



Päätös, joka koskee henkilöstön jäseniin liittyvien pyöröovitapausten käsittelyä Euroopan komissiossa (OI/1/2021/KR)

Päätös

Kanteluasia OI/1/2021/KR - **Tutkittavaksi otetut kantelut, pvm 03/02/2021 - Päätökset, pvm 16/05/2022 - Toimielin, jota kantelu koskee** Euroopan komissio (Tutkimusta ei syytä jatkaa) |

Koska EU:lle uskotaan jatkuvasti enemmän valtaa eri aloilla puolustuksesta terveydenhuoltoon, on olennaisen tärkeää, että kansalaiset luottavat sen hallintoon. Onkin erittäin vahingollista, jos viranhaltijoiden katsotaan ajavan omia yksityisiä etujaan, jotka ovat ristiriidassa heidän julkisen työnsä kanssa. Euroopan oikeusasiamies on pitkään ollut sitä mieltä, että pyöröovi-ilmiö voi heikentää kansalaisten tuntemaa luottamusta, jos sitä ei hallita kunnolla. Harvatkin huomiota saaneet siirrot voivat huolestuttaa kansalaisia huomattavasti ja aiheuttaa mainehaittaa. Tässä strategisessa tutkimuksessa tarkasteltiin sataa pyöröovitapausta Euroopan komissiossa. Tarkoituksena oli määrittää alat, joilla on parannettavaa, ja antaa EU:n muulle hallinnolle ohjeita jatkoa varten.

Oikeusasiamiehen tutkimuksessa havaittiin, että edellisen tutkimuksen jälkeen oli saatu aikaan todellisia parannuksia, muun muassa ohjeet siitä, miten kutakin siirtoa voidaan tutkia aiempaa tarkemmin.

Joissakin tapauksissa komissio oli kuitenkin hyväksynyt entisten ylempien henkilöstön jäsenten pyyntöjä tiettyjen toimien vastaanottamisesta, vaikka ei ollut varmaa, että siirroille asetetut ehdot vähentäisivät mahdollisia riskejä (tämä koski esimerkiksi eturistiriitoja, tiedonsaantia ja yhteyksiä hallintoon). Oikeusasiamies katsoo, että tällaisille siirroille pitäisi antaa lupa ainoastaan silloin, kun toimeen voidaan soveltaa rajoituksia, joilla riskejä pystytään vähentämään riittävästi ja joita voidaan seurata ja valvoa uskottavasti.

Jos tällaiset rajoitukset ja valvonta eivät ole mahdollisia, komission pitäisi tilapäisesti kieltää entisiä henkilöstön jäseniä ottamasta suunniteltuja työpaikkoja vastaan. Muutoin seurauksena voi olla riittämätön puuttuminen rapauttaviin vaikutuksiin, joita aiheuttaa kyseisten viranhaltijoiden tietämyksen ja verkostojen siirtymisestä yksityisen sektorin vastaaville aloille ja siitä EU:lle johtuvaan mainehaittaan.

Kun komissio hyväksyy uuden toimen vastaanottamisen ja sitä koskevat riskejä vähentävät toimenpiteet, sen pitäisi selvittää, mitä kaikkia toimenpiteitä on saatavilla. Komissio voisi esimerkiksi asettaa uuden työpaikan hyväksymisen ehdoksi sen, että henkilöstön jäsenen uusi työnantaja sitoutuu julkaisemaan komission määrittämät rajoitukset verkkosivustollaan.



Komission pitäisi vähintään vaatia (entistä) henkilöstön jäsentä toimittamaan todisteet siitä, että määrättyistä rajoituksista on kerrottu uudelle työnantajalle.

Koska komissiolla on ollut hankaluuksia sääntöjen noudattamisen valvonnassa, oikeusasiamies toisti ehdotuksensa siitä, että komissio julkaisee aiempaa ripeämmin kaikki tiedot arvioimistaan entisten ylempien henkilöstön jäsenten virkasuhteen jälkeisistä toimista. Tämä parantaisi kyseisten päätösten julkista valvontaa, joka on seurannan kannalta olennaisen tärkeää.

Background

1. When public officials leave the administration to take up positions in the private sector, they are described as going through the 'revolving door'. While former staff members have a fundamental right to engage in work after they leave the EU administration, this must be balanced against the risks that any such moves may pose to the interests of the EU institution and the public interest. There is also a need to take into account the public perception of such moves for the reputation of the EU administration.

2. To address the challenge of revolving doors, the EU administration has specific rules governing such moves. These are set out in the EU Staff Regulations [1] .

