

Decision closing the inquiry based on complaints 2077/2012/TN and 1853/2013/TN concerning the European Commission's handling of the 'revolving doors' phenomenon

Decision

Case 2077/2012/TN - Opened on 01/02/2013 - Recommendation on 22/09/2014 - Decision on 09/09/2016 - Institution concerned European Commission (Recommendation partly agreed by the institution) |

Case 1853/2013/TN - Opened on 28/11/2013 - Recommendation on 22/09/2014 - Decision on 09/09/2016 - Institution concerned European Commission (Recommendation partly agreed by the institution) |

The issue of staff leaving the EU public service to take up positions in the private sector, or staff joining the EU public service from the private sector, is often referred to as the 'revolving doors' phenomenon. This phenomenon is a growing concern for EU citizens and indeed for EU staff concerned about the integrity and reputation of their work. These concerns relate to the risk that conflicts of interests may arise when new staff recruited from the private sector work on files connected to their previous employment; the risk that staff leaving an institution may bring with them confidential information which can be used in their new job; the risk that staff who leave the public service may use their privileged contacts to lobby their former colleagues. The Ombudsman's inquiry into this issue was prompted by complaints made by a number of NGOs and by her general concern about this issue. The inquiry led the Ombudsman to make recommendations and issue guidelines with a view to strengthening the Commission's procedures for implementing the relevant rules related to the 'revolving doors' phenomenon. This involved ensuring that all decisions in this area are correct, well-reasoned and well-documented and that the decision-making process should be transparent.

The Ombudsman welcomes the cooperative approach to date being taken by the Commission, and the progress made on most aspects covered by her inquiry. However, she calls on the Commission to make further improvements particularly in light of the recent controversy concerning a former Commission President and his appointment to an influential and high-profile investment bank. While this inquiry does not concern Commissioners, it is generally relevant nonetheless to everyone working in EU institutions on behalf of EU citizens.

The Ombudsman looks forward to continued cooperation with the Commission on the matter.



She intends to follow up on the Commission's implementation of the relevant rules on the 'revolving doors' phenomenon by carrying out an own-initiative inquiry starting with an inspection in early 2017.

The background

1. In 2012 and 2013, Corporate Europe Observatory, Greenpeace EU Unit, LobbyControl, Spinwatch and Friends of the Earth, submitted complaints to the Ombudsman about the European Commission's handling of the so-called 'revolving doors' phenomenon, that is, staff movements between the EU public administration and the private sector.
2. In her inquiry [1] the Ombudsman sought to identify possible systemic problems, with a view to assist the Commission in finding appropriate solutions. Her inquiry, therefore, did not focus on the Commission's handling of any individual cases.

Conflicts of interest

3. While this is not an exhaustive definition, a **conflict of interest** exists when a person participates in a public authority's decision-making process despite the fact that he or she has a personal interest in the outcome of that process. A conflict of interest thus undermines a civil servant's independence and capacity to act only in the public interest.

Disclosing confidential information

4. In addition to managing conflicts of interest, the EU public service should ensure that former staff do not use or disclose confidential information acquired during their time in the public sector when they work in the private sector. Such use or disclosure is particularly problematic where it serves their own or others' private gain. In order to ensure that such use or disclosure does not occur, steps should be taken to ensure that former staff do not, at least for a period of time, take up positions in the private sector which overlap with the work they did while in the public sector, especially when such work concerned sensitive files.

Ensuring that former staff do not engage in inappropriate lobbying

5. Former EU staff may also undermine the independence of the EU public service if they use contacts built up while working in the EU public service to lobby their former colleagues. This is particularly important where the former staff held senior positions, since their contacts will normally be extensive and, in some cases, influential. In order to ensure that inappropriate lobbying does not occur, steps should be taken to ensure that former staff, in particular senior staff, do not, at least for a period of time, lobby former colleagues.

