GÜNTHER H. OETTINGER
MEMBER OF THE EUROPEAN COMMISSION

Ms Emily O'REILLY
European Ombudsman
1, avenue du Président Robert Schuman
B.P. 403
F-67001 STRASBOURG Cedex

Brussels, 10 OCT. 2019

Subject: **Strategic inquiry on how the European Commission manages 'revolving doors' situations of its staff members**
ref. OI/3/2017/NF

Dear Ms O'Reilly,

Thank you for the letter of 28 February 2019 addressed to President Juncker about the above-mentioned case.

Please see enclosed the comments of the Commission regarding this inquiry.

Naturally, the Commission remains at your disposal for any further information you may require.

Yours sincerely,

[redacted]

Enclosure

ADDRESS: EUROPEAN COMMISSION - BERL 12/297 - B-1049 BRUSSELS - PHONE: [redacted] - FAX [redacted] - E-MAIL [redacted]

FINAL

Comments of the European Commission on the closing decision with further suggestions from the European Ombudsman
- Strategic inquiry OI/3/2017/NF on how the European Commission manages 'revolving doors' situations of its staff members

INTRODUCTORY COMMENTS BY THE COMMISSION

The European Commission acknowledges receipt of the closing decision with further suggestions sent by the European Ombudsman (hereinafter "EO") on 28 February 2019.

The Commission welcomes the confirmation that the Commission has high standards in the area of ethics and transparency and the encouragements of the EO to continue to lead by example.

The Commission sees the suggestions of the EO as a valuable contribution to the overall discussion on avoiding conflict of interest situations. Any move of a staff member between the Commission and the private sector and vice versa needs to be scrutinised very carefully to make sure that there is no real, potential or even apparent conflict of interest. However, the Commission also wishes to underline that individuals have the right to engage in work and to pursue a freely chosen or accepted occupation, as granted by Article 15 of the Charter of Fundamental Rights of the European Union. It is also in the interest of the Commission to recruit staff with relevant and valuable experience and to allow its staff, for example during leave on personal grounds, to gather experience that might benefit the Commission at a later stage.

The Commission remains open to discuss how the matter of staff leaving the institutions to take up positions in the private sector or joining the institutions from the private sector can be best dealt with. It is willing to consider taking on board suggestions on how to further improve its system, within the relevant and applicable legal framework and requirements.

The European Union is a Union of law and the Commission, as all other European institutions and bodies, is bound to respect the law. Therefore, it shall weigh up the key legal principles and requirements at stake, notably transparency and accountability, the rule of law, the right to work, the right to protection of personal data and finally, the principle of proportionality. In potential situations in which it would be necessary to strike a balance on the simultaneous application of these principles, for example between the requirement for transparency versus the requirement to protect personal data, or the right to work versus the protection of the legitimate interest of the Institution, the Commission will always apply the fundamental principle of proportionality to come to fair and just conclusions, which accommodate all interests at stake to the extent possible.

The Commission would like, therefore, to make the following comments on the suggestions made by the EO:

COMMENTS OF THE COMMISSION ON THE SUGGESTIONS OF THE EUROPEAN OMBUDSMAN

1. ***To ensure it continues to lead by example, the Commission should take a more robust approach to the issue of 'revolving doors' when dealing with cases involving senior Commission officials. This should include carefully considering the legal option of forbidding the new activity when it could lead to a conflict with the legitimate interests of the Commission.***

Commission reply

The Commission would like to recall that, in line with Article 16 of the Staff Regulations (hereinafter "SR"), it may prohibit an activity or give its approval subject to conditions only when and if the envisaged activity would be in conflict with the legitimate interests of the Institution. The Appointing Authority (hereinafter "AA") defines an appropriate balance between the need to ensure integrity through temporary prohibitions and restrictions and the need to respect the former staff member's right to engage in work and to pursue a freely chosen or accepted occupation. As the assessment is made on a case-by-case basis, prohibitions or restrictions must be well reasoned and proportionate. In fact, it is common that decisions authorising an activity contain robust but proportionate restrictions, when some aspects of the declared activity could create a conflict of interest. When deemed necessary, the Commission has forbidden its former staff, including former senior officials, from undertaking certain activities.