3. Where staff members intend to take up an activity within two years of leaving the EU administration, or while on unpaid leave, they must request authorisation to do so. The EU Staff Regulations state that, when there is a risk of a conflict of interest, the Commission may either prohibit intended jobs or decide to place conditions or restrictions on the former staff members' activities in the new job [2] . Such restrictions must be necessary for the purposes of achieving a legitimate public interest, and must be proportionate. [3] The rules also include a specific prohibition for a period of one year on senior officials engaging in lobbying activities towards their former EU institution on matters for which they were responsible during the last three years in the service. [4]

4. As the largest EU institution, whose work has a wide and increasingly sensitive reach, the European Commission should set the standards in this area. In 2018, the Commission adopted a decision [5] , setting out its internal rules governing how it deals with revolving doors. [6]

The inquiry

5. In a previous inquiry [7] into the Commission's management of revolving doors, the Ombudsman indicated that she would in the future look at how the issue is dealt at specific Commission departments.

6. In February 2021, the Ombudsman opened [8] this inquiry to look into how the Commission dealt with requests of (current and former) staff members for approval: (a) to take up occupational activities after leaving the Commission, and (b) to take up such activities while on unpaid leave on personal grounds [9] .

7. In the course of the inquiry, the Ombudsman inquiry team inspected a sample of 100 decisions taken by the Commission in 2019, 2020 and 2021. To determine which files to



examine, the Ombudsman first asked the Commission to list the **number of requests to engage in occupational activities** it has dealt with over the past two years under the following provisions of the EU Staff Regulations: Article 16, which relates to '*activity after leaving the Commission*', and Article 12b in combination with Article 40 (referred to as Art. 12b40), which relates to '*unpaid leave to take up an outside activity*'. Based on this resulting statistical overview, the Ombudsman made her inspection requests. [10]

8. The Ombudsman inquiry team also met twice with representatives of the Commission, to clarify issues that arose during the inspection of the files on the decisions [11] and on the Commission's follow up to the previous inquiry. [12]

The inquiry covered a sample of **100 decisions** taken by the Commission.

(a) The inquiry covered **80 files** (covering 87 activities) concerning requests for authorisation to engage in **post-service occupational activities** from former Commission staff members.

The Commission rejected one of these requests.

The remaining requests were approved, often with restrictions. One-third of the requests related to work in the private sector.

These activities can be categorised as follows: 30 private sector (including five for law firms and 13 for consultancies); 19 education/academia; 15 not-for-profit/think-tanks/civil society; 13 speaking engagements/conference participation; 10 public sector.

The vast majority of former staff members concerned were permanent members of the EU civil service ('officials'). The files inspected also included three former temporary agents and two contract agents, whose contracts are limited in time.

(b) The inquiry covered **20 decisions** taken on requests to authorise **occupational activities for staff members on unpaid leave**. Some files concerned requests to renew the approval of ongoing activities.

The decisions can be categorised as follows: six decisions related to requests to work in the private sector, and four requests to renew the approval of ongoing activities in the private sector; five decisions related to requests to work in the public sector (including international organisations), and four requests to renew the approval of ongoing activities in the public sector; one decision related to a request to take a university course.

The 20 decisions included one rejection, which was related to a request for renewal. The other decisions were favourable, with conditions imposed in some cases.

The Commission's practice since the Ombudsman closed her previous inquiry



The Commission's decisions on post-service occupational activities

9. When staff members leave the Commission, the Commission asks them to sign a declaration confirming that they are aware of their obligations under the Staff Regulations as regards engaging in post-service activities within two years of their departure and the need to notify the Commission 30 working days in advance of any intention in this regard. [13]

10. The Commission deals with requests for post-service occupational activities within 30 working days. The Commission's Directorate-General for Human Resources handles these requests, consulting with other departments of the Commission (for example, the directorate-general where the individual worked and the Commission's Legal Service) in compiling its assessment on requests.

11. In order to identify risks of conflicts of interest to which post-service occupational activities of (former) officials may give rise, the Commission takes into consideration the precise tasks performed by the (former) official at the Commission, the envisaged activity, the link between the two and the risk of any real, potential or perceived conflict of interest. [14]

12. Following the Ombudsman's suggestions in the context of her previous inquiry into how the Commission manages 'revolving doors' situations [15], the Commission has provided guidelines to all its departments to use when assessing potential conflicts of interest between a former staff member's request to engage in a post-service activity and the tasks carried out during the last three years in service. In the meeting with the Ombudsman inquiry team, the Commission said that this practice has contributed to more substantiated assessments of the risks of conflicts of interest to which the requests may give rise.

13. The Commission stated that between 2019 and 2021, it rejected ten requests from former staff members to engage in an post-service activity, including one from a senior manager. [16] According to the Commission, this reflects its work in raising awareness among staff, including providing 'preliminary advice' before requests are submitted.

14. The Commission stated that it uses the option of forbidding a post-service activity, the most far-reaching measure, only as a last resort, if the identified risk cannot be mitigated through other means, such as:

- Limiting the scope of the requested activity and prohibiting the staff member from dealing with matters related to the work carried out during the last three years of service (referred to as 'ring-fencing').
- Preventing the former staff member from having (certain) professional contacts with former colleagues, or from representing opposing parties, for a defined period (referred to as a 'cooling-off period').

