



NATIONAL TRANSPARENCY AUTHORITY

ETHICS COMMITTEE OF ARTICLE 74 OF LAW 4622/2019

DECISION 2/2021

The Ethics Committee of Article 74 of Law 4622/2019 met in session on Monday, July 26, 2021, at 12:00 p.m., following the invitation its Chairman to the other regular and alternate members, dated 23.07.2021, which was sent by email along with the-agenda. The meeting was held by teleconference and was attended by the following members of the Ethics Committee: Menelaos Tsouplakis, Chairman of the Management Board of the National Transparency Authority (Chairman), Anastasia Zafiriadou, Legal Advisor to the State (regular member), Efstratios Iliadelis, Legal Advisor to the State (regular member), Dionysios Laskaratos, First Vice-President of the Supreme Council for Civil Personnel Selection (regular member) and Andreas Pottakis, Ombudsman (regular member). Secretarial support was provided by Eleni Magkafa, a secondary education category employee, administrative secretary with grade A, of the General Directorate of Financial and Administrative Services and e-Governance of the National Transparency Authority.

The subject of the above meeting was the discussion of the request with incoming protocol number 22504/12.07.2021 submitted by Mr. , former Second Vice-President of the National Organization for Medicines (hereinafter referred to as EOF), submitted to the Ethics Committee, in view of his imminent appointment to a position in the greek offices of an international pharmaceutical company, as supplemented by the additional information, requested by the Committee pursuant to Article 73(par.4)(sec.d) of Law 4622/2019.

Pursuant to Article 73 of Law 4622/2019, it is stipulated, inter alia, that persons appointed to the positions referred to in Article 68 of the same law, namely (a) members of the Government and Deputy Ministers, (b) the General and Special Secretaries, as well as the Coordinators of the Decentralized Administrations, (c) the



Presidents or heads of Independent Authorities and the Presidents, Vice-Presidents, Administrators, Deputy Administrators, Sub-Administrators, managing or appointed advisors of legal entities of public law (L.E.P.L.) and private law (L.E.Pr.L.), whose selection is the responsibility of the Government, with the exception of bodies falling within the scope of Chapter B of Law 3429/2005 (A' 314), are required for (1) one year after leaving their position for any reason, to obtain permission for any professional or business activity related to the activity of the body to which they were appointed, since this may create a conflict of interest situation within the meaning of Article 71 of Law 4622/2019. Such a situation arises in particular: (a) through the provision of services by them - under any legal relationship - to a natural or legal person governed by private law in Greece or abroad; or (b) through their participation in the capital or management of the above legal entities, except in cases of acquisition of shares, corporate interests or other rights through inheritance. The above persons who intend to engage in an activity that may fall within the scope of paragraph 1 of Article 73 of Law 4622/2019 shall submit a relevant application to the Ethics Committee referred to in Article 74 of the same law. The Committee, after considering the application of the person, shall issue a reasoned decision within an exclusive period of one (1) month. During this period, the person must refrain from engaging in the activity to which the application relates. If the Committee does not decide within the specified time limit, the permission shall be deemed to have been granted. The Committee, which, pursuant to Article 73(3)(d) of Law 4622/2019, may request from the applicant any additional information it deems necessary for its decision, may, by its decision, taken at its discretion, pursuant to Article 73(par.4) of Law 4622/2019, which is published on the website of the National Transparency Authority: (a) allow the activity in question without restrictions or conditions, (b) allow it with the necessary restrictions and conditions, (c) prohibit it absolutely. Cases (b) and (c) may not exceed a time limit of one (1) year after the person has left the position referred to in Article 68 of Law 4622/2019 for any reason. In the cases referred to in (b) and (c), the Committee may determine reasonable compensation for the person, that is borne by the State Budget.

By Law 1316/1983, as amended and in force, a Legal Entity under Public Law was established based in Athens and under the name "NATIONAL ORGANISATION FOR



MEDICINES" (E.O.F.), whose primary purpose is to protect and promote public health and ensure the public interest in the field of medicines and other related products (medical aids, artificial kidney filters, etc.), by ensuring the adequate circulation of tested and high-quality products, as well as by promoting and developing technology and research in the same field. In accordance with the provisions of Article 5 of Law 1316/1983, the administrative bodies of the EOF are the Board of Directors, the President, and two Vice-Presidents. The Board of Directors has five members and consists of the President, the two Vice-Presidents, and two members. The First Vice-President of the EOF has executive duties, and the Second Vice-President is responsible for scientific research and actions. The Board of Directors is convened by the President at least once a month and is quorate if at least three (3) members are present, including the President or one of the Vice-Presidents. The President chairs the meetings of the Board of Directors. In his absence for any reason, he is replaced in order by the First or Second Vice-President.

