

Report of the European Ombudsman on the publication of information on former senior staff so as to enforce the one-year lobbying and advocacy ban: SI/2/2017/NF

Correspondence - 28/02/2019

Case SI/2/2017/NF - **Opened on** 13/06/2017 - **Decision on** 28/02/2019 - **Institutions concerned** European Parliament | Council of the European Union | Court of Justice of the European Union | European Court of Auditors | European Data Protection Supervisor | European Economic and Social Committee | European Committee of the Regions | European Union Aviation Safety Agency | European Chemicals Agency | European Food Safety Authority | European Medicines Agency | European External Action Service | European Banking Authority | European Insurance and Occupational Pensions Authority | European Securities and Markets Authority |

This report identifies best practices across the EU civil service regarding the publication of information on former senior staff members' revolving door moves so as to enforce the one-year lobbying and advocacy ban (Article 16(3) and (4) of the EU Staff Regulations). It results from the Ombudsman's exchanges with 15 EU institutions and agencies.

Mr Antonio Tajani President European Parliament Cc: Mr Klaus Welle, Secretary-General

Strasbourg, 28/02/2019

Re: Publication of information on former senior staff so as to enforce the one-year lobbying and advocacy ban (SI/2/2017/NF)

Dear Mr President,

The issue of senior staff leaving the EU civil service to take up positions outside the EU institutions raises two concerns. The first is that former staff may use their privileged network to lobby their former colleagues. The second is that, in certain cases, the new job may conflict with the legitimate interests of the Union. It is therefore crucial to manage such concerns comprehensively under the available legal framework, which is Article 16 of the Staff Regulations.



In June 2017, I wrote to 15 EU institutions and agencies [1] to seek their views on how best (i) to enforce the one-year lobbying and advocacy ban for **senior EU staff** who have left the civil service (“revolving door” situations) and (ii) to publish annually information on the cases assessed for this purpose [2] .

The replies I received signal that while much work has been done, there is still room for a more ambitious and harmonised approach in terms of how the EU institutions meet their obligations.

My main conclusions are that the EU institutions should:

1. Have in place fit-for-purpose implementing measures that include a functional definition of senior staff, a fully effective lobbying and advocacy ban, and a procedure for notifying colleagues that a senior staff member has been placed under a lobbying and advocacy ban;
2. Publish information under Article 16(4) of the Staff Regulations as soon as possible but at least once a year, and include information as to whether or not cases were assessed;
3. Publish information on all cases that were submitted by senior staff within the first year of their leaving the EU civil service;
4. Publish the information on a dedicated section of the institution’s website;
5. Publish revolving door moves of senior staff members on the EU Transparency Register entry of the senior staff member’s new employer or self-owned company and explore the possibility of listing all such moves from the EU institutions on the EU Transparency Register (similar to ACOBA in UK civil service [3]);
6. Use a broad definition of ‘lobbying and advocacy’ that would encompass any direct or indirect promotion of interests by a former senior staff member in relation to matters for which s/he was responsible during the last three years in service;
7. Adopt a post-employment policy for all staff, including the publication of anonymised and aggregate information on all outgoing staff moves;
8. Use an ‘open data’ approach to the publication of such information, to facilitate the use of such public data by third parties.

I include in Annex I my conclusions on what an effective application of Article 16(3) and (4) of the Staff Regulation should entail. These may serve as guidance for those institutions that aim to improve their current practices.

In general institutions have tried hard to give effect to Article 16(3) and (4). I would like in particular to commend the common effort of the Heads of Agencies of the EU Agencies Network who developed guidelines on the issue of post-employment and the prevention of conflicts of interest. Given their reliance on temporary and contract staff, many agency staff members,



including those occupying senior posts, may take up employment outside the EU agencies at some point. In this context, it is reassuring that most agencies have worked to try and put in place robust post-employment policies covering all of their staff members.

A number of respondent institutions have not published any information under Article 16(4) as no senior staff member has left since 2014. I would encourage those institutions to put in place the necessary arrangements for publication as soon as possible to prepare for any potential case.

In my view, the EU Transparency Register should become the 'central transparency hub' for all institutions and agencies. [4] Specifically, information on moves of senior staff should be published on the new employer's Transparency Register entry or the entry of the staff member's own company, in case of self-employment. This would provide a better picture of interest representatives' hiring practices. My Office will follow up on this suggestion with the Joint Transparency Register Secretariat [5] , to examine the practicalities of implementation.