The Commission also said that it applies the ban on lobbying and advocacy strictly. [17]



15. Former staff members are not allowed to provide advice to their new employers, colleagues or clients on matters on which they are not supposed to work (under ring-fencing restrictions). Doing so would constitute a breach of the imposed restrictions.

16. The Commission added that there are several ways in which it ensures consistency of its decisions on (former) staff members' post-service activities. The Joint Committee [18] is consulted, as well as the Legal Service and the Secretariat-General, to guarantee that each draft decision is accurate and consistent with similar cases. Furthermore, for (former) senior staff members, the private office of the commissioner responsible also provides an opinion. Lastly, while each case is assessed on its own merits, the Directorate-General for Human Resources and Security (DG HR) also takes into consideration past restrictions imposed in similar cases.

The Commission's procedure for handling requests for approval of post-service activities from (former) staff members based on Article 16 of the EU Staff Regulations



A (former) staff member submits an application for authorisation of an interest conflicting activity to the Commission's Directorate-General (DG) for **Human Resources**.

DG HR asks the DG(s) where the former staff member worked during the last 12 months to provide: (i) a description of the tasks that the former staff member performed in the last 12 months; (ii) a **substantiated** opinion of the direct superior on whether the proposed activity is conflicting with the legitimate interest of the Commission. (For senior staff members, the cabinet of the commissioner responsible is sought).

Based on the responsible DG(s) feedback, DG HR prepares a draft decision, which is submitted to the Commission's **Secretariat-General (SG)** and **Legal Service** to submit their comments.

In accordance with Article 16 of the EU Staff Regulations, DG HR consults the **Staff Representative Committee**. It sends the proposed draft decision, the (former) staff member's reply/replies of the responsible DG(s) and cabinet(s) (if applicable), the opinion of the Legal Service.

If the proposed decision is **negative** or imposes **restrictions** to the applicant, a 'contradictory procedure' to guarantee the applicant's **right to be heard** on the decision, before it is adopted. The applicant's comments are taken into account.

DG HR adopts the final decision and informs the applicant.



Monitoring and enforcement of compliance with Commission decisions

17. The Commission takes the view that its former staff members adhere to the highest ethical standards and trusts that they will respect the conditions and restrictions imposed on them, as well as their general obligations arising from the EU Staff Regulations, of which they are reminded upon their departure from public service.

18. While the Commission *asks* former staff members to inform their new employer about the restrictions, it does not *require* this. The Commission considers that it is not in a position to interfere in the relationship between former staff members and their new employer. Therefore, it does not ask for evidence that the restrictions imposed are shared with the new employer.

19. The Commission explained the different ways in which it monitors restrictions:

- It shares the decisions with the relevant Commission departments, where they are made available to staff members for whom the decisions are relevant.
- External scrutiny by other institutions, the public, and third parties, including through monitoring media reports. There are different ways for those seeking to carry out such external scrutiny to access the necessary information. This can be found through: (i) consulting the Commission's annual reports concerning occupational activities of senior officials after leaving the service [19] ; (ii) public access to document requests; and (iii) questions from Members of European Parliament.
- Adequate follow up by the Commission of every alleged breach of compliance. In this context, the Commission's Investigation and Disciplinary Office (IDOC) has the power to conduct investigations. At the end of a disciplinary procedure, the Commission may impose sanctions on a former staff member, such as the reduction of pension rights. [20]

The Commission considers that these internal and external means of control, combined with the deterrent effect of disciplinary measures [21] , are appropriate and proportionate to the risks identified.

20. However, risks of conflicts of interest may nonetheless materialise. The most frequent risks are linked to the potential misuse by former staff members of professional contacts developed in active service with a view to obtaining privileged access to the Commission. However, the Commission is of the view that those risks are effectively mitigated through temporary prohibitions on those professional contacts combined with raising awareness among the staff members for whom the prohibition is relevant.

21. The Commission added that, when it becomes aware that a risk has materialised, it immediately contacts the former staff member concerned. The Commission noted that it has the responsibility to prove that the breach of obligations occurred.

22. The Commission makes public an annual report concerning occupational activities of senior officials after leaving the service. [22] This report includes details on cases where the



one-year lobbying and advocacy ban was applied (see paragraph 14). The 2019 and 2020 reports also include statistical information on the domains of the occupational activities undertaken by former senior officials.

The Commission's decisions on requests for external activities of staff members on leave on personal grounds

23. Staff members who, during leave on personal grounds [23], envisage engaging in an external activity, must obtain prior permission from the Commission in accordance with Article 12b of the EU Staff Regulations (see footnote 1) and the rules laid down by the Commission on outside activities and assignments [24]. Such approvals must be renewed annually and assessed anew with every request for renewal. New restrictions can be imposed in the context of renewal requests if the Commission becomes aware of risks that need to be mitigated.