In this case, as evidenced by the application numbered 22504/12.07.2021, the applicant held the position of Second Vice-President of the EOF until July 2, 2021, who by virtue of his position, participates as a member of the Board of Directors in all its meetings and, secondly, is responsible for scientific research and actions, pursuant to Article 5(par.1) of Law 1316/1983, as also referred to in No. C4b/oik.77348, published in Government Gazette No. 957/13.11.2019-Issue of Appointments of Senior Officials(Y.O.Δ.Δ.) decision of the Minister of Health on the appointment of new members to the Board of Directors of the EOF, and at the same time the applicant held the position of Director of Financial Documentation and Costing at the Center for Documentation and Costing of Hospital Services ("SyKNY – KETEKNY S.A."), i.e. a public enterprise organized as a non-profit limited company with the purpose of costing and financing hospital activities, as referred to in the aforementioned Government Gazette.

In accordance with Article 5(par.3)(sec.d) of Law 1316/1983, in contrast to the provisions applicable to the positions of President and First Vice-President of the EOF, the position of Second Vice-President is not a full-time position. On the basis of the above Government Gazette, the applicant was appointed to the position of Second Vice-President of the EOF, without any remuneration or compensation, as subject to



the provision of Article 70(par.3) of Law 4622/2019, which provides that, by way of derogation from paragraphs 1 and 2 of the same article, it is possible to assign, without any remuneration or compensation other than travel expenses, to persons in the cases referred to in (b) and (c) of paragraph 1 of Article 68 of Law 4622/2019, including the applicant, to perform parallel duties in legal entities of the public sector.

The applicant, in his capacity as Second Vice-President of a legal entity governed by public law (L.E.P.L.), whose members are appointed by the Government, falls within the scope of Article 68(par.1)(c) of Law 4622/2019 and is therefore required, pursuant to Article 73(par.1) and (par.2) of Law 4622/2019 to obtain the permission of the Ethics Committee, because he is about to take up a position in an international pharmaceutical company, which may lead to a conflict of interest. Therefore the Ethics Committee is competent to examine his application.

The application in question is admissible before the Committee, as, on one hand, it has the required legal form of an application under Article 73(par.1) and (par.2) of Law 4622/2019 and, on the other hand, it is submitted by a person who is legally entitled to do so, and therefore its substance must be further investigated.

In essence, since articles 68 and 73 of Law 4622/2019 do not introduce an absolute prohibition on the exercise of professional activity in the private sector by any of the persons referred to in article 68, paragraph 1 of the same law, after the end of his term of office in the public body in which he served, the permissibility or non-permissibility of the exercise of said activity within one (1) year after the end of his/her term of office is left to the discretion of the Ethics Committee. The Committee, after verifying that the business or professional activity which the applicant wishes to pursue is generally related to the area of competence of the body in which he served, in order to then decide at its discretion, in accordance with Article 73(par.4) of Law 4622/2019, (a) to allow the applicant to pursue the professional activity they wish to pursue without restrictions or conditions, or (b) to allow it with the necessary restrictions and conditions, or (c) to prohibit it absolutely, it must further examine whether the duties to be performed by the applicant in his professional activity in the private sector relate to the entire range of his responsibilities in the body in which he served. What is



relevant is not the nature of the applicant's responsibilities in relation to the question of whether he should be exempted from the Committee's control, but in terms of the type of control to be exercised by the Committee and, in particular, whether there are grounds for imposing any restrictions on his professional activities after the end of his term of office.

In the present case, after examining the additional information requested by the Committee and provided by the applicant, with regard to the precise scope of his responsibilities during his term of office as Second Vice-President of the EOF, it appeared that no additional responsibilities had been assigned to him either by the President of the EOF or by decision of the Minister of Health. He pointed out that he mainly performed administrative and financial duties and that he only had to stand in for the President of the EOF once, when he signed an information note to the National and Kapodistrian University of Athens (NKUA).