This case-by-case assessment is without prejudice to the provision of the third paragraph of Article 16 SR, that provides that the AA shall, in principle, prohibit senior managers, 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 the last three years in the service.

2. ***The Commission should also, when necessary, as provided for in its own implementing rules, forbid former senior staff from working on matters related to the work carried out, ensuring not to limit this to files, cases and related cases.***

Commission reply

As indicated by the EO, Commission implementing rules provide that, when necessary, former staff can be prohibited from working on matters related to the work previously carried out in the service. Article 21 (3) (a) of the Commission Decision of 29 June 2018 on outside activities and assignments and on occupational activities after leaving the service provides indeed that the AA may, during the two year period after the staff member has left the service: "*prohibit the former staff member from dealing with files, cases or matters related to the work carried out by him or her during his or her last three years of service, including related or subsequent cases and/or court proceedings*;"

When deemed necessary, following an appropriate balance between the need to ensure integrity through temporary prohibitions and restrictions and the need to respect the former staff member's right to engage in work and to pursue a freely chosen or accepted occupation, the AA has forbidden former staff members, including former senior staff, from working on matters related to the work carried out while in the service.

In line with the principle of proportionality, the concept "matters" should be defined considering the precise tasks performed at the Commission and the declared professional

activity, as well as the link between the two and the risk of any actual or potential conflict of interest.

The Commission wishes to recall that this restriction is usually complemented by a ban on professional contacts with former colleagues. Moreover, with specific regard to former senior officials, the AA prohibits them, during the first 12 months after leaving the service, from engaging in lobbying or advocacy, vis-à-vis staff of their former Institution, on behalf of their business, clients or employers on matters for which they were responsible during the last three years in the service. This prohibition is set out in the third paragraph of Article 16 SR.

The combination of all these measures provides for strong and proportionate set of conditions, when the activity at stake justifies it.

3. The Commission should develop a 'fast track procedure' for assessing Article 16 requests of senior staff members, to ensure it reaches a decision within the 30 working day time-limit.

Commission reply

The Commission is ensuring that the 30 working days' time limit provided by Article 16 SR is complied with, not only for former senior officials, but also for all other categories of staff members. In order to maximise the efficiency of its processes, the Commission has in June 2018 streamlined its procedures and centralised the management of ethics requests, including Article 16 SR requests, in the Ethics Unit in DG HR, which interacts and consults directly with other services.

4. The Commission should develop measures to monitor compliance of senior staff with their ethics obligations under the Staff Regulations.

Commission reply

The Commission's system provides for strict ethics rules, including in relation to former staff whatever their categories. The SR and the Conditions of Employment for Other Servants (hereinafter "CEOS") treat all staff members as being subject to the same rules on ethical standards (to the notable exception of the third paragraph of Article 16 SR). In relation to former staff members, the underlying principle of the relation between them and the Commission is also one of trust. Nevertheless, the Commission's disciplinary office (IDOC) carefully follows up any potential wrongful behaviour. Whenever the Commission gets information about ethics obligations allegedly not being respected, it forwards it to IDOC, which has the power to investigate further.

While the Commission strongly believes that a values-based integrity system adopted by staff is the best preventive action, this stance is flanked by appropriate and dissuasive sanctions as can be seen from the IDOC annual report.

5. While the Staff Regulations give discretion to the EU institutions in how to comply with the transparency requirement regarding the one-year lobbying and advocacy ban for former senior staff members, the Commission's current publication practices falls short of what the Ombudsman considers best practices in this regard. Most importantly, the Commission's current practices of (i) not publishing information online as it becomes available, and (ii) not publishing information on all cases it assesses with a view to possibly imposing the one-year lobbying and

advocacy ban on former senior staff members undermines effective public scrutiny of those staff's revolving door moves. The Ombudsman thus calls on the Commission to take action to follow-up on the best practices she has identified and shared also with 15 other EU institutions, bodies, offices and agencies.