24. When a staff member submits a request, the Commission said that it carries out a comprehensive risk assessment of the requested activity. This assessment would include consulting the staff member to assess whether there are any risks of conflicts of interest related to the requested external activity. Additionally, the Commission conducts its own investigation, including consulting publicly available information on the prospective new employer.

25. The Commission stated that it usually asks for further information from the staff member, their supervisor, or other parties whenever necessary. Following suggestions made by the Ombudsman in the decision closing her previous strategic inquiry, supervisors are now required to provide a detailed analysis on potential conflicts of interest.

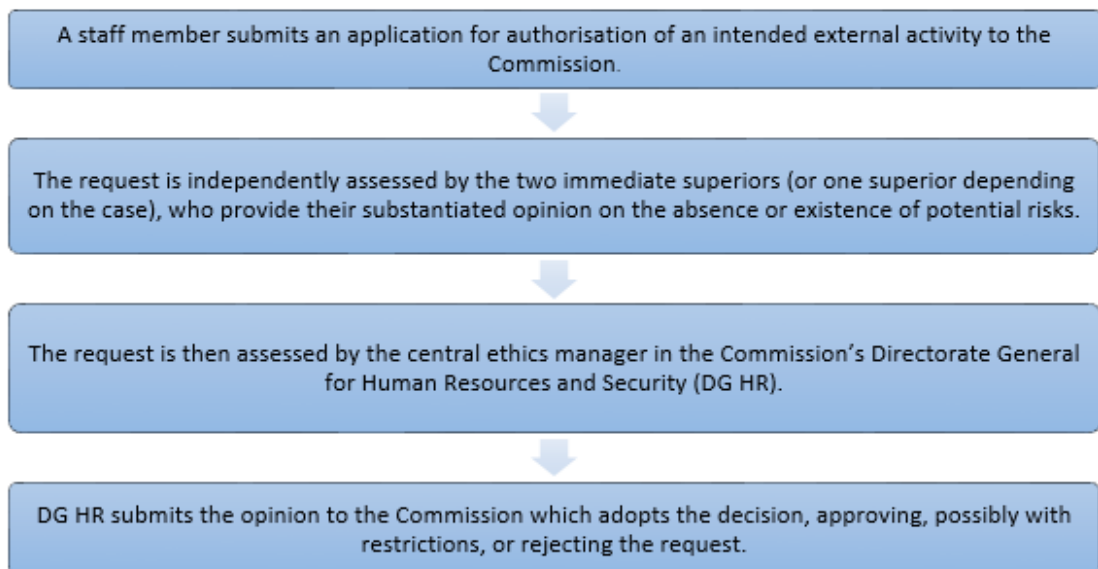
26. The Commission explained that it applies strict criteria when it takes a decision on requests to engage in an external activity in law firms, public affairs/relations consultancies and the public affairs departments of organisations in the same area of expertise as the one in which the staff member works at the Commission. This approach is also followed in requests related to consultancies and the public affairs departments of organisations where the Commission acts as the equivalent of a regulatory body in the field and, in particular, where staff members intend to represent their new employer vis-à-vis the Commission.

27. The Commission emphasised that requests for external activities are not authorised when the activities involve lobbying or advocacy vis-à-vis the Commission and could give rise to risks of conflicts of interest.

28. The Commission explained that, for requests concerning law firms, the risk of a conflict of interest depends largely on whether the staff member will join a law firm working in the same area of expertise. Where they do, the Commission will ask the staff member for further information on areas of work and prospective clients to assess whether there are risks. The Commission considers that the risks are lower in cases where staff members request to work in law firms in different fields of law than those in which they worked at the Commission or,



for example, dealing with national law. In this context, the Commission also takes the personal circumstances of the staff member concerned into account in its assessment (for example if a staff member has to take up work in a different country for family reasons). **The Commission's procedure for handling requests from staff members on unpaid leave on personal grounds for approval of external activities based on Articles 12b and 40 of the EU Staff Regulations**



Monitoring and enforcement of compliance with restrictions

29. The Commission said that compliance with restrictions is ensured in the same manner as for post-service occupational activities. The Commission trusts that staff members authorised to carry out an outside activity during leave on personal grounds will inform their new employers about the restrictions imposed on them and that they will comply with the restrictions.

30. The Commission systematically shares with the relevant departments the restrictions it imposes on staff members' external activity, for example when restrictions include a ban on professional contacts.

31. The Commission also monitors publicly available information closely. In cases where the Commission becomes aware of a potential breach, it immediately contacts the former staff member concerned. Furthermore, IDOC has the power to conduct investigations and to recommend disciplinary measures if necessary. The Commission considers that these internal and external means of control, combined with the deterrent effect of disciplinary proceedings, are appropriate and commensurate to the risks identified.

