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COMMUNICATION TO THE COMMISSION

**ON THE PUBLICATION OF INFORMATION CONCERNING OCCUPATIONAL
ACTIVITIES OF SENIOR OFFICIALS AFTER LEAVING THE SERVICE
(ARTICLE 16, FOURTH PARAGRAPH OF THE STAFF REGULATIONS)**

Annual Report 2022

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ON THE PUBLICATION OF INFORMATION CONCERNING OCCUPATIONAL ACTIVITIES OF SENIOR OFFICIALS AFTER LEAVING THE SERVICE (ARTICLE 16, FOURTH PARAGRAPH OF THE STAFF REGULATIONS)

2022 Annual Report

In line with Article 16 of the Staff Regulations¹, after leaving the service, officials continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits. Former officials who intend to engage in an occupational activity within 2 years of leaving the service shall inform their former institution of this, in order to enable it to take an appropriate decision in this respect and, when necessary, to forbid an activity or give approval subject to appropriate restrictions.

The third paragraph of Article 16 of the Staff Regulations stipulates that for former senior officials 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 their last 3 years in the service.

The fourth paragraph of Article 16 of the Staff Regulations requires each institution, in compliance with the relevant data protection rules², to publish information annually on the implementation of the third paragraph, including a list of the cases assessed.

The Commission details below the criteria it has used to ensure the implementation of its obligation, and sets out its analysis. The Commission has provided summary information in relation to the decisions taken under this provision in an annex to this document.

This document is being published in order to meet the Commission's obligation under the fourth paragraph of Article 16 of the Staff Regulations in combination with the relevant data protection rules³.

¹ As 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).

² 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.

³ 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.

The criteria applied in order to implement the third paragraph of Article 16 of the Staff Regulations

Definition of senior officials

In line with the third paragraph of Article 16 of the Staff Regulations the following categories of staff are concerned:

- Directors-General or Deputy Directors-General (including officials that were called upon to occupy temporarily such posts in accordance with Article 7(2) of the Staff Regulations) and ‘Hors Classe’ Advisors who exercised these functions at any time during the last 3 years before they left the service;
- Directors (including officials that were called upon to occupy temporarily such a post in accordance with Article 7(2) of the Staff Regulations) and Principal Advisers who exercised these functions at any time during the last 3 years before they left the service;
- Heads of Cabinet who exercised this function at any time during the last 3 years before they left the service.

The decision-making procedure in relation to the third paragraph of Article 16 of the Staff Regulations

The Directorate-General for Human Resources and Security receives the declaration and collects the views of the service(s) in which the former official has worked during the last 3 years of service, the respective cabinet(s), the Secretariat-General, the Legal Service and the Joint Committee. The Appointing Authority takes its final decision based on these different views.

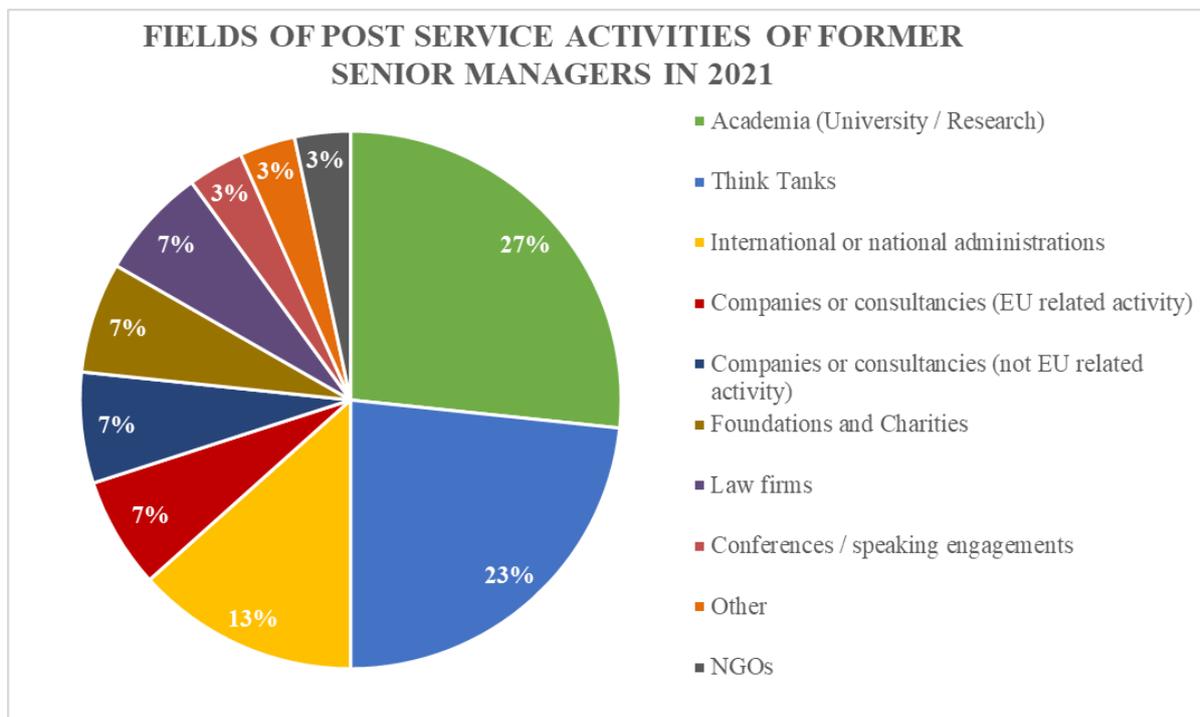
Occupational activities declared by former senior managers in 2021

In 2021, the Commission adopted 25 decisions under Article 16 of the Staff Regulations for declarations lodged by 18 former senior managers. These declarations related to 30 occupational activities. Some declarations included more than one activity, and in these cases the related Appointing Authority decision covered all the requested activities.