I hope that you will find this material useful and practically relevant. [6] Thank you for engaging with me on this important matter.

Yours sincerely,

Emily O'Reilly

European Ombudsman

Strasbourg, 28/02/2019

Enclosures:

- Annex I - Report, Ombudsman conclusions on the application of Article 16(3) and (4) of the Staff Regulations
- Annex II - Overview of the institutions' practices based on their replies to this strategic initiative and publicly available information

Annex I - Report

Ombudsman conclusions on the application of Article 16(3) and (4) of the Staff Regulations



Introduction

The issue of staff leaving the EU civil service to take up positions in the private sector is typically associated with two concerns, namely that former staff may have information that can be used in their new job in a way that would conflict with the legitimate interests of the Union and that they may use their privileged contacts to lobby their former colleagues. The risks are exacerbated when the staff member concerned held a senior position in the EU civil service and as such may have had important operational responsibilities and access to sensitive information. [7] It is thus crucial to have in place robust rules for managing such moves.

Article 16 of the Staff Regulations serves as the legal basis in this regard. Of course, in practice, the rules are only as good as their application is effective. It is for this reason that the EU legislature's decision to incorporate a transparency requirement into Article 16, requiring the EU institutions to publish information on the lobbying and advocacy ban, is important. The publication of information allows the wider public to check whether a former senior EU staff member is subject to a temporary lobbying and advocacy ban. This helps ensure that former senior staff honour their ethics obligations.

The Ombudsman's Strategic Initiative

To take stock of how Article 16(3) and (4) are implemented and, on that basis, to identify best practices, the Ombudsman asked for feedback on the following matters:

(i) Does your institution already publish, or intend to publish, the annual information required by Article 16(4) of the Staff Regulations? If so, could you please provide me with a copy of the last report or a preliminary draft? Can you provide me with the internet address of the report?

(ii) What is the actual or proposed format, scope and content of this information? In particular, does the list include, or will it, include all cases assessed, or only those cases which your institution considered could entail lobbying or advocacy?

(iii) How does your institution define, or intend to define, "senior officials"? Does your institution mention, or intend to mention, the names of the officials in question in the publicly available report?

(iv) When and how does your institution assess, or intend to assess, the notions of "lobbying" and "advocacy"?

(v) What are the details and timing of the required publication? Were there any cases where exceptional and compelling privacy reasons prevented the publication of an individual decision?

In addition to analysing the replies received, the Ombudsman looked at the information published by the EU institutions, bodies, offices and agencies that were invited to respond



(henceforth referred to as 'institutions') in relation to employment taken up by former senior staff in 2017. The Ombudsman also took account of the discussions that have taken place in the Preparatory Committee for Matters relating to the Staff Regulations ('CPQS'), which among other things, indicated that **institutions are open to the idea of publishing Article 16(4) Staff Regulations information on a central platform**.

Substantive considerations in relation to the lobbying and advocacy ban for former senior staff - Article 16(3):

Meaningful implementing measures

Article 16(3) of the Staff Regulations provides for a lobbying and advocacy ban for "*former senior officials as defined in implementing measures*". Institutions should thus ensure they have in place dedicated implementing measures that define 'senior staff'. Such implementing measures may be a stand-alone administrative decision or be embedded in a broader policy on the prevention of conflicts of interest or the management of outside activities or post-employment matters.

The fact that Article 16(3) requires the adoption of implementing measures and does not refer to Article 29(2) of the Staff Regulations allows the EU institutions to tailor their definition of senior staff. To give full effect to the transparency obligation in relation to former senior staff, a **functional definition of senior staff** is essential. 'Senior staff' should thus be defined based on their level of responsibilities and their access to critical information, having regard to an institution's unique organisational set-up and the tasks it is called upon to perform. While it may be appropriate for some institutions to use the definition of senior staff under Article 29(2) of the Staff Regulations also for the purposes of Article 16(3) of the Staff Regulations, institutions, especially smaller ones, should reflect carefully on what types of posts should sensibly be included in the definition of senior staff with regard to the lobbying and advocacy ban. A fit-for-purpose definition of senior staff may - in addition to Executive Directors, Directors-General, Directors, their deputies, and advisers - include Heads of Cabinets or Private Offices, administrators in Cabinets or Private Offices, Heads of Department, Heads of Unit, team leaders and equivalent functions. [8]

Institutions may also want to publish their implementing measures or, alternatively, set out the main points and definitions in the introductory part of their Article 16(4) publication (see further below 'Practicalities regarding the publication of information in relation to the lobbying and advocacy ban for former senior staff - Article 16(4)').