The Ombudsman's assessment



Decisions on post-service activities

32. Former EU staff members continue to be bound by the duty to act with discretion and integrity as regards the acceptance of certain appointments or benefits after leaving the public service. The Ombudsman considers that this duty also implies that, when considering potential post-service occupational activities, (former) senior staff members should take into account whether this could give rise to reputational damage for the EU administration, in particular where the activities in question are related to their work within the EU administration and follow shortly after departure.

33. When (former) staff members request authorisation to take up a new job, the Commission should carry out a risk assessment related to that intended job that takes into account the staff member's tasks and responsibilities while in the service of the Commission. This should include assessing:

- i. possible conflicts with the legitimate interests of the Commission;
- ii. potential misuse or disclosure of information that is not public;
- iii. potential misuse of professional contacts developed in active service.

34. In the case of senior officials, the risk of a conflict with the legitimate interests of the institution is arguably higher, given their responsibilities while in active service and the level of information and contacts that they have access to. This is reflected, notably, in the one year lobbying ban mentioned above (see paragraph 14).

35. According to EU case-law [25], the power of the employing institution to prevent a (former) official from exercising a post-service activity within two years of leaving is subject to two conditions, namely that the intended activity:

1. is related *in any way* to the activity of the official during their last three years of service, and
2. could lead to a conflict with the legitimate interests of the institution.

36. According to EU case-law, it is sufficient that the envisaged activity can *be perceived* as giving rise to a (risk of) conflict of interest. [26]

37. The Ombudsman acknowledges the wide discretion that the EU institutions have when it comes to deciding on those conditions.

38. The Ombudsman also recognises that each request for authorisation of a post-employment activity should be assessed on its own merits, taking into account, among other matters, the individual's fundamental right to engage in work. Any restrictions on the rights of former EU staff to work in the private sector must be necessary for the purposes of



achieving a legitimate public interest, and must be proportionate. **The Commission informed the Ombudsman that it would forbid a former staff member from engaging in an activity only if it found that the risk could not be mitigated through other means. As this inquiry reveals, the Commission did so in only two out of the 100 cases inspected.**

39. The Ombudsman inquiry team identified for instance one case in which a senior manager was authorised to engage in a post-service activity despite a direct link existing with the work carried out in the final three years of service and despite it being difficult to verify that the imposed restrictions would be complied with. The intended job started only three and a half months after the former senior official had left the Commission. While acknowledging the wide discretion enjoyed by the Commission, the Ombudsman urges it to take a more robust approach in future.

40. The objective of the Ombudsman's inquiry is to get an overview of how the Commission deals with revolving door moves of its (former) staff members. To do this the Ombudsman examined 100 Commission decisions. The Ombudsman did so not to make findings of maladministration in individual files, but to determine whether **systemic improvements** are necessary.

41. The Ombudsman takes the view that, when an intended job of a former senior staff member is related to their work during the last three years of service and could lead to a conflict with the legitimate interests of the Commission, and when the authorisation of such an activity cannot be made subject to restrictions that adequately mitigate the risks and that can be credibly monitored and enforced, then the Commission should make use of its wide discretion and forbid (temporarily) the intended job in the public interest. Not opting to forbid (temporarily) intended post-service activities of former senior officials in such circumstances risks seriously undermining the rules set out in the Staff Regulations. **The Ombudsman will make a suggestion below to the Commission that it act accordingly .**

42. To illustrate when a more robust approach is warranted, the Ombudsman will provide hypothetical case examples. [27] These examples constitute general guidance on whether (temporarily) forbidding a post-service activity is necessary to protect the EU administration's interest.

- The Commission should consider a (temporary) prohibition, when former senior officials want to take up post-service activities related to the matters worked on before their departure or retirement.
- A DG FISMA director with responsibilities in the area of financial policy-making concerning the European derivatives markets wants to move to a job of chief executive officer of a trade association of companies with interests in financial derivatives.
- A senior official in DG COMP wants to move to a private firm that is specialised in challenging the Commission in competition matters.
- A senior official who has worked for many years in the Commission's Trade department, which deals with antidumping, wants to move to a private firm whose core business is antidumping matters.
- A former director at DG DEFIS retires and wants to move to a job in an aerospace, defence



and space company as a non-executive board member. On the board, her responsibilities would include providing strategic advice on international and European developments in area of defence and space.

- The Commission should also consider a (temporary) prohibition, when former senior officials in high-level, horizontal posts want to move to the private sector, as this **can also conflict** with the Commission's **legitimate interest** due to potential conflicts of interest, or the perception thereof, which in turn risks damaging the Commission's reputation.
- A senior official in the Secretariat-General who has had many different roles in the Commission and has a wide network within the Commission, wants, upon retirement, to join a Brussels-based law firm that represents clients on EU matters.
- A senior official in DG COMM with an extended network in the Commission and access to non-public information wishes to depart the Commission to take up a job in a Brussels-based consultancy working on EU affairs.
- Finally, if an official has been involved in awarding a major contract to a company within the last year before leaving the Commission, there are high risks of conflicts of interest [28] and damage to the EU administration's reputation of independence. The Commission should therefore also forbid such a move (temporarily).