The main rules at EU level

6. The Staff Regulations [2], which set out the rights and obligations of EU staff, oblige EU staff



[3] to carry out their duties and conduct themselves **solely with the interests of the Union in mind**. [4] EU staff must not, in the performance of their duties, deal with matters in which, directly or indirectly, they have any personal interest which might impair their independence. [5] **Even before recruiting an official**, an EU institution must examine whether the individual in question has personal interests which might impair his/her independence on starting work in the EU public service. [6]

7. EU staff are, **even after they leave the institution**, bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. [7] EU staff who intend to accept a job within two years of leaving the service shall inform their institution. [8] If that job is related to the work carried out by that person during the last three years working for the EU institution, the institution has the right to **forbid** the person from taking the job if the institution considers that it would conflict with the interests of the institution. It can also allow the person to take the job provided the person complies with **conditions** designed to ensure that the interests of the institution are protected. [9]

8. An EU institution must also, in principle, **prohibit its former senior staff** from **lobbying** the institution's staff, or otherwise representing client's interests to the institution's staff, on matters for which the former senior staff member was responsible during the last three years working for the institution. [10] That ban can be applied for up to 12 months after the senior staff member leaves the institution.

9. The above outline applies to staff who retire or resign and then take up positions outside the EU institutions. Similar issues may arise when EU staff take **leave on personal grounds**; EU staff have a right to take up to 12 years leave during their time working for an EU institution. Some such staff may wish to work in the private sector while on leave. Before they take up such work, they must ask the EU institution concerned for permission [11]. The EU institutions can refuse such requests, or impose appropriate conditions, if the job conflicts with the interest of the institution or if it is otherwise detrimental to the interest of the European Union [12]. This would be the case where the job involves lobbying or advocacy toward the EU staff member's institution [13], or if it involves a policy area in which the staff member had been working during the three years immediately preceding the leave on personal grounds. [14] Upon reinstatement after leave on personal grounds, the EU institution must examine whether, as a consequence of the activities carried out during the leave or otherwise, the staff member has any personal interest which impairs his or her independence or otherwise constitutes a conflict of interest. [15]

The Ombudsman's recommendation [16]

10. The Ombudsman's inquiry led her to conclude that the EU Staff Regulations provide a strong legal basis for managing these issues. The relevant rules set out how to identify risks and how to provide protection against certain behaviours and situations. They also give guidance as to the identification, disclosure, management and adoption of the appropriate solutions to conflict of interest situations, to issues regards the safeguarding of sensitive information and to issues involving the lobbying of former colleagues. The Ombudsman also found, on the basis of the information obtained in the course of her inquiry, that the Commission has actively put in place many useful procedures and structures for implementing the relevant rules in the EU Staff Regulations. In the Ombudsman's view, **the challenge lies in making the most of these**



procedures and structures with a view to ensuring that the rules are implemented fully in all cases.

11. Making sure that the existing procedures work properly involves ensuring that **all decisions in this area are correct, well-reasoned and well-documented** . The procedures must be fit-for-purpose. In addition, **the decision-making process should be transparent** to allow for scrutiny by civil society, thereby gaining citizens' trust .

12. Having carried out a thorough inspection of the Commission's files [17] , the Ombudsman found that there were certain weaknesses in the Commission's implementation of the procedures, primarily regarding how decisions were explained and documented. However, the Ombudsman notes, the Commission responded positively to some of the questions that she put to it during her inquiry. The Ombudsman thus concluded that the Commission had made, or was in the process of making, improvements to certain aspects of its procedures. The Ombudsman commended the Commission for these efforts.

13. As regards the systemic problems identified, and which the Ombudsman found to constitute maladministration, in September 2014 the Ombudsman made a number of concrete **recommendations** to the Commission. In the spirit of constructive dialogue, the Ombudsman also provided **further guidance** to the Commission, aimed at assisting it not only to deal correctly with individual cases, but also to allow citizens to be reassured that the Commission applies the rules properly.