Commission reply

The Commission is of the view that the best practices suggested by the EO with regard to transparency requirements should be assessed within the applicable legal framework. Transparency and public scrutiny should be indeed balanced with data protection requirements and principles.

The Commission's current practice of publishing each year information on the implementation of third paragraph of Article 16 SR, including a list of cases assessed, is fully in line with the requirements of the SR, which expressly indicates that the publication shall be done on an annual basis.

The Commission would also like to recall that the fourth paragraph of Article 16 SR states that the publication of such information shall be done in compliance with the applicable rules on Data Protection (i.e. Regulation 2018/1725 of 23 October 2018). The legislator, therefore, clearly stated in this provision that the fundamental right of Protection of personal data (Article 8 Charter of Fundamental Rights of the European Union) must be taken in full consideration with regard to the yearly publication requirement. Data protection principles, notably necessity, proportionality, purpose limitation, data minimisation, and lawfulness, must therefore be respected (Article 4 and 5 of Regulation 2018/1725 of 23 October 2018). Publishing the relevant information more often than on an annual basis would not only go against the wording of the fourth paragraph of Article 16 SR but also against the aforementioned data protection principles, as the legal basis available refers to an annual publication.

The Commission takes note of the suggestion of the EO to publish information on all cases it assesses with a view to possibly imposing the one-year lobbying and advocacy ban on former senior officials. The Commission, however, is of the opinion that its current practice of publishing information on the cases where the one-year lobbying and advocacy was imposed is fully in line with the requirements of the SR. The fourth paragraph of Article 16 SR refers indeed to "information on the implementation of the third paragraph". The Commission understands that the publication should concern the cases where the AA did actually prohibit former senior officials from engaging in lobbying and advocacy activities, and not all cases assessed by the AA. In addition, as the Commission has to comply with the applicable rules on data protection, the principles at stake (notably necessity, proportionality, data minimisation and lawfulness) impose to publish and make available to the public only the information requested in the legal basis and strictly needed.

6. The Ombudsman also trusts that the Commission will, in its role of Joint Transparency Register Secretariat, adopt an ambitious approach in facilitating publication of information on former senior staff members' lobbying and advocacy bans directly on the Transparency Register entries of the new employers or self-own companies, both in relation to its own staff and that of other EU institutions, bodies, offices, and agencies.

Commission reply

In order to ensure further transparency, the Commission will give additional visibility to its Annual report on the publication of information concerning occupational activities of former senior officials (published under the fourth paragraph of Article 16 SR) with a dedicated section/tab on its Transparency Portal.[1] The Transparency Portal is indeed designed to provide a good and immediate overview of all the relevant transparency tools and a quick and direct access to information on the decision-making process within the Commission.

However, the Commission is not in a position to publish information on former senior officials under the fourth paragraph of Article 16 SR on the Transparency Register website.

Regarding this suggestion, the Commission has legal concerns. The Commission notes that the Interinstitutional Agreement ('IIA') between the European Parliament and the Commission, on which the Transparency Register is based, is not an appropriate legal basis for the implementation of obligations under the SR in view of the different objectives pursued, legal bases (SR vs IIA) and legal effects vis-à-vis third parties.

Indeed, the Transparency Register was set up with the clear objective of revealing who is influencing the Union institutions, on behalf of whom, on which issues and with what level of resources. In this way, serving as a 'go-to' database, the Transparency Register allows to track the activities and potential influence of interest representatives. On the other hand, the SR aim at notably describing the mutual rights and obligations of staff members and their institution and does not have legal effects and impact vis-à-vis third parties. Therefore, the Transparency Register and the IIA underpinning it cannot serve the purpose of implementing obligations under the SR. It would also be contrary to the data protection Regulation to mix two set of data without having a defined legal basis allowing it and processing data beyond the purpose for which it was initially collected.

