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REPORT

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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) – 2018

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 Union¹, for 2018.

¹ 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) and 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).

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) – 2018

1. Introduction: the regulatory framework

Article 16 of the Staff Regulations 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'*.

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 Council², 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

The General Secretariat of the Council (GSC) has put in place measures implementing Article 16 of the Staff Regulations. These are contained in two decisions of the Secretary-General of the Council:

- (i) Decision No 61/2015 on outside activities and assignments. Title 9 ("Staff members having left the service of the GSC", Articles 23 to 25) thereof sets out the key provisions in this field. Article 23(2) 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) 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*';

² This is now construed as a reference to 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 (in accordance with Article 99 of this new Regulation).

- (ii) Decision No 23/2018 on the implementation of the second paragraph of Article 16 of the Staff Regulations of Officials of the European Union and Articles 11 and 81 of the Conditions of Employment of Other Servants of the European Union. While this Decision streamlines the application of said statutory provisions (namely, by a simplified procedure for cases which do not risk creating a conflict of interest), it also makes clear that declarations of occupational activities to be undertaken by members of senior management within twelve months of leaving the service will be subject to close scrutiny. In these latter cases, both the Joint Committee's opinion and the Appointing Authority's examination shall take due account of the provisions of the third paragraph of Article 16 of the Staff Regulations (i.e. the one-year lobbying and advocacy ban).

These measures are consistent with conclusion 1 of the "Report of the European Ombudsman on the publication of information on former senior staff so as to enforce the one-year lobbying and advocacy ban" (SI/2/2017/NF)³, of 28 February 2019.

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 gives 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, ensures that all cases are assessed 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).

³ <https://www.ombudsman.europa.eu/en/correspondence/en/110521>.

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). The Heads of the Cabinets of the President of the European Council and of the Secretary-General of the Council are also concerned by the prohibition as the types of post they currently occupy are those of Director-General and Director, respectively.

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 GSC staff, 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. The GSC applies this provision rigorously, as advocated in the aforementioned European Ombudsman's report of 28 February 2019⁴.

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.

Finally, the GSC examines declared activities against a broad understanding of the notion "lobbying and advocacy", thereby encompassing the direct or indirect promotion of interests – be these of a corporate or a civil society nature – in relation to matters for which former senior officials were responsible during the last three years of service.

3. Specific cases in 2018

No senior official declared an intention to engage in an occupational activity in 2018.

⁴ See footnote 3.