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## REPORT

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From:	General Secretariat of the Council
To:	Delegations
Subject:	Information regarding the occupational activities of former senior officials of the General Secretariat of the Council after leaving the service (third and fourth paragraphs of Article 16 of the Staff Regulations of Officials of the European Union) – 2016

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Delegations will find attached the report, provided for by the third and fourth paragraphs of Article 16 of the Staff Regulations of Officials of the European Union<sup>1</sup>, for 2016.

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<sup>1</sup> Staff Regulations of Officials of the European Union, laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 (OJ L 56, 4.3.1968, p. 1).

**INFORMATION REGARDING THE OCCUPATIONAL ACTIVITIES OF FORMER  
SENIOR OFFICIALS OF THE GENERAL SECRETARIAT OF THE COUNCIL AFTER  
LEAVING THE SERVICE (THIRD AND FOURTH PARAGRAPHS OF ARTICLE 16 OF  
THE STAFF REGULATIONS OF OFFICIALS OF THE EUROPEAN UNION) – 2016**

**1. Introduction: the regulatory framework**

Article 16 of the Staff Regulations<sup>2</sup> provides that *'[a]n official shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits'* (first paragraph).

Thus, *'[o]fficials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof'*, in order to allow the institution to take an appropriate decision on the matter and, if need be, forbid an official from undertaking an activity or give its approval subject to any conditions it thinks fit (second paragraph). *'The appointing authority shall, after consulting the Joint Committee, notify its decision within 30 working days of being so informed. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance'* (ibid.).

*'In the case of former senior officials'* (third paragraph of Article 16 of the Staff Regulations), *'the appointing authority shall, in principle, prohibit them, 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'*.

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<sup>2</sup> Last amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 (OJ L 287, 29.10.2013, p. 15).

Finally, the fourth paragraph of Article 16 of the Staff Regulations provides that *'[i]n compliance with Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>3</sup>, each institution shall publish annually information on the implementation of the third paragraph, including a list of the cases assessed'*.

## **2. Method and criteria for application of the third paragraph of Article 16 of the Staff Regulations**

Article 23(2) of Decision No 61/2015 of the Secretary-General of the Council on outside activities and assignments provides that *'[a] staff member leaving the service of the GSC shall sign a declaration that he/she is aware of his/her continuing obligations to the institution, in particular those under articles 16, 17 and 19 SR'* (emphasis added). Article 24(1) of the Decision provides that *'[f]or a period of two years after leaving the GSC, a former staff member wishing to engage in an occupational activity, paid or unpaid, shall inform the Appointing Authority in advance'*.

In the light of the above, when examining declarations submitted under the second paragraph of Article 16 of the Staff Regulations by officials intending to engage in an occupational activity within two years of leaving the service, the Appointing Authority and the Joint Committee – which must be asked for its opinion – check whether these declarations include items that are likely also to fall within the scope (personal, temporal and material) of the third paragraph of Article 16. This improves procedural efficiency and allows the Appointing Authority to take a consistent approach to applying the provisions of Article 16 of the Staff Regulations, with a view to ensuring that, after leaving the service, officials fulfil their duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits (in accordance with the first paragraph of Article 16).

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<sup>3</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

The three applicability criteria (personal, temporal and material) are cumulative. Therefore, declarations are examined in the order set out below, so that if the first criterion (*ratione personae*) is not met, the second (*ratione temporis*) is not considered; if the first is met but the second is not, the third (*ratione materiae*) is not taken into account.

#### Personal scope (*ratione personae*)

The prohibition set out in the third paragraph of Article 16 of the Staff Regulations concerns '*former senior officials as defined in implementing measures*'.

Article 24(4) of Decision No 61/2015 of the Secretary-General of the Council on outside activities and assignments specifies that the prohibition in question applies to '*[f]ormer Director-Generals, Deputy Director-Generals and Directors*' of the General Secretariat of the Council (serving the Council of the European Union and the European Council).

If the Joint Committee finds that an official who intends to engage in an occupational activity and who has declared it under the second paragraph falls into one of these categories, it also considers his or her declaration in the light of the third paragraph, as set out below.

#### Temporal scope (*ratione temporis*)

While the second paragraph of Article 16 of the Staff Regulations concerns engagement in an occupational activity within '*two years of leaving the service*', the third paragraph only applies to the '*12 months after leaving the service*'.

The Joint Committee, consulted under the second paragraph, is therefore able to assess whether the declared activity falls within the temporal scope of the third paragraph. If it finds that this is the case, it looks into the nature of the activity, as set out below.

### Material scope (*ratione materiae*)

The third paragraph of Article 16 of the Staff Regulations covers activities that constitute lobbying or advocacy vis-à-vis staff of the General Secretariat of the Council, by former senior officials, for their business, clients or employers on matters for which they were responsible during the last three years in the service.

According to the provision in question, such activities are '*in principle*' prohibited by the Appointing Authority during the 12 months after the official concerned left the service. However, Article 24(4) of Decision No 61/2015 of the Secretary-General of the Council on outside activities and assignments does not include the expression '*in principle*', resulting in strict application of the prohibition.

Furthermore, the assessment conducted within the GSC is not limited to envisaged activities of which the sole or primary object, from the outset, is lobbying or advocacy. Even if an activity does not include lobbying or advocacy at the time of the notification, the GSC checks whether, owing to the nature of the activity, it might entail or involve, in theory or in practice, lobbying or advocacy as referred to in the third paragraph of Article 16 of the Staff Regulations.

### **3. Specific cases in 2016**

Three former senior officials (Mr Paul Culley, Mr Rafael Fernández-Pita y González and Mr Ricardo Gosalbo Bono) declared their intention to engage in an occupational activity in 2016 (N.B.: same number of officials as in 2015; no cases in 2014); one of them (Mr Paul Culley) submitted four declarations, thereby bringing the total number of declarations to six. All six of these declarations meet the applicability criterion of *ratione personae* (see section 3 above).

The six declarations also fall, *ratione temporis*, within the scope of the third paragraph of Article 16 of the Staff Regulations, given that the people concerned left the service less than 12 months before engaging in the declared activities. They were therefore considered in terms of the next criterion.

In accordance with the prudential approach established at the GSC (see section 2 above), two of the six declarations were the subject of an in-depth analysis as they would potentially be liable to fall, *ratione materiae*, within the scope of the third paragraph of Article 16 of the Staff Regulations. The other four activities were excluded from the material scope of that provision from the outset since three of them were of a scientific and/or academic nature, while the fourth related to the participation of the person concerned in a forum for debate, two half days per annum, albeit not as one of the panellists.

The first of the two declarations which were the subject of an in-depth analysis, submitted by Mr Ricardo Gosalbo Bono, concerned his admission to the Bar in Valencia (Spain) and his possible engagement in such an activity. The Appointing Authority authorised such an activity '*subject to the exclusion, however, in the two years following [Mr Gosalbo Bono's] retirement, of advocacy in cases before the General Court and the Court of Justice of the European Union*' (thus adhering to the opinion of the Joint Committee).

The second declaration to be analysed in detail, submitted by Mr Paul Culley, concerned the provision of advice to the State Secretary for European Affairs of a Member State required to assume the rotating presidency of the Council of the European Union for the first time within the not too distant future, now approaching all the more rapidly as a result of the United Kingdom's decision to relinquish the presidency in the second half of 2017. The activity in question was therefore authorised since it in no way constituted lobbying or advocacy, but rather capacity building; it was intended to facilitate the exercise of the future presidency in the mutual interest of both the Member State and the Council.

This information is published in accordance with the fourth paragraph of Article 16 of the Staff Regulations.