In addition, publishing information on former senior officials under the fourth paragraph of Article 16 SR on the Transparency Register could lead to misunderstandings and wrong interpretations, as the way the organisations are listed in the Register has not been designed for such a use.

First of all, it should be noted that there is no harmonised way for companies to register themselves; registration is not a legal obligation and registrants are solely responsible for the information they provide and for updating it. It is not possible under the present IIA to link reliably the individual's future employer to a registered entity in the Transparency Register (e.g. in the case of a multinational company or an umbrella organisation). For example, a former Commission staff member may be doing work for a subsidiary of a multinational company, completely unrelated to the lobbying activities carried out by its Brussels office. Linking an activity performed for a given subsidiary in a Member State with the representation office in Brussels could create confusion and wrong perception of the activity contemplated. This may also lead to a reputational damage to the company and the individual concerned.

[1] https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/transparency_en

Furthermore, it should be noted that registrants are currently required to update their data in the Transparency Register annually on the basis of the most recent financial year closed. The deadline for updating is different for each registrant and depends on the last annual update. Therefore, there may be a discrepancy in the applicable periods published on the Transparency Register between the data published by the registrant and the information on former senior officials under the fourth paragraph of Article 16 SR.

COMMENTS OF THE COMMISSION ON THE TECHNICAL SUGGESTIONS OF THE EUROPEAN OMBUDSMAN

Regarding its practices for carrying out conflict of interest checks and authorising outside employment, the Commission could:

(i) include the information 'type of post offered' in its form for incoming revolving door moves to facilitate the conflict of interest check (which, in any event, is done based on the vacancy notice);

Commission reply

The Commission understands that the EO's reference to the "type of post offered" is related to the title of the post (that can notably be found in the job description, e.g. case-handler in the domain of mergers).

In practice, information on the "type of post offered" is already taken into account in the conflict of interest check at recruitment. The Commission would indeed like to stress that the conflict of interest check is made on the basis of the job description, the updated CV of the applicant and, of course, the information filled by the applicant in the conflict of interest form. The conflict of interest form includes the reference number of the post (in addition to information on the administrative status of the position offered, the grade of the position offered and the unit). That number allows for a speedy retrieval of the job description from Sysper.

Since the information to which the EO refers is already included in the documents mentioned above, that are provided for the assessment on possible conflict of interest, the Commission sees no difficulty in the suggestion made by the EO to also include the title of the post in its conflict of interest form for the recruitment of staff members.

(ii) remove, from the form for incoming revolving door moves, the statement that the Appointing Authority will not check the form in case neither the individual concerned nor the Directorate-General of recruitment or reinstatement has identified a (potential) conflict of interest to align the form with the Commission's actual practice of carrying out another check at the level of the Appointing Authority;

Commission reply

The Commission would like to point out that the wording of the existing conflict of interest forms is in line with the requirements of the third paragraph of Article 11 SR, which requires the AA to issue a reasoned opinion and take a decision only if the candidate informs the AA of any actual or potential conflict of interest. Therefore, in cases where neither the candidate nor the recruiting service have identified a conflict of interest, the AA is not under a legal obligation to take a decision, as this is not required by the SR.

In this context, the Commission would also like to reiterate that the responsibility for the identification of conflicts of interest lies primarily with the recruiting service, but also with the applicant. The recruiting service is the best placed to carry out such an identification and, where needed, propose mitigating measures.

The above does not mean, of course, that the AA does not perform any check in this regard. In fact, what the AA consistently checks is that no manifest error of assessment occurred on the part either of the candidate or of the recruiting service. If, at its level, the AA identifies a conflict of interest, even though neither the candidate nor the recruiting service identified one, it is indeed the practice that the AA imposes the necessary mitigating measures. Also, should it consider that the measures put forward by the recruiting service are manifestly not sufficient or appropriate to mitigate the risks already identified by the candidate or by the recruiting service, the AA imposes additional mitigating measures.