With regard to his role as a member of the Board of Directors of the Hellenic Organization for Economic Cooperation and Development and in order to investigate the existence of a connection between the decisions of the Board of Directors of the Hellenic Organization for Economic Cooperation and Development and the responsibilities that he may assume in the company in which he wishes to work, it was deemed necessary to examine the subject matter of the meetings in which the applicant participated. From the information provided, it can be concluded that, as a rule, the subject matter of the meetings of the EOF Board of Directors concerned the imposition of administrative fines and penalties for infringements relating to products falling within the competence of the EOF, the revocation of production or wholesale licenses for those products, budgetary issues, requests for the emergency importation of unique medicines to fill a therapeutic gap, and the ratification of decisions taken by the President in the context of emergency measures to protect public health (e.g., prohibition of drug exports, product recalls from the market). According to the applicant, the specific company he intends to work for was only once the subject of a meeting of the EOF Board of Directors, and on that occasion, a previous decision of the EOF President was simply ratified.

In view of the above, it appears that the activity of the pharmaceutical company which



the applicant wishes to join is generally related to the responsibilities of the body for which he worked, namely the EOF, and consequently, prima facie, the applicant's intended activity entails a risk of conflict of interest, as provided for in Article 73(par.1) of Law 4622/2019. Furthermore, an examination of the documents submitted revealed that the specific responsibilities of the position the applicant wishes to take up in the international pharmaceutical company relate to the harmonization of the company's activities with a number of guidelines that are being prepared and issued by a number of international regulatory bodies, so that the company is ready to adapt to upcoming changes in the regulatory framework. The specific position that the applicant is negotiating to take up is entitled "External Affairs Manager" and the duties corresponding to it consist of developing communication relations with international regulatory bodies, domestic and international partners, collective bodies in the pharmaceutical industry, competitors, and patient associations. For example, he will ensure the company's compliance with European directives, e.g. Directive 2011/62/EU on "Falsified Medicinal Products," and will therefore ensure compliance with the requirements for "safety features."

In assessing the above data at the Committee meeting, two opinions were formed.

In the opinion of the majority, consisting of Menelaos Tsouplakis, President of the Administrative Council of the National Transparency Authority, Dionysios Laskaratos, First Vice-President of the Supreme Council for Civil Personnel Selection, and Andreas Pottakis, Ombudsman, after comparing all of the applicant's responsibilities during his term at the EOF with the core duties of his new job, as specified in the letter dated 23 July 2021 accompanying the evidence submitted, no conflict of interest arises, because the harmonization of the company's policy with European legislation and its adaptation to the Greek context is not closely related to his responsibilities as Second Vice-President and member of the Board of Directors of the EOF. Furthermore, the applicant's duties, as described by him in his reply to the Committee dated 23 July 2021, include developing communication links with other bodies, for which he may draw on the social and professional relationships he has developed during his tenure at the EOF in order to gain more direct access to bodies with a regulatory and supervisory role in the pharmaceutical market. This point does entail a risk of exploitation of his former position in view of his future activity, but it is only a loose



link between his former position at the EOF and his subsequent intended employment in the private sector, which cannot justify the imposition of any restriction on his desired new employment. Moreover, the lack of a more detailed framework of rules and criteria regarding the types of restrictions that may be imposed makes it difficult to determine the conditions under which the desired professional activity would be carried out.

Furthermore, as the applicant has clarified, the manufacture of products will not form part of his activities, since the company in question does not manufacture products in Greece. Although it cannot be ruled out that the manufacture of pharmaceutical products to be placed on the Greek market may fall within the scope of the activities of a subsidiary of that company, or that the products of that company may be manufactured abroad and then imported into the Greek market, in which case the company would carry out quality and safety checks each time before placing them on the market, the applicant's area of competence is not identified in the specific activities, namely the granting of a license to manufacture or place on the market the products of that company. Even if it were assumed that the applicant, thanks to the experience gained during his previous term of office at the EOF and the contacts he has developed with the other members of the board, he could assist the company he intends to work for with advice on the above issues, there is no substantial link between the specific duties proposed to him in the context of his intended activity in the private sector and his responsibilities as Second Vice-President and member of the Board of Directors of the EOF.

In view of the above, in accordance with the opinion of the majority, since the applicant's duties will not include involvement in matters relating to the granting of manufacturing/marketing authorizations or other matters falling within the competence of the EOF's Board of Directors, but will be limited to harmonizing the policy of the international pharmaceutical company with the relevant international and European directives, there is no close connection between his previous and future duties. Consequently, for this reason and in view of the fact that this company has only been discussed once at a meeting of the EOF, there is no risk of a conflict of interest that would justify imposing a substantial restriction on the applicant's freedom to pursue his professional activities after the end of his term of office. Moreover, if the



Committee had to assess merely the relevance between the competence of the body from which a person, subject to supervision, derives and the broader market sector in which he will be involved, then, on one hand, the Committee's work would be very easy, as it would be easy to establish that there is a connection, and, on the other hand, the Committee's work would not be particularly meaningful, because anyone who has been appointed to a position of responsibility in a public body, has been selected by the government on the basis of his expertise in the field to which the position relates, in order to contribute to the progress of the body's work. Moreover, the majority considers that the role of the Committee should not ultimately be punitive in nature by imposing strict restrictions on the free professional activity of the persons referred to in Article 68(par.1) of Law 4622/2019, so that capable executives are not discouraged from taking up positions in public bodies.