Recommendations

14. The Ombudsman made the following recommendations:

The Commission should:

(a) Analyse fully each individual application to work outside the Commission and set out that analysis in well-reasoned and well-documented decisions;

(b) Properly record that it has analysed whether the information provided by the official regarding the proposed outside work is sufficiently detailed to allow the Commission to carry out a full analysis of that outside work;

(c) Properly record and analyse comments made by other Commission services, particularly when the eventual position of the Commission does not reflect those comments;

(d) Take all the necessary steps to ensure that the Commission applies the rules on conflicts of interests consistently across the Commission, including by alerting DGs whenever inconsistencies as regards the imposition of conditions are identified;

(e) Ensure that the assessment of applications is carried out by staff who have not had any direct professional connections with the official concerned. It is particularly important to pay



close attention to this requirement as regards senior officials;

(f) Inform staff that they remain bound always to behave with integrity and discretion as regards the acceptance of certain appointments or benefits, remind them that this obligation is not limited in time, and take all possible measures vis-à-vis any former staff who ignore this obligation by accepting any problematic employment offer.

Guidelines for further improvements

15. The Ombudsman put forward the following guidelines for further improvement, suggesting that the Commission:

(g) Identify those DGs that should have Codes on ethics and integrity and make sure that such codes are put in place;

(h) Where applicable, also analyse applications to work outside the Commission on the basis of DG-specific Codes of ethics and integrity;

(i) Improve the Ethics and conduct website [18] of the Commission;

(j) Publish online DG-specific codes or guidelines;

(k) Publish online, in respect of decisions to approve requests to work outside the Commission from senior officials, (i) the name of the senior official concerned, (ii) details of the duties carried out in the Commission by that senior official, (iii) details of the duties to be carried out in the new activities, and (iv) the Commission's detailed assessment and conclusions (including any conditions) in respect of any potential conflict of interest;

(l) Inform the Ombudsman of each case where exceptional and compelling privacy reasons prevent the publication referred to in point (k) above. The Ombudsman will then inspect and assess the file on the decision taken to allow that senior official to work outside the Commission;

(m) Put in place a centralised register of staff applications to work outside the Commission and for conflict of interest assessments of incoming staff;

(n) Use the Ombudsman's recommendations set out in points (a) to (f) as guidelines when assessing possible conflicts of interest of incoming staff;

(o) Use the Ombudsman's recommendations set out in points (a) to (f) above when analysing whether the prohibition on senior staff leaving the Commission from engaging in lobbying or advocacy vis-à-vis the Commission is complied with;

(p) Take the necessary steps to ensure that all future cases reflect the policy that commitments offered by the officials, aimed at eliminating conflicts of interest, are expressly referred to and analysed in the file.



16. The Commission welcomed [19] the Ombudsman's recommendations and guidelines as a valuable contribution. The Commission acknowledged that the key principles applicable, when staff leave the Commission to take up positions in the private sector, are transparency and accountability, the rule of law, the right to work and the right to protection of personal data. It also acknowledged that there are potential tensions between some of these principles, which means that a careful balancing of principles has to be carried out.

17. The Commission is of the view that it complies fully with the relevant legal framework but it remains open to discussion on how to further improve its handling of the matter.

18. The Commission's detailed comments will be dealt with in the Ombudsman's final assessment below.

19. In their observations on the Commission's response to the Ombudsman's recommendation, the complainants put forward the view that the Commission has not demonstrated a sufficient level of engagement to remedy the shortcomings identified by the Ombudsman and they called on the Ombudsman to maintain her finding of systemic maladministration on the part of the Commission.

Further developments

20. In its response to the Ombudsman's guideline (k), the Commission stated that it was in the process of reflecting on the appropriate format, scope and content of the information to be published annually, in accordance with Article 16(4) of the Staff Regulations [20] , about senior staff members having left its service. Given the Ombudsman's view that transparency is key when it comes to the effective implementation of a conflict of interest policy, the Ombudsman informed the Commission, in early 2015, that she intended to keep her inquiry open until the Commission publishes the relevant information. On 4 December 2015, the Commission issued a Communication on the publication of information concerning occupational activities of senior officials after leaving the service, including a summary of the relevant decisions in 2014. [21] The Ombudsman publicly welcomed the publication, while maintaining her view that publication of decisions allowing former senior staff to take up new activities should be done more frequently than once a year.