As the AA is in fact performing this check regarding a possible manifest error of assessment, the Commission agrees to remove the statement on the form that the AA will not check it in case neither the individual concerned nor the Directorate-General of recruitment has identified a (potential) conflict of interest. The AA will however not take a formal decision, if it does not detect any manifest error of assessment on the part of the candidate and/or of the recruiting service as regards the identification of any conflicts of interest. The same approach is valid for the conflict of interest form for staff members coming back from leave on personal grounds.

(iii) make the Business Correspondents perform the conflict of interest check on behalf of the recruiting Directorate-General regarding incoming revolving door moves (part II of the conflict of interest form);

Commission reply

The Commission considers that the recruiting services and, more particularly, the manager recruiting the candidate are best placed to assess the existence of a conflict of interest, as they are very much aware of the context in which the activity of the unit takes place.

The Commission, however, fully agrees with the EO that the conflict of interest check at recruitment should be carried out in the most efficient and accurate way and a consistent approach should be ensured in all Commission services. The Commission is, therefore, currently working on issuing guidance to help candidates and the recruiting services to accurately fill in the form. This guidance will be provided to them as an annex to the form.

The Commission also would like to point out that, in the context of the centralisation of the handling of ethics files in DG HR, each DG and Service appointed Ethics contact points, i.e. contact persons with whom DG HR services liaise for the ethics related matters, such as assessing the need for awareness raising actions or exchanging views on cases that need particular attention.

The Commission will use this network of Ethics contact points to raise awareness in the DGs on this matter, in addition to the direct communication from the HR central Ethics Unit to Commission managers. The guidance, which will be annexed to the form, will also be shared with Ethics contact points in the DGs and a specific awareness raising

event will be organised for them by DG HR central Ethics Unit in the second half of 2019.

For the sake of completeness, it should also be stressed that consistency is ensured through the checks performed in DG HR on individual files as well, as explained in the reply to technical suggestion ii). The AA indeed performs a check regarding a possible manifest error of assessment for all files. In addition, all cases where a potential conflict of interest has been identified (be it by the applicant, by the recruiting service, or by the AA itself) are sent for consultation to the HR central Ethics Unit.

The same approach is valid for the conflict of interest form for staff members coming back from leave on personal grounds.

In light of the above, make the Business Correspondents perform the conflict of interest check on behalf of the recruiting Directorate-General regarding incoming revolving door moves does not appear necessary to the Commission.

(iv) ensure that opinions in relation to the authorisation of outside occupational activities during leave on personal grounds are always as detailed as possible, spelling out whether there are links between the staff member's tasks in the Commission and the intended future tasks in the outside activity and reasoning why there is no, or a limited and manageable, risk of a (potential) conflict of interest;

Commission reply

The Commission understands that the EO refers to the opinions provided by the hierarchical supervisors and the HR central Ethics Unit on the requests for outside activity during leave on personal grounds, which are taken into account by the AA when taking its decision.

The Commission contends that the level of details that must be provided in opinions of the hierarchical supervisors and the HR central Ethics Unit depends on whether the activity is putting at risk the interests of the Institution, or not, in line with the principle of proportionality. In practice, when the hierarchy or HR central Ethics Unit are of the opinion that the activity is putting at risk the interests of the Institution, the opinions provided are always much more detailed, and follow-up exchanges are often taking place by email or by phone.

Against this background, the Commission will consider improving its IT system (Sysper) to make sure that the opinion of the hierarchical supervisors include more details, including for cases where the activity is approved without restrictions. Instead of requesting only a general opinion on the activity and a description of restrictions if needed, the IT interface could be amended to ask in addition on a systematic basis to hierarchical supervisors (i) whether there are links between the staff member's tasks in the Commission and the intended future tasks in the outside activity and (ii) whether there is a risk of a (potential) conflict of interest.