A fully effective lobbying and advocacy ban

Article 16(3) of the Staff Regulations provides that institutions shall "*in principle*" impose a lobbying and advocacy ban on former senior staff. As the scope of application of the lobbying



and advocacy ban is already limited [9] in terms of the addressees and subject-matter of the lobbying and advocacy activities, and in terms of time (12 months), institutions should opt for a rigorous application of the ban.

A fully effective lobbying and advocacy ban would also require informing colleagues concerned of the fact that a former senior staff member has been placed under a lobbying and advocacy ban for a certain period of time. Ideally, the institutions should set out a dedicated information and enforcement procedure in their implementing measures. [10]

Broad understanding of lobbying and advocacy

Article 16(3) of the Staff Regulations does not define the terms 'lobbying and advocacy'. However, the effectiveness of this ethics obligation hinges on the meaning of those terms. Rather than aiming for an exhaustive definition of what constitutes lobbying and advocacy activities, institutions should work with **a definition of 'lobbying and advocacy' that is as broad as possible**.

Such a definition could refer to 'the direct or indirect promotion of interests by former senior staff members for their business, clients or employers in relation to matters for which they were responsible during the last three years in service'.

'The promotion of interests' would cover any type of interest, be it a corporate or a civil society interest.

'Advocacy' may also refer to the work of a lawyer (that is, a 'legal advocate' [11]). In that sense, legal representation by a former senior staff member should arguably be covered by the lobbying and advocacy ban.

Regarding the direct or indirect manner of carrying out lobbying and advocacy activities, EU institutions may want to draw on - but not limit themselves to - the examples of activities set out in point 7 of the inter-institutional agreement [12] on the current Transparency Register.

The assessment of a notified occupational activity should not be limited to whether it **will** entail lobbying or advocacy activities, but should extend to whether it **could, potentially**, given the nature of the occupational activity, involve lobbying or advocacy activities within 12 months of the former senior staff member leaving the service. This seems to be the assessment carried out by most institutions and bodies who responded to this initiative.

If a notified activity of a former senior staff member is assessed based on the above considerations, one would expect virtually all occupational activities in the private sector to warrant a lobbying and advocacy ban being imposed as a minimum.

All cases assessed



The transparency requirement of Article 16(4) relates to cases assessed under Article 16(3). Cases need to be assessed in relation to the imposition of a lobbying and advocacy ban if they were notified by a (former) senior staff member within 12 months of leaving the service. Consequently, and irrespective of whether the cases were found to warrant a lobbying and advocacy ban, information on all of these 'cases assessed' should be published in accordance with the transparency practicalities under Article 16(4).

Post-employment policy for all staff

With a view to managing departures of all staff members, whether senior staff or not, all institutions should consider putting in place a general post-employment policy. Apart from laying down procedures to remind staff of their obligations under Article 16 and to notify occupational activities, a general post-employment policy could set out the criteria that need to be met for, respectively, (i) a blanket authorisation of an occupational activity, (ii) an authorisation conditional on mitigating measures, and (iii) a refusal. In particular, it may be useful to determine a standard set of mitigating measures, which an institution may impose on a (former) staff member in order to prevent conflicts with its legitimate interests.

While Article 16(3) expressly provides for a lobbying and advocacy ban for senior staff, the institutions have discretion to impose a lobbying and advocacy ban or, more generally, a contact ban regarding professional contacts with former colleagues, as a mitigating measure for any staff member under Article 16(2) of the Staff Regulations. [13] Given their regulatory tasks, many agencies impose some type of contact ban [14] also on non-senior staff when they go through the 'revolving door' to work in the private sector.

With a view to raising accountability standards, a general post-employment policy should usefully include the compilation, and publication, of aggregate and anonymised data on all staff departures during a given year. It could make available the following information:

- i. The total number of (senior and non-senior) staff who left the service during the year, among them the number who left to join the private sector, who returned to a Member State administration, and who joined another EU institution [15] ;
- ii. the number of senior staff who left the service during the year, specifying the number who did not declare any intention to engage in an occupational activity and the number who joined another EU institution or returned to a Member State administration;
- iii. the total number of requests submitted by (former) staff to engage in an occupational activity after leaving the service, the number of blanket authorisations, the number of authorisations with mitigating measures, and the number of refusal decisions.

