

Reply by the European Commission to a Strategic Initiative from the European Ombudsman on how the European Commission handles revolving door moves by senior staff members from its Directorate-General for Competition to corporate law firms

- ref. SI/5/2024/KR

I. BACKGROUND / SUMMARY OF THE FACTS / HISTORY

On 17 May 2024, the European Ombudsman opened a strategic initiative on how the European Commission handles revolving door moves by senior staff members from its Directorate-General for Competition to corporate law firms.

II. EUROPEAN OMBUDSMAN'S INITIATIVE

The strategic initiative follows recent reports that a former director in the Directorate-General for Competition (DG COMP) will join the Brussels office of a US corporate law firm.

As part of this initiative, the European Ombudsman asked the European Commission to:

- i. publish without delay the restrictions it has placed on the move of this former senior staff member,
- ii. explain how, in this specific case, it had taken into account the outcome of her previous inquiries in this area.

To date, the Ombudsman has carried out three inquiries on moves of former Commission officials to the private sector (i.e., in [2012](#), [2017](#) and [2021](#)). The Ombudsman did not find any instance of maladministration in any of those inquiries and closed all of them without formal recommendations. This fact confirms that the Commission's approach has been robust, in line with the rules and does not require systemic changes. Moreover, when closing her 2021 inquiry into that matter, the Ombudsman found genuine improvements in the Commission's approach to the matter.

Nevertheless, in her latest decision on the 2021 inquiry (OI/1/2021/KR), the Ombudsman stated that the Commission should apply a more robust approach when managing 'revolving doors' moves of its most senior staff members. The Ombudsman suggested that the Commission should forbid (at least temporarily) former staff members from taking up activities posing risks which cannot be adequately mitigated by restrictions, or when restrictions cannot be effectively monitored or enforced. In addition, the Ombudsman suggested obtaining a commitment from the new employer that the restrictions imposed by the Commission are made public, or requiring the former staff member to submit evidence that they shared the restrictions imposed with their employer. Finally, the Ombudsman suggested to make public the information on post-service occupational activities of former senior staff members shortly after the adoption of the relevant appointing authority's decision.

III. COMMISSION REPLY

The European Commission has taken note of the European Ombudsman's request and reiterates its full commitment to driving an institutional culture based on the highest ethical standards and maintaining public trust in the integrity of its staff and its decision-making processes.

Indeed, in order to protect its legitimate interests, avoid any undue influence on its decision-making, and maintain trust in the European Union, the Commission has been consistently applying the existing legal provisions on post-service employment in an effective, vigorous and proportionate manner, taking account of the merits of each case, whilst maintaining a consistent policy line.

As regards the European Ombudsman's requests made as part of her strategic initiative SI/5/2024/KR, the Commission wishes to make the following comments:

- 1. Request to publish without delay the restrictions it placed on the move of a former senior staff member from the Directorate-General for Competition to a US corporate law firm.**

Commission's reply

As stated to the Ombudsman in the context of the previous inquiries on the same matter, the Commission is bound by the will of the co-legislators and the provisions of Article 16(4) of the Staff Regulations as regards information on post-service occupational activities of former senior staff members. These rules provide for the publication of an annual report on former senior officials' cases involving lobbying or advocacy vis-à-vis their former institution on matters for which they were responsible during their last 3 years in the service.

The third paragraph of Article 16 of the Staff Regulations states that the Appointing Authority must, in principle, prohibit former senior officials, during the 12 months after leaving the service, from engaging in lobbying or advocacy towards staff of their former institution for their business, clients or employers, on matters for which they were responsible during their last 3 years of service.

While complying with data protection rules¹, the fourth paragraph of Article 16 of the Staff Regulations requires each institution to publish information annually on the implementation of the third paragraph, including a list of the cases assessed.

Currently, no legal basis exists for disclosing restrictions imposed on senior officials' post-service occupational activities outside the annual report based on Article 16(4) of the Staff Regulations. Since 2015 (the first year of publication), that annual report has been the only means for the Commission to disclose, on a legal basis as required by the data protection rules (i.e., Article 16(4) of the Staff Regulations), restrictions and conditions imposed in a

¹ 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, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.

previous year on senior officials' post-service employment entailing lobbying or advocacy activities.

Therefore, the restrictions imposed on the former DG COMP senior official's post-service employment, which are subject of the current strategic initiative, will be disclosed as part of the next annual report based on Article 16(4) of the Staff Regulations, which will be published in 2025.