(v) clarify that all staff members have to fill in the start and end date of their intended outside occupational activity in the online form for requesting authorisation of an outside activity during leave on personal grounds by removing, from the form, the reference to the status of 'employee';

Commission reply

The Commission would like to point out that each request for an outside activity during leave on personal grounds is linked to a specific request to go on leave on personal grounds. Therefore, an outside activity is authorised for the duration of the leave on personal grounds period (one year being the maximum, and it can be renewed). The information requested linked to the status of employee is of a different nature, as it does not concern the duration of the outside activity but the duration of the employment relationship with the organisation.

(vi) ensure that the Directorates-General who, through the direct superior of the former staff member, provide input and an opinion on the notified intended occupational activity after leaving the service, consistently set out, in its opinions, as much factual information as possible, such as a list of the tasks undertaken by the staff member during the last three years in service (basis for the following assessment), an explanation on whether there is a link between those tasks and the intended occupational activity, and a detailed explanation on whether any (potential) conflicts of interest could arise in the notified occupational activity;

Commission reply

The Commission would like to point out that the HR Ethics Unit, which is managing the consultation process for Article 16 SR declarations, is making sure to have enough information and a proper assessment from the service(s) of origin of the former staff member. The service of origin is indeed requested to give a substantiated opinion in this context on whether "the envisaged activity would be conflicting with the legitimate interests of the Commission in relation to the work carried out during her last three years of service".

In practice, the service(s) of origin provide an elaborated opinion on whether there is a link between the tasks of the former staff member and the intended occupational activity, and an explanation on whether any (potential) conflicts of interest could arise in the notified occupational activity. In line with the principle of proportionality, when the service(s) of origin is of the opinion that the activity is putting at risk the interests of the Institution, the opinion provided is always more detailed. If further details or explanations are needed, the HR Ethics Unit engages in discussions with the service of origin. Ethics contact points are always consulted when the activities concern former senior officials.

As regards the suggestion of the EO that the service(s) of origin includes also in its opinion a list of tasks carried out by the former staff member during the last three years in the service, the Commission contends that this factual element should be provided on a case-by-case basis, depending on the circumstances of the case, in line with the principle of proportionality. If the service of origin is of the opinion that there is no link at all between the tasks of the former staff member and the intended occupational activity, the HR Ethics Unit does not need this information. When there is a link, the service of origin provides an explanation about the link, by mentioning the relevant tasks of the former staff member at the Commission that are linked to the envisaged outside activity.

(vii) ask, in the form for requesting authorisation of occupational activities after leaving the service, former staff members to provide it also with the (intended) employer's or self-owned company's website and, where applicable, the relevant Transparency Register entry;

Commission reply

Though the HR Ethics Unit is already systematically checking the employer's or self-owned company's website, the Commission welcomes the suggestion of the EO to ask former staff members to provide the website address in the form. Websites are generally providing useful information to understand the content of the activity envisaged by the former staff member. The Commission agrees to introduce this change in the form for requesting authorisation for occupational activities after leaving the service, currently being revised to notably take into account lessons learned after one year of implementation of the revised Decision on outside activities and assignments and on occupational activities after leaving the service, adopted in June 2018.

As regards the suggestion to ask former staff members to provide the relevant Transparency register entry, the Commission is of the opinion that this is not necessary and could lead to misleading information. As explained in the reply to suggestion 6, there is indeed no harmonised way for companies to register themselves and, moreover, linking an activity performed for a given subsidiary in a Member State with the representation office in Brussels could create confusion and wrong perception of the activity contemplated. This may also lead to a reputational damage to the company and the individual concerned. Finally, it is worth pointing out that it is already the current practice of HR Ethics Unit to check in the Transparency Register the available information when assessing its relevance in view of the declared activity.