In the opinion of the minority, composed of Anastasia Zafiriadou and Efstratios Iliadelis, Legal Advisers to the State, in accordance with the provision of paragraph 1 of Article 73 of Law 4622/2019, persons appointed to the positions referred to in Article 68 of the same law are required, for a period of one (1) year after leaving their position for any reason, to obtain permission for any professional or business activity related to the activity of the body to which they were appointed, since this could create a conflict of interest, within the meaning of Article 71 of this law. In the true sense of this provision, such a situation arises, inter alia, through the provision by the above persons of services - under any legal relationship - to a natural or legal person of private law, domestic or foreign, whose activity is related to the activity of the body to which they were appointed, the decisive factor being the subject matter of the competence of that body and not the responsibilities conferred on the person concerned.

In the present case, the applicant's activity in the company in which he intends to take up a position is entirely related to the competences of the EOF, of which the applicant was a member of the management body, given that, until his resignation, he held the position of Second Vice-President of the Board of Directors of that organization.

Indicatively, as stated by the applicant in his letter of 23.7.2021 to the Ethics Committee, the duties of the position he is negotiating to take on include developing



relationships with collective bodies in the pharmaceutical sector, studying new European directives and adapting them to the Greek context, the design of a medium- to long-term policy and strategy plan for the company with regard to harmonization with international directives and transposition into Greek law, etc. Firstly, it should be noted that the applicant's letter does not clearly indicate what exactly he will be doing at the company where he wishes to work, nor is the subject of his activities in relation to the transposition of European directives into national law fully understood and specified. Furthermore, although the applicant states in his letter that the company in question does not manufacture products in Greece itself, it is possible that a subsidiary or partner company manufactures them or makes them available on the Greek market after obtaining the necessary permission, which is why it obviously monitors Greek pharmaceutical legislation and complies with it, even though, according to the provisions of Article 3 of Law 1316/1983, the EOF is responsible, inter alia, for the approval, rejection, renewal, suspension, revocation, etc. of marketing authorizations for medicinal products and other related products in Greece, the granting of licenses for the sale of medicines and the imposition of administrative penalties provided for by that law and other pharmaceutical legislation. Furthermore, the subject matter of the meetings of the EOF's Board of Directors during the applicant's term of office is crucial. From the information brought to the Committee's attention, it appears that the applicant, as a member of the EOF Board, took part in meetings where the subject of discussion was related to the products of various pharmaceutical companies and the imposition of sanctions on companies in the pharmaceutical sector, which leads to a conflict of interest. It is irrelevant whether this was already the subject of a meeting of the EOF Board of Directors concerning the specific company in which the applicant intends to work, because an issue concerning that company may be brought before the Board of Directors of the Organization within the critical period of one year from the applicant's resignation. And just as it would not be permissible for the applicant to be employed by a pharmaceutical company while performing his duties at the EOF, likewise, he should not be allowed to take up such employment within one year of leaving the Organization without conditions being imposed. Given that the legislation currently in force does not provide an adequate framework with a complete set of rules, on the one hand, for imposing conditions, other than a time limit, under



which the applicant could be allowed to take up a position in the above company, and, on the other hand, for monitoring compliance with those conditions and any change in the scope of the applicant's duties in that company during the period of one year following his departure from the EOF, in that opinion, pursuant to paragraph 4 of the aforementioned Article 73 of Law 4622/2019, the applicant must be prohibited, for one year from his resignation from the position of Second Vice-President of the EOF, from engaging in the professional activity he is seeking to pursue.

Consequently, in view of all the above, the Committee decides by a majority to grant the applicant, former Second Vice-President of the EOF, Mr. ..., the requested permission to be employed professionally, without any restrictions, in the Greek offices of an international pharmaceutical company, specifically within the framework of duties described in his response letter to the Committee, together with the additional information provided.

The Chairman of the Ethics Committee

Menelaos Tsouplakis