Practicalities regarding the publication of information in relation to the lobbying and advocacy ban for former senior staff - Article 16(4):



Annual publication

Article 16(4) of the Staff Regulations provides that institutions “ *shall publish annually information on the implementation* ” of the imposition of a lobbying and advocacy ban on senior staff who went through the revolving door. To dispel any doubt as to whether an institution assessed cases in relation to the imposition of a lobbying and advocacy ban in a given year, institutions should as soon as possible but at a maximum **each year** , publish information regarding the implementation of Article 16(3).

If no senior staff member left the institution during the relevant year, or those who left did not notify any intention to engage in an occupational activity, the institution concerned should state this in its Article 16(4) publication. Institutions may want to use wording similar to the following: “ *No senior staff member left [the institution] in [year concerned]* ”. “ *In [year concerned], [the institution] received no requests from former senior staff members for authorisation to engage in an occupational activity* ”.

Where senior staff went through the revolving door and notified their intention to engage in an occupational activity, institutions should publish conclusive information on each individual case (see below).

Conclusive information on all cases assessed, including a link to the Transparency Register

As set out above, institutions should publish information on **all cases assessed** in relation to the imposition of a lobbying and advocacy ban, that is, all cases where a (former) senior staff member notified the intention to engage in an occupational activity within 12 months of leaving the service.

The information to be published should be conclusive and include [16] :

- the name of the senior staff member concerned;
- the date of departure of the senior staff member;
- the type of post held by the senior staff member and a description of the duties carried out during the last three years in the EU civil service;
- the name of the (intended) future employer and a description of the type of duties to be carried out in the new occupational activity; alternatively, a description of the intended self-employed activities;
- if the (intended) future employer or the self-owned company is registered on the EU Transparency Register, link to the relevant register entry;
- the institution’s detailed assessment of the case, including its conclusion on whether to authorise it - with or without mitigating measures - and a statement as to whether the intended activity may entail lobbying and advocacy and thus warrants the imposition of a lobbying and advocacy ban.



The above information should be published for all cases assessed, regardless of whether the institution took the view that the notified occupational activity could, or would, entail lobbying and advocacy. This is necessary to ensure an effective and meaningful application of Article 16(3) and 16(4). Limiting the publication of information to those cases that were found to (potentially) entail lobbying and advocacy would deprive the transparency requirement of much of its meaning.

Should a case arise where exceptional and compelling privacy reasons prevent publication of the above information, the institutions may, if they so wish, reach out to the European Ombudsman for a review of the case. The Ombudsman would then inspect, and assess, the file on the decision taken in relation to the request for authorisation to engage in an occupational activity outside the EU civil service with a view to validating the institution's decision not to publish any information on the case. [17]

Format of an institution's individual publication

EU institutions should publish the information on their implementation of Article 16(3) in a timely fashion in each case assessed on a dedicated section of an institution's website. Employers, the general public, and former colleagues are thus enabled to check whether a lobbying and advocacy ban was imposed on a former senior staff member and to help the ban being respected in practice.

Given a staff member's right to lodge an administrative complaint under Article 90(2) of the Staff Regulations against an institution's decision on the (conditional) authorisation or refusal of a notified occupational activity, it would be sensible, however, to hold off on publication until the deadline for bringing an administrative complaint has expired or, as the case may be, until the complaint procedure has been exhausted. Online publication should then take place **as soon as possible**.

In addition to timely online publication of individual cases assessed in view of a potential lobbying and advocacy ban, it can be useful also to set out the information on all cases assessed in a given year in an annual report or an annex to an annual report (this may either be a report dedicated to the implementation of Article 16(3) or part of an annual report of more general scope, such as an annual activity or human resources report). The information may then also be considered in a more formal context, such as the budgetary discharge procedure, and may, more generally, be looked at by a potentially different audience than the one following online publication. A yearly compilation of Article 16(3) information in report format could, moreover, be usefully integrated with the publication of anonymised and aggregate information on all staff moves in a given year (see above on a general post-employment policy).

Institutions opting to publish annual information on Article 16(3) in a dedicated report should ensure that this report appears on its public documents register.

Regardless of the format of publication, institutions should provide the public with contextual



information on Article 16(3) so as to make the information on the individual cases assess more meaningful and comprehensible. It would thus be sensible to explain, on an introductory note, (i) the applicable legal rules (Staff Regulations and implementing measures) and (ii) the institution's method and criteria for assessing cases.