(viii) be more specific, at the end of the form for requesting authorisation of occupational activities after leaving the service, regarding the types of documents that (former) staff members could usefully submit to demonstrate that the intended occupational activities are compatible with the Commission's interests, by listing documents such as vacancy notices, offer letters, draft contracts, and project descriptions;

Commission reply

The Commission agrees with the suggestion of the EO and will include in its revised form an indicative list of examples of the types of documents that former staff members could usefully submit to demonstrate that the intended occupational activities are compatible with the Commission's interests. Any information provided should of course not lead former staff members to divulge business secrets.

(ix) consistently use 'shall' - or wording such as 'will not' - rather than 'should not' for conditions set out in a decision authorising an occupational activity after leaving the service to properly reflect the nature of the conditions;

Commission reply

The Commission agrees with the suggestion of the EO and would like to underline that its wordings for the AA decisions regarding occupational activities after leaving the service have already been revised accordingly.

(x) use 'shall' - or wording such as 'not being allowed to' - rather than 'should not' when imposing a lobbying and advocacy ban on former senior staff in an unconditional authorisation decision by way of recalling the former senior staff member's obligation under Article 16(3) of the Staff Regulations;

Commission reply

The Commission agrees with the suggestion of the EO and would like to underline that its wordings for the AA decisions regarding occupational activities after leaving the service have already been revised accordingly.

(xi) systematically ask the former staff member to inform the new employer of any conditions imposed by the Commission and to provide the Commission with proof that such a communication has occurred;

Commission reply

Former staff members have the ongoing obligation to act with integrity and discretion as regards the acceptance of certain appointments and benefits. In the light of this obligation, former staff members shall take all the appropriate measures to ensure that the conditions imposed by the Commission are respected, including informing their new employer of the restrictions imposed. Restrictions shall be communicated if need be, in line with the principles of necessity and proportionality and without disclosing any confidential matter related to the work carried out at the Commission.

Requesting evidence of a communication of the restrictions imposed between the former staff member and the new employer would be going beyond the scope of the obligations of the former staff member towards the Commission, taking into account the bilateral nature of the relationship between the former staff member and the new employer.

Therefore the Commission is exploring possible ways of further reminding staff members from their obligation to take all the appropriate measures to ensure that the conditions imposed by the Commission are respected.

(xii) systematically inform the former staff member's Directorate-General (possibly via the Business Correspondent and having clarified any potential data protection issues) of any conditions imposed on the former staff member in a decision authorising an occupational activity after leaving the service;

Commission reply

The Commission agrees with the suggestion of the EO and would like to point out that the DGs are systematically informed of all decisions regarding an occupational activity after leaving the service of a former staff member. Business Correspondents are indeed copied of these decisions and share it on a need-to-know basis in their DG.

Regarding its practices for publishing information on the one-year lobbying and advocacy ban for former senior staff members, the Ombudsman suggests that the Commission:

(xiii) publish, under Article 16(4) of the Staff Regulations, information on all the 'cases assessed', that is, all cases notified by a (former) senior staff member within 12 months of leaving the EU civil service;

Commission reply

As explained in reply to suggestion 5 above, the Commission takes note of the suggestion of the EO to publish information on all cases it assesses with a view to possibly imposing the one-year lobbying and advocacy ban on former senior officials.

The Commission is however of the opinion that its current practice of publishing information on the cases where the one-year lobbying and advocacy was imposed is fully in line with the requirements of the SR. The fourth paragraph of Article 16 SR refers indeed to "information on the implementation of the third paragraph". The Commission understands that the publication should concern the cases where the AA did actually prohibit former senior officials from engaging in lobbying and advocacy activities, and not all cases assessed by the AA.

In addition, as the Commission has to comply with the applicable rules on data protection, the principles at stake (notably necessity, proportionality, data minimisation and lawfulness) impose to publish and make available to the public only the information requested in the legal basis and strictly needed.