The Ombudsman's assessment after the recommendation

General remarks - The need for citizens to be reassured and transparency as the way forward

21. The Ombudsman welcomes the Commission's willingness to accept most of her suggestions on how to improve its procedures. The Ombudsman is also encouraged by the



Commission's awareness that there are still challenges related to this matter that need to be addressed.

22. Regarding those matters on which the Commission has made **positive commitments** in the context of the present inquiry, the Ombudsman intends to monitor the implementation of these commitments in order to promote good administrative practices on the part of the Commission. This monitoring will be done by way of **an own-initiative inquiry starting with an inspection in early 2017**.

23. Regarding those matters where the Commission does not agree fully with the Ombudsman's recommendations and guidelines, but where the Ombudsman considers that there is scope for the Commission to reconsider the matter on the basis of further reflection, the Ombudsman will **reiterate the relevant recommendation or guidelines in her decision closing the present inquiry. The progress made on these aspects will also be assessed in the further inquiry and its inspection.** Regarding the specific aspects of the inquiry, the Commission insists that the Ombudsman found deficiencies in only a few cases among the files inspected. The Ombudsman acknowledges that, as regards most of the files inspected, the material *outcome* of the Commission's analysis appeared to be correct. The Ombudsman stresses, however, that in order to arrive at that conclusion, her services had to draw their own conclusions from the information set out in the files and had to seek oral explanations from the Commission for many files. They had to do so because many files were not well-reasoned and coherent.

Reasoned decisions - recommendation (a)

24. The Ombudsman maintains the view that a decision following a request from staff to work outside the Commission must set out i) a **clear and complete description** of the work carried out by the official during the last three years of service; ii) a **clear and complete description** of the new occupational activity of the official; iii) an appropriately detailed analysis as to whether the work carried out as an official and the new activity are related; iv) if they are related, the Commission should describe, in appropriate detail, what the legitimate interests of the Commission are in the area concerned and analyse whether the new activity would conflict with these interests. If conflicting interests are identified, the Commission should describe and analyse the appropriate options to remedy the situation. A primary finding of the Ombudsman was that, in the case of the Commission's *positive* decisions (that is, decisions authorising a former staff member to take up a job outside the EU administration), there was a lack of supporting reasoning. However, the Ombudsman welcomes the Commission's statement that it is open to giving further explanations in such cases.

25. The Ombudsman intends to follow up on this aspect in the context of her further inquiry and its inspection in early 2017.

Sufficient information or clarifications needed - recommendation (b) - and self-imposed commitments - guideline (p)



26. The Commission states that if it needs more information, it asks the (former) staff member concerned, or the relevant Commission services for that information. Such requests for additional information are recorded in the file. In response to the Ombudsman's recommendation, the Commission has agreed to include a point on the check-list to be completed and included in the file, stating that the information provided by the (former) staff member is sufficient to allow a thorough analysis of the application for outside work. The Ombudsman welcomes this improvement in the Commission's procedures, which will prompt it to reflect more carefully on this aspect.

27. Regarding the self-imposed commitments sometimes made by (former) staff members, the Commission has restated that it agrees to make express references to such commitments in its decisions on applications for outside work.

28. The Ombudsman will monitor these commitments, in the context of her further inquiry and inspection, with a view to ensuring that a real analysis is carried out rather than merely a tick-box exercise.

Documentation of steps followed - recommendation (c)

29. The Ombudsman recommended that the Commission should analyse more fully the comments made by relevant services (primarily those made by the Directorate-General where the staff member used to work, the Secretariat-General, the Legal Service and the Joint Committee), particularly if these services express reservations as to the outside work in which the (former) staff member wishes to engage. The Commission considers that it already does what it is required to do. It states, however, that it will take the opportunity to consider whether further improvements are possible.

30. The Ombudsman welcomes this statement by the Commission which suggests that it will be more conscious of this aspect of the decision-making process in the future.