43. The Ombudsman encourages the Commission, when it opts for approving a post-service activity subject to restrictions, that it explores and, where appropriate, uses the full range of restrictions and conditions available to it to safeguard its legitimate interests. For instance, the Commission could make its approval of a new job conditional upon the staff member obtaining a commitment from the new employer that the restrictions imposed by the Commission (for example the limits of what the former official can deal with) are made public on the new employer's website. Such a condition may be particularly warranted where it is known or can be expected that the move of a former senior official will figure prominently on the new employer's website (what is colloquially known as the 'shop window'). It is important that any restrictions are clearly visible on the new employer's website, for example alongside the former staff member's profile. **The Ombudsman will make a corresponding suggestion to the Commission below.**

44. The Commission should, as a minimum, require its former staff members to share any decisions that it has taken in relation to their post-service occupational activities with their new employers, and it should require former staff members to provide proof that they did inform their new employers. This is not an excessive measure to take and would constitute an important safeguard. [29] **The Ombudsman will address this point in a suggestion for improvement below .**

45. The Ombudsman issued 'Practical recommendations for public officials' interaction with interest representatives', which the Commission endorsed and uses for training purposes. [30] One practical recommendation to staff members is to *"[r]eport lobbying practices considered unacceptable in particular in light of the EU Transparency Register's Code of Conduct for interest representatives"*. The EU Transparency Register's Code of Conduct foresees that : *" if employing [...] staff of the Union institutions, take the confidentiality requirements and rules applicable to those individuals after leaving the respective institution duly into account, with a view to preventing conflicts of interest "*. [31] The Commission shares its decisions on post-service



activities of former staff members with the relevant Commission departments, where they are made available to staff members for whom the decisions are relevant. The Ombudsman calls on the Commission to remind its staff of the need to report any lobbying from former staff members who have had restrictions in relation to lobbying placed upon them. The Commission could provide to its staff a designated form that can be used to report any possible breaches, as well as instructions as regards whom to report to.

46. Based on the inspection, the Ombudsman notes that in a number of cases staff members informed the Commission late (less than 30 working days before leaving the service) about the post-service activity they intended to take up. This means that the Commission's decision is often adopted after the staff member concerned has already left the service. The Commission could consider whether more can be done to raise awareness among its staff that requests for approval of post-service activity should be made in good time. At the same time, the Commission should try and deal with such requests as quickly as possible.

Decisions on external activities during leave on personal grounds

47. The Ombudsman's inspection revealed that the Commission's assessments of the requests to renew ongoing approvals for an external activity were not as rigorous as those for initial requests. In a number of cases, the approval decisions did not make clear that a full assessment had been carried out. While this is regrettable, it emerged in the course of the Ombudsman's inquiry that the Commission is committed to applying a stricter approach than hitherto to initial requests for approval of external activities of staff members on unpaid leave on personal grounds (see paragraph 26). This is welcome. When the Commission **assesses requests to renew approval for an external activity**, it is important that new factual elements are duly considered (for example, negative media coverage of the initial move). Some of the files inspected by the Ombudsman's inquiry team indicate that the Commission is working in this direction.

48. When assessing a request from a staff member on leave on personal grounds for permission to engage in an external activity that is incompatible with the Commission's interests, the Commission has wide discretion as regards whether to forbid that activity or to impose restrictions. The Ombudsman is of the view that, if an activity creates risks that cannot be effectively mitigated by restrictions or be credibly monitored and enforced, the Commission should use its wide discretion and refuse to approve the external activity. **The suggestion below also addresses this.**

In one of the inspected files, the Commission took the decision not to renew a request for an external activity in the private sector of a staff member on leave of personal grounds. Among the reasons justifying this decision, the Commission cited the substantial negative attention the staff member's activities had attracted, including articles in the press. This confirms the need for a robust approach.



Publication of decisions

49. In monitoring the compliance of former staff members with the restrictions imposed on them, the Commission relies in part on external scrutiny by the public.

50. The Commission continues to publish information on revolving doors in the form of a report (see paragraph 22) that is released only once a year. This report includes only cases where the one-year ban on lobbying and advocacy was imposed, and not on all cases assessed.

51. The Commission does not, as previously urged by the Ombudsman, make public information on individual cases shortly after adopting the decisions.

52. The Ombudsman maintains her view that there are significant shortcomings in how the Commission makes public information about its assessments of post-service activity requests by former staff members. For example, the Commission made public on 21 December 2020 and on 9 December 2021 its annual reports for decisions taken in 2019 and 2020 respectively. Of the 12 decisions that were summarised in these two reports, nine fell within the scope of the inspection. All of these nine decisions predated the public report by more than a year, and some by close to two years. This significantly reduces the usefulness of the annual reports as a tool for the public scrutiny (see paragraph 19). The Ombudsman has already drawn the Commission's attention to this [32].