Central publication on the Transparency Register

The Code of Conduct for interest representatives registered on the EU Transparency Register provides in its point (h) that interest representatives shall “ *if employing former officials or other staff of the European Union, or assistants or trainees of Members of EU institutions, respect the obligation of such employees to abide by the rules and confidentiality requirements which apply to them* ”.

While Article 16(3) of the Staff Regulations is legally binding only on the (former) senior staff member concerned, the Transparency Register's Code of Conduct assigns an informal role to employers in enforcing former EU staff members' ethics obligations, among them the lobbying and advocacy ban for senior staff. This informal role is complementary to the rationale of the transparency requirement of Article 16(4) of the Staff Regulations, which through the publication of information on senior staff's outgoing revolving door moves, allows employers to verify that a former EU senior staff member has indeed obtained authorisation for a new occupational activity.

With a view to developing the EU Transparency Register as a central transparency hub for all EU institutions, information on individual cases assessed with a view to the imposition of a lobbying and advocacy ban under Article 16(4) of the Staff Regulations should also be published on the Transparency Register entry of the (intended) employer or the self-owned company in case of self-employed occupational activities. A central listing of all such moves in the EU institutions and agencies could also be hosted by the EU Transparency Register website, similar to that of ACOBA in the UK civil service.

Publication of Article 16(4) information directly on the Transparency Register (both a complete listing and also the specific information in the entry of an interest representative) would also make it easier for institutions' staff members to verify, in advance of a meeting with an interest representative [18] , whether that interest representative has recently recruited a former senior colleague (or the self-employed interest representative him- or herself recently left the EU civil service) and whether, for this reason, measures need to be taken with a view to respecting an imposed lobbying and advocacy ban.

In addition, central publication of Article 16(4) information would provide a better picture of interest representatives' hiring practices in showing, directly on the Transparency Register, where former senior EU staff members pursue their careers after having left the EU civil service.

In practical terms, institutions, agencies and bodies that are not parties to the interinstitutional agreement on the Transparency Register could send their information on cases assessed under



Article 16(3) of the Staff Regulations to the Joint Transparency Register Secretariat for publication on the Transparency Register. [19]

However, it would be for the European Commission, together with the European Parliament, to determine the specific practical arrangements for publication of Article 16(4) Staff Regulations information on the Transparency Register.

Centralising the publication of information on the occupational activities of senior staff who have left the EU civil service with a view to enforcing the one-year lobbying and advocacy ban would be an important step towards increasing transparency and accountability.

Open data

EU institutions and agencies could work toward an 'open data' approach when publishing such Article 16(4) information, to facilitate the use of such public data by third party tools and websites.

Protection of personal data

Regulation 2018/1725 [20] on the protection of individuals with regard to the processing of personal data by the Union institutions, bodies, offices and agencies recently came into force. [21] Institutions will have to update their internal rules to comply with the new Regulation. It is thus opportune to reflect on whether a reference to Article 16 and the publication of information on outgoing senior staff moves could usefully be included in the internal rules, should this not already be the case.

Annex II - Overview of EU institutions' practices based on their replies to this strategic initiative and publicly available information

Institution

Information published

Last published

Years

Format of publication



Link

European Parliament (EP)

Yes

2018

2016 (covering also 2015)

2017

Website, dedicated annual report

<http://europarl.europa.eu/atyourservice/en/20150201PVL00050/Ethics-and-transparency> [Link]

Council

Yes

2018

2015 (covering also 2014)

2016

2017

Dedicated annual report

<https://www.consilium.europa.eu/en/general-secretariat/staff-budget/annual-reports/> [Link]

Court of Justice of the European Union (CJEU)

N/A

N/A

N/A

N/A

N/A

European Court of Auditors (ECA)

12



Yes

2018

2014

2015

2016

2017

2018

Website,

dedicated annual report

<http://www.eca.europa.eu/en/Pages/Transparency-ethics.aspx> [Link]

https://www.eca.europa.eu/Lists/ECADocuments/ART_16_3_AND_4_PAR_OF_STAFF_REGULATIONS/Article%2016_3_and_4_Par_of_Staff_Regulations_2018/Article%2016_3_and_4_Par_of_Staff_Regulations_2018.htm [Link]