31. The Ombudsman intends to monitor the evolution of this aspect in the context of her further inquiry and inspection.

The importance of consistency in imposed conditions - recommendation (d)

32. The Ombudsman's inspection of the Commission's files showed that the Commission was not always consistent when imposing conditions for allowing (former) staff members to take up outside work. In response to the Ombudsman's recommendation, the Commission states that in all cases dealt with under Article 16 of the Staff Regulations, its Directorate-General for Human Resources ('DG HR') consults the Secretariat General and the Legal Service to ensure that a legally sound, consistent and coherent approach is applied across its services. If it identifies differences of treatment, the Commission requests its staff to check whether these differences of treatment are justified and if so, to explain how. The fact that DG HR takes all decisions under Article 16 of the Staff Regulations also ensures that all former staff are treated equally, regardless of the Directorate-General where they worked.



33. The Commission added that it has already taken steps to improve consistency in the implementation of the ethics provisions in the Staff Regulations that came into force on 1 January 2014. This has been done in particular through the network of "ethics correspondents" within the Commission and through the Ethics collaborative website launched in October 2014. The Commission will also consider whether it should draw up guidelines for its staff to improve consistency further.

34. The Ombudsman is satisfied, from its response, that the Commission is very aware of the need to be proactive and vigilant on this issue. She welcomes the steps that have been taken and the steps that will be taken. She intends to monitor the evolution of this aspect in the context of her further inquiry and inspection.

Independence of assessment - recommendation (e)

35. The Commission considers that the views of the Directorate-General where the (former) staff member used to work is important because of that Directorate-General's expertise when it comes to assessing the work carried out in that Directorate-General by the staff member and possible risks arising in relation to the staff member's new activities. The Commission argues that the independence of assessment in this regard is guaranteed by the opinions of, and sometimes even lengthy discussions with, the Secretariat General and the Legal Service, and also the Joint Committee. According to the Commission, the views of the Directorate-General where the (former) staff member worked are followed only after close scrutiny. If necessary, a different position is taken.

36. The Ombudsman fully acknowledges the importance of the input from the Directorate-General where a (former) staff member used to work. However, she maintains and emphasises that the Commission should seek to have the relevant **assessment** done by **persons** in that Directorate-General who have not had any **direct** professional connections with the (former) staff member concerned. In other words, the Ombudsman's recommendation in this regard did not rule out obtaining the **views** of the staff of the Directorate-General who have worked directly with the person concerned. However, other staff in the Directorate-General, who have not worked with the person concerned, should have the responsibility of **assessing** if a problem arises in relation to the new job of the staff member concerned. Although there are additional and valuable checks made by other Commission services during the decision-making process, the Ombudsman considers it to be of paramount importance that one of the most important elements in the assessment is as objective as possible.

37. The Ombudsman thus encourages the Commission to reconsider its understanding of her recommendation. The Ombudsman intends to follow up on the Commission's practical approach to this aspect in her further inquiry and inspection.

Time-limit for imposing conditions - recommendation (f)



38. The Commission states that it reminds its staff, including staff leaving its services, of their obligation, under the Staff Regulations, to behave with integrity and discretion as regards the acceptance of certain "appointments or benefits". The Commission also regularly reminds retired staff of these obligations. The Commission stated that it agrees with the Ombudsman that the obligation set out in Article 16(1) of the Staff Regulations is not limited in time. It insisted that the Commission may always impose disciplinary measures if a former staff member does not behave with integrity and discretion under Article 16(1). This applies even if two years have passed since the person left the Commission.

39. The Ombudsman welcomes the Commission's interpretation of Article 16(1) of the Staff Regulations. She finds no need to follow-up on this specific aspect of her inquiry.

Codes on ethics and integrity, the Ethics and conduct website of the Commission and the assessment of applications for outside work based on codes on ethics and integrity - guidelines (g), (h), (i) and (j)

40. In the Commission's view, codes on ethics and integrity, specific to particular Directorates-General, serve as guidance to help staff understand what their obligations are and to highlight that difficult situations may arise in a given sector of activity. However, legally, such codes cannot impose obligations additional to those set out in the Staff Regulations.