Building on its practice established in 2022, the Commission publishes the annual report² in the first part of the year to enable a more effective public scrutiny of the decisions taken in application of Article 16(3) of Staff Regulations, including a list of the cases assessed. The report is also available on the Transparency Portal³ to give to it additional visibility.

Nevertheless, for the sake of transparency, the Commission is willing to share with the European Ombudsman, in a confidential manner, the Appointing Authority's decision on the former DG COMP senior official's post-service employment, which is the subject of the current strategic initiative. This decision is provided in the confidential annex to the present reply.

2. Request to explain how, in this specific case, the Commission had taken into account the outcome of the Ombudsman's previous inquiries in this area.

Commission's reply

The Commission wishes to emphasise that in the present case, as in all other decisions concerning post-service occupational activity, it implemented the applicable provisions of the Staff Regulations in a sound manner with a view to preventing any risk of a real, potential or perceived conflict with the Commission's legitimate interests.

In its previous answers to the Ombudsman's inquiries into the matter, the Commission had exhaustively described the way in which it applies the relevant provisions of the Staff Regulations. Where relevant, the Commission implemented the Ombudsman's suggestions for improvement. Where those suggestions were not feasible for legal reasons, the Commission committed to alternative solutions with a view to protecting its reputation and maintaining citizens' trust in the European Union. Moreover, the Commission's rigorous approach to the "revolving door" phenomenon, welcomed by the Ombudsman in her latest inquiry (OI/1/2021/KR), results from the Commission's own constant risk assessment. It led, where justified, to a stricter interpretation of rules and more severe restrictions with regard to staff members' envisaged activities after the service. Against this background, the Commission wishes to emphasise that the assessment of the former DG COMP senior official's post-service employment and the appointing Authority's decision thereon are fully in line with the approach described above and already communicated to the European Ombudsman on several occasions.

² https://commission.europa.eu/system/files/2023-06/2023_Annual-report-activities-senior-officials-after-service_EN.PDF

³ https://commission.europa.eu/publications/occupational-activities-former-senior-officials-annual-report_en.

More specifically, the declaration of intention to engage in a post-service activity submitted by the senior official concerned by the present strategic initiative was assessed thoroughly, in a proportionate way, and on its own merits.

In particular, in accordance with the Commission decision on outside activities and assignments and on occupational activities after leaving the service C(2018)4048 final of 29.6.2018, the Commission took into consideration the following elements:

- i. the relation between the envisaged occupational activity and the work carried out by the former senior official during the last three years of service;
- ii. whether the occupational activity would involve working on specific files and cases for which the former staff member was responsible during the last three years of service;
- iii. the nature of the envisaged activity and tasks as well as the quality of the future employer;
- iv. whether the envisaged activity would involve representing outside interests vis-à-vis staff of the Institution (in that respect, the Commission considered the fact that the future employer is not registered in the Transparency Register because it does not have an office in Brussels yet);
- v. reputational impact on the Institution and whether the activity could constitute a real or potential conflict of interest or could be reasonably perceived as such.

As a result of this assessment, the Commission authorised the present activity subject to a set of restrictions, which the Commission considers to be reliable, appropriate and effective to mitigate identified risks of real, potential or perceived conflicts between the senior official's interests and those of the Institution, while remaining proportionate.

The Commission wishes to reassert that it must always define an appropriate balance between respecting former officials' fundamental right to engage in work and to pursue a freely chosen occupation and protecting the Institution's legitimate interests through temporary prohibitions and restrictions. Post-service occupational activities are only prohibited if an identified risk cannot be appropriately mitigated by temporary restrictions. In addition, in line with the relevant provisions of the Staff Regulations, the Commission prohibits activities where former senior officials would engage in lobbying or advocacy vis-à-vis staff of their former Institution on matters for which they were responsible during the last 3 years of service. In the present case, because none of the above two conditions were met, the Commission considers that its decision to authorise the declared post-service employment subject to severe restrictions and conditions is well-reasoned and proportionate.

The restrictions imposed in this case are also consistent with previous similar cases of senior officials taking up post-service occupational activities.

Indeed, in addition to the statutory 1-year ban on lobbying and advocacy, which can be extended to 2 years, the Commission can impose very strict limitations on activities that could lead to risks of conflicts of interests, both potential and actual, and thus harm the reputation of the Institution. In particular, the Commission may, during the 2-year period after the staff member has left the service:

- i. prohibit the former staff member from dealing with files, cases or matters related to the work carried out by them during their last three years of service, including related or subsequent cases and/or court proceedings.
- ii. impose a ‘cooling off period’ excluding the former staff member from, for example, professional contacts with former colleagues or relevant Commission services/departments or from representing opposing parties.
- iii. impose restrictions on the entities they can accept as clients, where relevant.