[https://www.eca.europa.eu/Lists/ECADocuments/ART_16_3_AND_4_PAR_OF_STAFF_REGULATIONS_2018/Article%2016_3_and_4_Par_of_Staff_Regulations_2018/Article%2016_3_and_4_Par_of_Staff_Regulations_2018.htm](https://www.eca.europa.eu/Lists/ECADocuments/ART_16_3_AND_4_PAR_OF_STAFF_REGULATIONS_2018/Article%2016_3_and_4_Par_of_Staff_Regulations_2018.htm) [Link]

European External Action Service (EEAS)

N/A

N/A

N/A

N/A

Overall number of Article 16 Staff Regulations requests set out in the annual human resources report

European Economic and Social Committee (EESC)

Yes

13



2018

2014

2015

2016

2017

Website,

dedicated annual report

<https://www.eesc.europa.eu/en/occupational-activities-former-senior-officials-eesc-after-leaving-service>
[Link]

Committee of the Regions (CoR)

Yes

2018

2015 (covering also 2014)

2016

2017

Website, dedicated annual report

<https://cor.europa.eu/en/about/secretary-general/Pages/secretary-general.aspx> [Link]

European Data Protection Supervisor (EDPS)

N/A

N/A

N/A

N/A



N/A

European Banking Authority (EBA)

Yes

2019

2018

Website, dedicated annual report

<http://www.eba.europa.eu/about-us/organisation/management-board/declaration-of-interests>
[Link]

[https://eba.europa.eu/documents/10180/2590106/Annual+Report+2018+on+Art+16\(3\)%20SR_Final.pdf/634db05c-b](https://eba.europa.eu/documents/10180/2590106/Annual+Report+2018+on+Art+16(3)%20SR_Final.pdf/634db05c-b)
[Link]

European Chemicals Agency (ECHA)

Yes

2018

2014

2015

2016

2017

2018

Website, annual activity report

https://echa.europa.eu/documents/10162/13559/post-employment_senior_managers_en.pdf/8567fc1f-1631-05fe-ec
[Link]

https://echa.europa.eu/documents/10162/23133404/mb_03_2017_caar_2016_en.pdf/eea4a86c-e115-0361-6436-b
[Link]



https://echa.europa.eu/documents/10162/3048539/FINAL_MB_03_2018_%282%29_General_Report_2017_MB49.
[Link] (page 52)

https://echa.europa.eu/documents/10162/23865279/FINAL_MB_04_2018_CAAR_2017_MB49.pdf/775fa348-4874-c
[Link]

European Food Safety Authority (EFSA)

N/A announced for 2017

N/A

N/A

Intended for annual activity report

<http://www.efsa.europa.eu/en/corporate/pub/ar16> [Link]

http://www.efsa.europa.eu/sites/default/files/corporate_publications/files/ar2017.pdf [Link]

European Insurance and Occupational Pensions Authority (EIOPA)

Yes

2016

2011

2012

2013

2014

2015

2016

Website

<https://eiopa.europa.eu/Pages/About-EIOPA/Report-on-former-senior-managers.aspx> [Link]

European Medicines Agency (EMA)

16



Yes

2017

2012

2013

2014

2015

2016

Dedicated annual report + annex to annual activity report

<https://www.ema.europa.eu/en/about-us/how-we-work/handling-competing-interests> [Link]

European Securities and Markets Authority (ESMA)

Yes

N/A

Supposedly covering all years

Website

<https://www.esma.europa.eu/about-esma/governance/ethics-and-conflict-interests> [Link]

European Union Aviation Safety Agency (EASA)

Yes

2018

2014

2015

2016

2017



Annual activity report

https://www.easa.europa.eu/document-library/general-publications?publication_type%5B%5D=143
[Link]

N.B. The same report has also been addressed to the following institutions and agencies:

- the Council
- the Court of Justice of the European Union (CJEU)
- the European Court of Auditors (ECA)
- the European External Action Service (EEAS)
- the European Economic and Social Committee (EESC)
- the Committee of the Regions (CoR)
- the European Data Protection Supervisor (EDPS)
- the European Banking Authority (EBA)
- the European Chemicals Agency (ECHA)
- the European Food Safety Authority (EFSA)
- the European Insurance and Occupational Pensions Authority (EIOPA)
- the European Medicines Agency (EMA)
- European Securities and Markets Authority (ESMA)
- the European Union Aviation Safety Agency (EASA)

[1] Not including the European Commission, which was the subject of a separate Ombudsman inquiry (OI/3/2017/NF).