41. The Commission considers it appropriate to leave the drawing up of such codes to the discretion of each Directorate-General, which are best placed to determine their specific needs and thus the specific content of such codes. The consistency of codes on ethics and integrity is ensured by requiring that they must be approved by DG HR, the Secretariat General and the Legal Service. At the time of its response to the Ombudsman's recommendations and guidelines, the Commission stated that it is in the process of examining how to ensure greater transparency by publishing the internal codes and guidelines on the Europa website. The Commission also stated that it continuously updates and improves its Ethics and conduct website. [22] It stated that it will build on these efforts.

42. The Ombudsman considers that the Commission's position, that codes on ethics and integrity are for each Directorate-General to decide, is reasonable. She continues to encourage these individual Directorate-Generals of the Commission to be as transparent as possible on the issue.

43. The Ombudsman fully agrees with the Commission that codes on ethics and integrity cannot impose legal obligations in addition to those set out in the Staff Regulations. She is of the view, however, as also acknowledged by the Commission, that such codes serve as valuable **guidance** to staff since they can be used to highlight the types of difficult situations that may occur. They thus raise awareness and serve to build a culture of responsibility. The Ombudsman encourages the Commission to be guided by such codes when assessing the particular circumstances related to applications for outside work. It should consider including, in its check-list for handling such applications, a reference to the need for staff to consult such codes for guidance. Direct links to the codes should be provided to ensure ease of access. The



Ombudsman welcomes the Commission's efforts to update and improve its Ethics and conduct website. She notes that the latest update was on 15 December 2015. It includes the Commission's Communication on the publication of information concerning occupational activities of former officials after leaving the service (Article 16(3) and 16(4) of the Staff regulations). She also again encourages the Commission to ensure the greatest possible transparency, by publishing codes on ethics and integrity, specific to particular Directorates-General, in its website.

44. The Ombudsman will follow up on these issues related to codes on ethics and integrity, and the Ethics and conduct website, in the context of her future inspection.

What information to publish online regarding decisions to allow former senior staff members to take up outside work - guidelines (k) and (l)

45. At the time of its response to the Ombudsman's recommendations and guidelines, the Commission stated that it was in the process of reflecting on the appropriate format, scope and content to be given to the annual information to be contained in the publication which is provided for under Article 16(4) of the Staff Regulations. As set out above in paragraph 18, the Ombudsman decided to keep her inquiry open until the Commission had published the relevant information. As already stated publicly, the Ombudsman very much welcomes the Commission's publication, in December 2015, of the summaries of the nine decisions that it considered relevant during 2014.

46. However, the Ombudsman does not agree with the Commission as regards its policy of making public its assessment of such cases. The Commission determines which applications from former senior staff members could give rise to, or entail, lobbying or advocacy. It then publishes summaries of its decisions in relation to those cases. It provides no information on other cases.

47. Article 16(4) of the Staff Regulations obliges the EU institutions to publish information on the implementation of Article 16(3), including *a list of the cases assessed*. In the Ombudsman's view, all applications from former senior staff, that is, *all cases*, *have to be assessed* in order to determine how to implement Article 16(3). It is only by publishing *all* such cases that civil society can be reassured that Article 16(3) is properly implemented, by allowing citizens to see *if* the Commission (or any other EU body) has correctly assessed the nature of the outside work and applied appropriate conditions or prohibitions. The publication of *all* decisions also empowers civil society to report any irregularities detected to the Commission and, where appropriate, to the Ombudsman (for example, publishing such decision will allow the public to realise if the person concerned is undertaking work which has not been reported to the Commission). In order for such empowerment to be effective, the Ombudsman also maintains her view that such decisions should be published online *as soon as possible*. In addition, the Ombudsman does not consider that all of the summaries of the Commission's decisions in 2014 set out, in sufficient detail, the duties that the former senior staff member carried out in the



Commission and the duties to be carried out in the new engagement.

48. In its letter forwarding to the Ombudsman the Communication on the publication of information concerning occupational activities of senior officials after leaving the service, the Commission argues that the agreement of the former senior official would not constitute a sufficient basis for publication of the relevant personal data. The reason for this, the Commission states, is that the consent given by an employee in the context of an employer-employee relation cannot, as a rule, be considered as given freely because of the subordinate position of the employee.