53. The Ombudsman notes the Commission's arguments for making the information public only annually, namely that the EU Staff Regulations require only annual publication [33] and that publishing its decisions in a more timely manner could be in conflict with data protection rules [34].

54. While the EU Staff Regulations explicitly require the publication of an annual report, this requirement should be read taking into account the purpose behind the legal obligation. The purpose of making public information on post-service activities is to ensure transparency so that businesses, civil society organisations and the public are aware of any restrictions and can monitor whether they are complied with. [35] Information that is public may also serve the purpose of deterring former senior officials from engaging in those prohibited activities. Making the information public in a more timely manner would thus be more effective as a deterrent and as a means of monitoring if the decision is complied with.

55. The Ombudsman fails to see how a more timely publication of this information would change the purpose for which the personal data of the former senior officials were initially processed. When drafting the EU Staff Regulations, the EU legislators balanced the interest of protecting personal data with the purpose of publication, and decided that the personal data related to the requests to engage in professional activities from former senior officials should be made public.

56. In light of the above, **the Ombudsman reiterates her suggestion that the Commission should make public information on all the cases assessed [36], and that it does so**



upon adoption of the decisions, rather than publishing an annual report including information on some specific cases only .

Joint Committee

57. The EU Staff Regulations require that the appointing authority consults the Joint Committee before taking a decision on a request to engage in an post-service activity [37] . The Joint Committee usually takes its decision on requests for post-service activities by ‘written procedure’, but it holds in-person discussions on all draft decisions to prohibit an activity. Discussions will also be held in person if at least three of its members request this. However, if the attendance quorum [38] for the in-person meeting is not met, no opinion will be adopted. The Ombudsman is of the view that the failure to adopt opinions in such cases undermines the effectiveness of the Joint Committee consultation, as mandated by the EU Staff Regulations.

Conclusion

The Commission should apply a more robust approach in relation to revolving door moves of its most senior staff to private sector jobs, shortly after departure or retirement, related to matters on which they worked while in the Commission.

Suggestions for improvement

Based on the findings in this strategic inquiry, the Ombudsman makes the following suggestions for improvement to the Commission:

- 1. Where the Commission considers that a request to take up an activity poses risks that cannot be adequately mitigated by restrictions or when restrictions cannot be effectively monitored or enforced, it should (temporarily) forbid (former) staff members from taking up such positions or activities after their departure or when on leave on personal grounds.**
- 2. The Commission should explore the full range of measures available to it when approving an activity with mitigating measures. For instance, the Commission could make its approval of a new job conditional upon the (former) staff member obtaining a commitment from the new employer that the restrictions imposed by the Commission (for example the limits of what the (former) staff member can deal with) are made public in a prominent way, for example alongside the (former) staff member’s profile, on the new employer’s website. As a minimum, the Commission should require the (former) staff member to submit evidence that the restrictions imposed were shared with the new employer.**
- 3. The Commission should make public the information on post-service occupational activities of former senior staff members shortly after it adopts a decision to authorise such activities .**

The Ombudsman invites the Commission to inform her, within six months from the date of this decision, of any action it has taken, or intends to take, in relation to the above suggestions.



Emily O'Reilly European Ombudsman

Strasbourg, 16/05/2022

[1] Regulation No 31 (EEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (the Staff Regulations). Available at:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501>

[2] Set out in Article 16, paragraphs 1 and 2, of the Staff Regulations.

[3] See Article 15 Charter of Fundamental Rights of the European Union.

[4] Set out in Article 16, paragraph 3, of the Staff Regulations.

[5] Commission Decision of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service, C(2018) 4048 final, which is available here:
<http://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-4048-F1-EN-MAIN-PART-1.PDF>

[6] A detailed overview of the relevant rules and how the Commission applies these rules can be found in the decision in Ombudsman inquiry OI/3/2017/NF:
<https://www.ombudsman.europa.eu/en/decision/en/110608>

[7] Case OI/3/2017/NF. The decision is available at:
<https://www.ombudsman.europa.eu/en/decision/en/110608> .

[8] The opening letter is available at: <https://europa.eu/!rnYJbC> .

[9] In accordance with Article 12(b) in combination with Article 40 of the Staff Regulations.

[10] See: <https://www.ombudsman.europa.eu/en/doc/correspondence/en/141660> and <https://www.ombudsman.europa.eu/en/doc/correspondence/en/144021> .

[11] The meeting report is available at:
<https://www.ombudsman.europa.eu/en/doc/inspection-report/en/152861> .

[12] The reply from the European Commission on implementation of the European Ombudsman's suggestions resulting from the own-initiative inquiry on the revolving doors phenomenon OI/3/2017/NF is available at <https://www.ombudsman.europa.eu/en/doc/correspondence/en/152862> . As the exchange in this meeting is largely covered by the Commission's presentation, there is no separate



meeting report.