(xiv) include, in the information it publishes under Article 16(4) of the Staff Regulations, a link to the former senior staff member's (intended) employer's or self-owned company's entry on the Transparency Register, where applicable;

Commission reply

As explained in reply to suggestion 6 above, the Commission contends that providing such a link would raise serious legal concerns, including as regards compliance with data protection rules and eventually provide misleading information to the general public.

(xv) actively inform the colleagues of a former senior staff member of the fact that s/he has been placed under a lobbying and advocacy ban for a certain period of time;

Commission reply

As explained under reply to (xii) decisions adopted pursuant Article 16 SR are systematically communicated to the DGs of the former staff members via the Business Correspondents, whose role is to provide the information to the colleagues concerned in their DG on a need-to-know basis. The HR Ethics Unit will tackle the point in the awareness session that will be organised in the second part of 2019 with the Ethics contact points of each DG.

(xvi) publish, directly on its ethics website and in a timely manner, information under Article 16(4) of the Staff Regulations on each case assessed with a view to the one-year lobbying and advocacy ban for former senior staff members;

Commission reply

As explained under suggestion 5 above, the Commission is of the opinion that its current practice of publishing each year information on the implementation of third paragraph of Article 16 SR, including a list of cases assessed, is fully in line with the requirements of the SR, which expressly indicates that the publication should be done on an annual basis.

(xvii) publish, directly on the Transparency Register entry of the (intended) employer or the self-owned company (in case of self-employed occupational activities), information on individual cases assessed with a view to the imposition of a lobbying and advocacy ban under Article 16(4) of the Staff Regulations;

Commission reply

In order to ensure further transparency, the Commission will give additional visibility to its Annual report on the publication of information concerning occupational activities of senior officials after leaving the service (published under the fourth paragraph of Article 16 SR) with a dedicated section/tab on its Transparency Portal, which is designed to provide a good and immediate overview of all the relevant transparency tools and a quick and direct access to information on the decision-making process within the Commission.

The Commission is however not in a position to publish directly on the Transparency register the information requested as explained in the reply to suggestion (xi).

(xviii) facilitate the publication on the Transparency Register of information under Article 16(4) of the Staff Regulations for former senior staff of other EU institutions, bodies, offices, and agencies;

Commission reply

As explained under suggestion 6 above, the Commission contends that it is not in a position to publish information on the Transparency Register under the fourth paragraph of Article 16 SR for former senior officials of EU institutions.

The Commission is however ready to consider developing the Transparency Portal to add a link to the annual report concerning the publication of information concerning occupational activities of senior officials after leaving the service (third and fourth paragraphs of Article 16 SR). As the Transparency portal is a Commission page of the Europa website, it is however not the adequate tool to make a link with the annual publications of other EU institutions, bodies, offices, and agencies.

(xix) as a general post-employment policy measure, compile and publish aggregate and anonymised yet informative data on all staff departures during a given year.

Commission reply

The Commission takes note of the suggestion of the EO. It would like to remind the EO that the Commission publishes on annual basis the information required by the SR regarding the implementation of the third paragraph of Article 16 SR.

As regards the suggestion to publish "aggregate and anonymised yet informative data on all staff departures", the Commission would like to underline the following: in line with data protection rules, the Commission does not hold a ready-made register of individual decisions under Article 16 SR nor is storing information on the type of activity carried out by the former staff members. The Commission only keeps records of the number of requests or notifications made under the referred Articles of the Staff Regulations.

In order to comply with Article 26 SR all relevant individual decisions are included only in the personal files of the persons concerned. The General Court has indeed ruled that a personal file is by nature unique, which precludes the existence in any form whatsoever of any other set of documents of the same sort (Judgment of 11.10.1995, Baltsavias/Commission, joined cases T-39/93 and T-553/93, paragraph 38). Consequently, the individual decisions concerned are not filed in parallel by the Commission.

In light of the above comments and considerations, the Commission regrets not being in a position to give a positive reply to all the suggestions of the EO.