49. However, as already set out in paragraph 48 above, the Ombudsman considers Article 16(4) of the Staff Regulations to set out a *legal obligation* to publish all cases, given that all cases will have to be assessed in order to determine in which cases to impose a lobbying and advocacy prohibition. The *agreement* of the senior official is thus not needed for such publication. In addition, the European Data Protection Supervisor has stated, regarding the necessity to publish this type of information, that the balancing of interests (privacy and transparency) " *might be in favour of publication of [declarations of interest, declarations of conflict of interest] and decisions 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')* " [23] .

50. Regarding the Ombudsman's guideline to inform her of each case where exceptional and compelling privacy reasons prevent the publication of a decision regarding a former senior staff member, the Commission states that it will consider the feasibility of this guideline when designing its system for publishing information on the implementation of Article 16(3) of the Staff Regulations. The Commission has not yet provided the Ombudsman with its conclusions in this regard.

51. On the basis of the above, and in particular the fact that transparency is the best way forward to efficiently monitor possible conflict of interest issues, the Ombudsman will reiterate the relevant guidelines in her decision on this case.

Centralised register - guideline (m)

52. The Commission states that it has an IT tool for the processing and assessment of ethics requests and subsequent decisions. This IT tool is gradually being expanded to include all ethics requests and can be equivalent to a register. Further developments are expected to increase transparency and accountability.

53. The Ombudsman welcomes the steps taken by the Commission in this regard and she will monitor the progress in the context of her future inspection.

Applying the Ombudsman's recommendations (a) to (f) when assessing possible conflicts of interest of incoming staff and when assessing whether a lobbying and



advocacy prohibition addressed to a former senior staff member is complied with - guidelines (n) and (o)

54. The Commission considers that Article 11, third and fourth subparagraphs, [24] of the Staff Regulations already implements the recommendations made by the Ombudsman as regards the assessment of possible conflicts of interest.

55. The Ombudsman acknowledges that Article 11 of the Staff Regulations sets out *the framework* for determining possible conflicts of interest situations. However, just as with Article 16 of the Staff Regulations, it does not set out in detail the processes for *efficient implementation*. That is where the Ombudsman's recommendations (a) to (f) come into play.

56. As the relevant rules were relatively new when the Ombudsman made her recommendation, she informed the Commission of her intention to inquire into the implementation of these provisions during the course of 2015, when the Commission would have had an opportunity to apply the new rules for some time and to make its first publication under Article 16(4) of the Staff Regulations. Given that the publication under Article 16(4) was made later than expected (at the very end of 2015), the Ombudsman now intends to carry out her follow-up in early 2017, in the context of her overall continued efforts to support the Commission in improving its procedures in this area.

Conclusion

The Ombudsman welcomes the cooperative approach taken by the Commission, and the progress made on most aspects covered by her inquiry. Perhaps no set of rules can ever fully protect against the negative consequences associated with the 'revolving doors' phenomenon and it is therefore incumbent on EU institutions to ensure, to the greatest extent possible, that the spirit of its rules in this area is respected. The Ombudsman looks forward to continued cooperation on the matter, with a view to strengthening the Commission's procedures for implementing the relevant rules governing the management of issues related to the 'revolving doors' phenomenon. Above all, it is essential that the Commission's actions in this regard have the effect of increasing citizens' trust in the EU administration.

The Ombudsman makes the following suggestions for improvement which reflect her 2014 recommendation and guidelines:

The Ombudsman suggests that the Commission :

(i) Ensure that the assessment of applications from officials leaving the service is carried out by staff who have not had any direct professional connections with the official concerned. It is particularly important to pay close attention to this requirement in the case of senior officials;

(ii) Where applicable, analyse applications to work outside the Commission on the basis



of DG-specific Codes of ethics and integrity;

(iii) Publish online, in respect of decisions to approve requests to work outside the Commission from senior officials, (i) the name of the senior official concerned, (ii) details of the duties carried out in the Commission by that senior official, (iii) details of the duties to be carried out in the new activities, and (iv) the Commission's detailed assessment and conclusions. The Commission should publish all such decisions and the publication should be done as soon as possible and within a timescale and frequency appropriate to the importance of this matter;

(iv) Inform the Ombudsman of each case where exceptional and compelling privacy reasons prevent the publication referred to in point (iii) above. The Ombudsman will then inspect and assess the file on the decision taken to allow that senior official to work outside the Commission.