[13] See Article 21(1) of the Commission decision on outside activities and assignments and on occupational activities after leaving the Service, which can be assessed here:
[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2018\)4048&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2018)4048&lang=en)

[14] See the Ombudsman's report on the meeting with the Commission, available at:
<https://www.ombudsman.europa.eu/en/doc/inspection-report/en/152861> .

[15] See: <https://www.ombudsman.europa.eu/en/decision/en/110608> .

[16] Three cases in 2019, three in 2020 and four in 2021. To put this into context, in 2019 the Commission adopted 363 favourable decisions as regards notifications for post-employment activities of staff. Therefore the percentage of unfavourable decisions in 2019 was less than one percent. See:
<https://www.asktheeu.org/de/request/8376/response/28244/attach/10/03%20FINAL%20REPLY%20GEST>

[17] In accordance with Article 16(3) of the Staff Regulations.

[18] The Joint Committee is an internal body, composed in accordance with article 2 of Annex II of the Staff Regulations. The Commission appoints a chairperson of the Committee each year. The members and alternate members of the Committee are appointed at the same time, with the Commission selecting seven members and the Staff Committee selecting seven members. Consultation of the Joint Committee is mandatory under Article 16 of the Staff Regulations.

[19] The publication of these reports is foreseen in article 16 paragraph 4 of the Staff Regulations. The Commission's annual reports on occupational activities of former senior officials are available here:
https://ec.europa.eu/info/publications/occupational-activities-former-senior-officials-annual-report_en
.

[20] Article 9 of Annex IX to the Staff Regulations.

[21] As foreseen in Article 86 of the Staff Regulations.

[22] See:
https://ec.europa.eu/info/publications/occupational-activities-former-senior-officials-annual-report_en
.

[23] Article 40(1) of the Staff Regulations provide that leave on personal grounds is only granted " *in exceptional circumstances* ". Requests for leave on personal ground are authorised for one year at a time, renewable up to 12 years. Requests for leave on personal grounds (which are separate from the request to engage in an external activity) are handled by a different appointing authority: the Commissioner for HR for requests submitted by senior staff members; for other staff the appointing authority is the relevant



director-general. Heads of cabinet are the appointing authority for staff members working in a cabinet.

[24] See:

[https://ec.europa.eu/transparency/documents-register/detail?ref=C\(2018\)4048&lang=en](https://ec.europa.eu/transparency/documents-register/detail?ref=C(2018)4048&lang=en) .

[25] See judgment of the EU Civil Service Tribunal of 15 October 2014 in case F 86/13, *Van de Water v Parliament* , paragraphs 46, 48 and 51. Available at:

<https://curia.europa.eu/juris/document/document.jsf?text=&docid=158611&pageIndex=0&doclang=EN&>

[26] See judgment of the EU Civil Service Tribunal of 28 November 2019 in case T-667/18,

Pinto Teixeira v EEAS , paragraph 51:

<https://curia.europa.eu/juris/document/document.jsf?jsessionid=6C1D5AEBC52907DAE330A0EFB649D56>

[27] These examples are unrelated to the inspection of documents that the Ombudsman carried out in the inquiry, and which the Commission considers confidential. Future cases must of course be assessed individually.

[28] See recital 104 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union. See:

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018R1046&from=EN>

[29] The Commission included this mitigating measure in a decision on post-mandate activities of a former Commissioner, who was required to "*formally, in writing, share a copy*" of the Commission's decision that applied to him individually with the prospective employers and to confirm this to the Commission.

See: [commission-decision-arias-canete_en.pdf](#)

https://ec.europa.eu/info/sites/default/files/commission-decision-arias-canete_en.pdf

[30] See: <https://www.ombudsman.europa.eu/en/publication/en/79435> .

[31] See:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A01962R0031-20140501> . See:

<https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=>

[32] See point 52 of the Ombudsman's decision in OI/3/2017/NF (footnote 7).

[33] Article 16 of the Staff Regulations.

[34] Namely Regulation (EU) 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, available at:

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32018R1725>

[35] This principle of transparency is enshrined in Article 15(1) of the TFEU, which states, "[i]n order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible."

[36] Meaning, all cases notified by a (former) senior staff member within 12 months of leaving its service.

[37] See Article 16, paragraph 2, of the Staff Regulations. The Joint Committee seeks to reach an opinion by consensus or majority vote. Opinions are adopted by a simple majority of the members, taking into account that the President of the Joint Committee has no voting rights. In the event of a tie vote (7-7), the opinion of the Joint Committee is considered as split ("*avis partagé*").

[38] Article 3 of Annex II of the Staff Regulations foresees that "*The proceedings of the Committee shall be valid only if all full members or, in their absence, their alternates are present*", meaning seven members, or their alternates, representing management plus seven staff representatives, or their alternates.