Moreover, former staff members involved in legal cases (for instance in DG COMP) are prevented from working directly or indirectly on any case, in which they were involved during their entire service at the Commission. This also includes the prohibition to deal with other cases directly related to those mentioned above, including appeals brought before the European Courts against a decision of the European Commission. This prohibition is unlimited in time.

Furthermore, former staff members remain bound by other obligations after leaving the service, which are also unlimited in time. These include, in particular:

- i. The prohibition to disclose any unauthorised information received in the line of duty, unless that information has already been made public or is accessible to the public (Article 17 of the Staff Regulations);
- ii. The duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits (Article 16(1) of the Staff Regulations).

This above-mentioned duty also includes refraining from advising or working on behalf of a new employer/new clients on particular files or matters (for example: contracts, policy files, grants, ongoing legislative procedures, and in particular competition cases, claims, investigations, etc) in which a former staff member participated personally and substantially and which would entail relying upon information received in the line of duty which has not been made public.

In addition, the Commission requests systematically from former officials to share the restrictions imposed on their new post-service activity with their new employer and clients.

Moreover, the Commission reminds former staff members about the continuing duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. This duty covers potential public communication or announcement on the new post-service occupational activity.

To enhance transparency, in particular in cases where its reputation is more at risk, the Commission is, as of end of June 2024, also imposing an obligation on former officials to specify in any public communication or announcement about their future position that restrictions were imposed by the Institution. However, the extent to which former officials would want to disclose details of those restrictions would be a matter for them to decide.

As regards the monitoring of compliance with the restrictions, the Commission wishes to reiterate that trust is the underlying principle in the relations between the Commission and former staff members leaving the service. The Commission recognises the prominent role of external scrutiny and oversight from third parties and duly follows up on any complaint or

notification received in relation to its decisions concerning former officials' post-service employment.

Like all other decisions on post-service occupational activities, the decision regarding the former senior official concerned by the present strategic initiative was shared with the senior official's former service. This aims to ensure a correct implementation and enforcement of the mitigating measures imposed and represents an effective means of control.

Finally, if the Commission becomes aware of any potential breaches of these restrictions, the Investigation and Disciplinary Office of the Commission may investigate the matter and disciplinary sanctions, as provided in Article 9 of Annex IX of the Staff Regulations, may be imposed, where appropriate, by the Commission on the former senior official. Possible sanctions range from a written warning to a reduction pro tempore of a pension.

IV. CONCLUSION

The former DG COMP senior official's post-service employment was assessed thoroughly, in a proportionate way and on its own merits. Consequently, the Commission authorised the intended post-service activity subject to several strict conditions aiming to ensure that identified risks of conflict with the Institution's legitimate interests can be effectively mitigated. This approach is fully in line with the Commission's constant robust and legally sound approach to addressing revolving door situations. The European Ombudsman has not found any single instance of maladministration, as part of her latest three inquiries, in the way that the Commission has been handling such cases since more than 12 years.

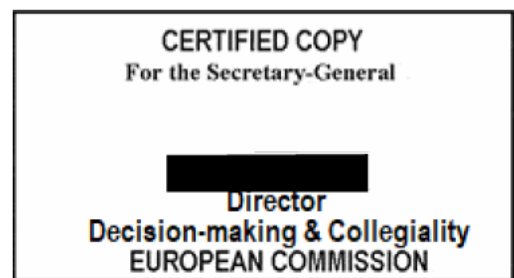
Currently, no legal basis exists for disclosing restrictions imposed on senior officials' post-service occupational activities outside the annual report based on Article 16(4) of the Staff Regulations. Consequently, the restrictions imposed on the former DG COMP senior official's post-service employment will be disclosed as part of the annual report, which will be published in 2025.

The Commission has decided to share with the European Ombudsman, in a confidential manner, the Appointing Authority's decision on the former DG COMP senior official's post-service employment, which is the subject of the current strategic initiative. This decision is provided in the confidential annex to the present reply.

To enhance transparency and protect its reputation even more vigorously, especially in cases where there are particular risks, the Commission is, as of end of June 2024, also imposing an obligation on former officials to specify in any public communication or announcement about their future position that restrictions were imposed by the Institution. However, the extent to which former officials would want to disclose details of those restrictions would be a matter for them to decide.

For the Commission

Johannes HAHN
Member of the Commission



Enclosure:

- The Appointing Authority's decision on the former DG COMP senior official's post-service employment (confidential)