The Ombudsman intends to follow up on the Commission's implementation of the relevant rules on the 'revolving doors' phenomenon by **carrying out an own-initiative inquiry starting with an inspection in early 2017**.

The complainants and the Commission will be informed of this decision.

Emily O'Reilly

Strasbourg, 09/09/2016

[1] All relevant correspondence in this inquiry has been published on the Ombudsman's website:

<http://www.ombudsman.europa.eu/cases/caseopened.faces/en/52661/html.bookmark>

[2] EU Commissioners are subject to rules and procedures regarding conflicts of interest which are different to those applying to Commission staff. While the Ombudsman considers that ensuring that Commissioners, or former Commissioners, do not find themselves in conflicts of interest, is extremely important, this inquiry, which is based on complaints received from NGOs, focuses only on staff going through the "revolving door".

[3] The relevant rules in the Staff Regulations, such as Articles 11 and 16, also apply to temporary staff (see Article 11 of the Conditions of employment of other servants of the European Union). In respect of contract staff, Article 11 of the Staff Regulations applies (see Article 81 of the Conditions of employment of other servants of the European Union).

[4] Article 11 of the EU Staff Regulations.



[5] Article 11a of the Staff Regulations.

[6] Article 11, third paragraph, of the Staff Regulations.

[7] Article 16, first paragraph, of the Staff Regulations.

[8] See also Article 22(1) of Commission Decision of 16 December 2013 on outside activities and assignments.

[9] Article 16, second paragraph, of the Staff Regulations.

[10] Article 16, third paragraph, of the Staff Regulations.

[11] Article 12b of the Staff Regulations. As regards the Commission, see also Article 14(1) of Commission Decision of 16 December 2013 on outside activities and assignments

[12] See also Article 14(2) of Commission Decision of 16 December 2013 on outside activities and assignments

[13] See also Article 14(3) of Commission Decision of 16 December 2013 on outside activities and assignments

[14] See also Article 16(1) of Commission Decision of 16 December 2013 on outside activities and assignments

[15] Article 11, fourth paragraph, of the Staff Regulations and Article 18, first paragraph, of Commission Decision of 16 December 2013 on outside activities and assignments

[16] For the full reasoning leading up to the recommendations and guidelines for further improvement, please see
<http://www.ombudsman.europa.eu/cases/recommendation.faces/en/56216/html.bookmark> [Link]

[17] For more details, see point 3 in the Ombudsman's recommendation.

[18] http://ec.europa.eu/civil_service/admin/ethic/index_en.htm#3 [Link]

[19] The Commission's full response is available here:
<http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/58888/html.bookmark>

[20] As set out in point 9, Article 16(3) of the Staff Regulations sets out that former senior officials shall, in principle, be prohibited, during the 12 months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution on matters for which they were responsible during the last three years in the service. Article 16(4) of the Staff Regulations provides that each EU institution



shall publish information on the implementation of the third paragraph annually, including a list of the cases assessed.

[21]

http://ec.europa.eu/civil_service/docs/c_2015_8473_f1_communication_from_commission_to_inst_en_v4_p1_8340

[22] http://ec.europa.eu/civil_service/admin/ethic/index_en.htm#3

[23] Page 14 in the European Data Protection Supervisor's Guidelines on the processing of personal data with regard to the management of conflicts of interest in EU institutions and bodies, available at:

https://secure.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Supervision/Guidelines/14-12-08_

[24] " *Before recruiting an official, the appointing authority shall examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interest. To that end, the candidate, using a specific form, shall inform the appointing authority of any actual or potential conflict of interest. In such cases, the appointing authority shall take this into account in a duly reasoned opinion. If necessary, the appointing authority shall take the measures referred to in Article 11a(2).*

This Article shall apply by analogy to officials returning from leave on personal grounds. "