and between Member States. Good governance also depends on the rigorous implementation and enforcement of agreed policies and rules, which must be closely monitored. Each institution should revisit its working methods and reflect on the best way to fulfil its role under the Treaties.”*

8. There is also a rising concern over citizen's perception of the European Union. To an average EU citizen, the difference between all the types of meetings associated with a Presidency are not clear. If they see the EU flag next to the logo of Coca-Cola, BMW or Google – there is only one message that comes out: Corporate Influence inside the EU.

9. To this end, we consider that the response of the Council to the Ombudsman on 23 October 2019 has not gone far enough. We do not accept that neutrality and impartiality stops in Brussels. We do not accept that having rules for how to run a Presidency is out of the hands of the Council according to Article 13 (2) TEU as the Presidency is functionally considered as part of the Council. It is now time to step up to the responsibility and adopt clear rules (to be also included in the current guidelines²) on financial transparency and independence of Presidencies and an end to corporate sponsorship.

Yours sincerely



Thilo Bode

¹ <https://www.consilium.europa.eu/en/press/press-releases/2019/06/20/a-new-strategic-agenda-2019-2024/>

² <http://www.mvap.hr/files/file/2018/181212-handbook-of-the-presidency-02-2018-1.pdf>