

Letter from the Ombudsman to the Director of the European Securities and Markets Authority on the implementation of Article 16 of the EU Staff Regulations

Correspondence - 13/06/2017

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 |

Ms Verena Ross Executive Director European Securities and Markets Authority (ESMA)

Strasbourg, 13/06/2017

Re: Implementation of Article 16 of the EU Staff Regulations

Dear Ms Ross,

As you may know, I have in recent years inquired into the European Commission's handling of situations where staff leave to work for the private sector and where staff join the Commission after having worked in the private sector (so-called "revolving door"). My inquiry led me to issue suggestions and guidelines to strengthen the Commission's procedures for implementing the relevant provisions of the EU Staff Regulations [1] .

I recently launched a follow-up inquiry [2] to give the Commission an opportunity to inform me of the actions taken in response to my suggestions and guidelines.

Among the provisions governing "revolving door" situations, 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.

More than three years have passed since the revised Staff Regulations agreed by the legislators entered into force. The revised Regulations include the new obligation on EU institutions, bodies, offices and agencies to enforce a one-year lobbying/advocacy ban for senior EU staff who have left the EU civil service and to publish annually information on the cases assessed for this purpose. I believe that this a good moment to take stock of our respective practices in complying with these obligations.

To date, my Office has published three reports [3] on our implementation of Article 16(3) of the Staff Regulations. In the course of my inquiry into the Commission's handling of situations where staff left to work for the private sector and vice versa, the Commission published its first report for the year 2014. In the meantime, the Commission has published a second report. While I welcomed as further progress the Commission's first publication of information on the occupational activities of senior staff who left its service, I maintained my suggestion that the Commission should publish all decisions as soon as possible, with more detail, and that it should include in the list all cases assessed, not only those applications which it considered could give rise to lobbying or advocacy. I also suggested that the Commission should inform me of each case where exceptional and compelling privacy reasons prevent the publication of an individual decision.

As European Ombudsman, I want to assist all the EU institutions, bodies, offices and agencies in developing the highest standards of accountability and transparency and support their efforts by helping to identify best practices. I am therefore writing also to the EU institutions and bodies other than the Commission that apply the Staff Regulations, and are represented in the Preparatory Committee for Matters relating to the Staff Regulations ('CPQS') [4] , as well as to a number of decentralised EU agencies [5] , with the aim of gathering information on the current practices and potential challenges related to the implementation of Article 16(3) and (4) of the Staff Regulations.

In order to help me determine what current practices are, I would appreciate it if you would reply to the following questions:

(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?

I would appreciate it if you would provide me with your reply within three months from the date of this letter. Please do not hesitate to mention best practice examples in your reply. Please note that I may consider it useful to make your reply available on my website.

After receiving and analysing all the replies, I will contact all the institutions concerned, as well as the EU Agencies Network, to share the results of my work.

I look forward to engaging constructively with you on this matter. Should your staff require any further information or clarifications, they may contact Ms Alice Bossière (+ 32 2 283 34 01) in my Office.

Yours sincerely,

Emily O'Reilly

European Ombudsman

[1] 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. Available at:

<https://www.ombudsman.europa.eu/en/cases/decision.faces/en/71136/html.bookmark>

[2] My letter to the Commission opening the follow-up inquiry is available at:

<https://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/77544/html.bookmark>
[Link]

[3] The reports for 2014, 2015 and 2016 are available at:

https://www.ombudsman.europa.eu/en/resources/ethics_and_conduct/home.faces

[4] European Parliament, Council of the EU, Court of Justice of the EU, European Court of Auditors, European External Action Service, Economic and Social Committee, Committee of the Regions and European Data Protection Supervisor.

[5] EMA, EFSA, ECHA, EASA, ESMA, EBA and EIOPA. These agencies were selected according to their size and/or their regulatory role.