[2] Article 16(3) of the Staff Regulations provides that the appointing authority shall, in principle, prohibit former senior officials, during the 12 months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during their last three years in the service. Article 16(4) requires that each institution publish annually information on the implementation of this obligation, including a list of the cases assessed.

[3] <https://www.gov.uk/government/collections/appointments-taken-up-by-former-crown-servants>
[Link]

[4] See, for example, my strategic initiative SI/7/2016/KR regarding efforts to improve the EU Transparency Register: <https://www.ombudsman.europa.eu/en/correspondence/en/67708> [Link]



[5] Point 24. Interinstitutional Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation, OJ 2014 L 277, page 11.

[6] Annex II contains an overview of the type of information that, to the best of my Office's knowledge, the institutions listed currently publish under Article 16(4).

[7] Since Article 16 of the Staff Regulations is applicable to temporary and contract agents via Articles 11 and 81 of the Conditions of Employment of Other Servants, the generic term 'senior staff' is used in this report to cover all types of senior statutory staff who are subject to Article 16 of the Staff Regulations.

[8] The European Ombudsman decided to extend the definition of senior staff to the Head of the Cabinet and Administrators in the Cabinet.

[9] An all-encompassing lobbying and advocacy ban would not be limited to colleagues of the former senior staff's institution but extend to EU institutions in general (as other institutions may be involved in the handling of the same files or related matters) and would cover not only matters for which the senior staff member was responsible but any matter in which s/he was involved or of which s/he otherwise had knowledge.

[10] See, for example, the Inter-Agency Legal Network (ILAN) guidelines on the issues of post-employment in connection with management and prevention of conflicts of interest, point '10. Recommendations -summary', page 10: "*In cases restrictions are imposed as to contacts with former colleagues, the latter should be informed and measures should be taken internally in order to enforce these restrictions*".

[11] See, for example, the Oxford dictionary's definition of advocacy:
<https://en.oxforddictionaries.com/definition/advocacy> [Link]

[12] Interinstitutional Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation, OJ 2014 L 277, page 11.

[13] See, for example, Commission Decision of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the service, C(2018) 4048 final, Article 21(3)(b) and (6).

[14] The type of ban and its duration should be tailored to the role and length of service of the former staff member.

[15] While staff members who join another EU institution do not leave the EU civil service and do not, therefore, fall under Article 16 of the Staff Regulations, it would nevertheless be in the institution's and the public's interest to compile these numbers. Regarding the meaning of



'leaving the service' under Article 16, see, for example, Decision of the European Ombudsman on internal rules concerning the exercise of an occupational activity after leaving the service of the European Union (Article 16 of the Staff Regulations), 7 March 2016, Article 1; and Commission Decision C(2018) 4048 final, Article 20(2).

[16] See the [EDPS' Guidelines on the processing of personal data with regard to the management of conflicts of interest in EU institutions and bodies \[Link\]](#), according to which “ *the balancing of interests might be in favour of publication of DoI, Dcl or decisions [including on Article 16(3) of the Staff Regulations] based thereon for some posts with decision making power, for example regarding **former senior staff members who take positions in the private sector** or persons from the private sector who take up a senior post in the institutions ("revolving doors"). For regular officers and administrators and staff with no influence on the decision-making process or on (scientific) advice for the EU institution, such as administrative support staff, HR officers and other administrative tasks without operational functions, the publication of declarations does not seem to be proportionate* ”.

[17] See suggestion (iv) set out in the Ombudsman's decision closing her inquiry based on complaints 2077/2012/TN and 1853/2013/TN concerning the European Commission's handling of the 'revolving doors' phenomenon, which is available here:
<https://www.ombudsman.europa.eu/en/decision/en/71136> [Link]

[18] See the European Ombudsman's practical recommendations for public officials' interaction with interest representatives, which are available here:
<https://www.ombudsman.europa.eu/en/correspondence/en/79435> [Link]

[19] See point 35 of the interinstitutional agreement on the Transparency Register (heading 'VIII. Involvement of other institutions and bodies'), which states that “ *[] Other EU institutions, bodies and agencies are encouraged to use the framework created by this agreement themselves as a reference instrument for their own interaction with organisations and self-employed individuals engaged in EU policy-making and policy implementation.* ”

[20] Regulation 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ 2018 L 295, page 39.

[21] The new Regulation was published in the Official Journal of the European Union on 21 November 2018 and became effective on 11 December 2018.