For the purpose of reporting and statistical analysis, the fields covered by the declared post-service activities have been grouped into 10 different categories.

Of the 30 activities that were declared, 15 fell outside the temporal scope of the third paragraph of Article 16 of the Staff Regulations, as they took place more than 12 months after the former senior managers who declared them left the service. Of the 15 activities that fell into the relevant timeframe, 6 activities were considered to potentially give rise to or entail lobbying or advocacy vis-à-vis staff of the former senior managers’ former institution on matters for which they were responsible during their last 3 years in the service.

The pie chart below summarises the occupational activities fields for former senior managers who received a decision by the Appointing Authority in 2021.



Occupational activities relevant to this Report

The third paragraph of Article 16 of the Staff Regulations covers activities which constitute lobbying or advocacy vis-à-vis staff of the former senior manager's former institution for their business, client or employers on matters for which they were responsible during their last 3 years in the service. Such activities shall in principle be prohibited by the Appointing Authority during the 12 months after leaving the service.

The Commission did not limit its analysis of the 30 declared activities that fell within the temporal scope of the third paragraph of Article 16 of the Staff Regulations to those whose only purpose or core purpose would have been lobbying or advocacy activities. Some declarations related to activities which, even if lobbying or advocacy was excluded at the point in time of the declaration, could, because of their nature, potentially give rise to, or entail, lobbying or advocacy as stated in the third paragraph of Article 16 of the Staff Regulations. In these cases, the Commission decided to widen its analysis to take account of this potential risk and assess the declared activity within the framework of the third paragraph of Article 16 of the Staff Regulations.

With regard to activities outside the temporal scope of the third paragraph of Article 16 of the Staff Regulations and activities that did not (even potentially) give rise to or entail lobbying or advocacy, the Appointing Authority can and did, where appropriate, impose other restrictions, such as restrictions on professional contacts with former colleagues, obligations not to deal with certain files or requirements in relation to the duties of discretion and confidentiality. These activities do not, however, fall within the scope of this report, which is exclusively based on the reporting obligation set out in the fourth paragraph of Article 16 of the Staff Regulations.

Information provided in the summary of relevant decisions taken by the Appointing Authority in 2021 only covers activities that were declared and actually undertaken. In line

with the legal provisions in force, it does not cover declarations received for activities that could not, by their very nature, give rise to or entail lobbying or advocacy.

This publication is the eighth annual report released by the Commission, in line with its obligations under the fourth paragraph of Article 16 of the Staff Regulations, setting out how it has implemented the third paragraph of Article 16.

Number of activities

As one declaration may cover several activities the information in this report is presented by grouping activities declared by the same former staff member, to provide an exhaustive overview.

Analysis

The information in this report covers the cases in which the Appointing Authority has taken a decision under the third paragraph of Article 16 of the Staff Regulations, in the year 2021.

The Appointing Authority decided to forbid one activity which would have taken place within the first year of leaving the service, pursuant to the third paragraph of Article 16 of the Staff Regulations.

The Commission also received declarations concerning 5 envisaged activities (by 4 former senior managers) which, even if lobbying or advocacy was excluded at the point in time of the declaration, could, because of their nature, potentially give rise to or entail, lobbying or advocacy as stated in the third paragraph of Article 16 of the Staff Regulations, in particular for situations in the future. The Appointing Authority has, therefore, deemed it advisable, as explained above, to assess these particular activities in the framework set by the third paragraph of Article 16 of the Staff Regulations. This has led the Appointing Authority to grant a conditional authorisation by imposing a prohibition of lobbying or advocacy. In other cases falling within the temporal scope of the third paragraph of Article 16 of the Staff Regulations, the Appointing Authority reminded the former senior managers to bear in mind the rules under the third paragraph of Article 16 of the Staff Regulations in the future.

The 5 decisions taken in 2021, in line with the third paragraph of Article 16 of the Staff Regulations, are summarised below.

Summary of relevant Decisions by the Appointing Authority in 2021:

End of Service: 30 September 2020

CONCERNS

Mr BORCHARDT Klaus-Dieter

Former Deputy Director-General at DG ENER

Former Director DG ENER

NEW ACTIVITY

Senior visiting research fellow at the Oxford Institute for Energy Studies.

DECISION

Mr Borchardt sought authorisation to perform a non-remunerated (unless there are royalties for a publication) occupational activity for an indefinite period, as a senior visiting research fellow at the Oxford Institute for Energy Studies, in Oxford.

The Appointing Authority gave its approval to Mr Borchardt to carry out this activity subject to the following conditions :

- As a former senior manager, according to the third paragraph of Article 16 of the Staff Regulations, during 12 months after leaving the service, Mr Borchardt was not allowed to engage in lobbying or advocacy vis-à-vis staff of the Commission on behalf of the Oxford Institute for Energy Studies or its clients on matters for which he had been responsible during the last 3 years of service;
- During 2 years after leaving the service, Mr Borchardt was not allowed to engage in professional contacts, aiming notably at lobbying or advocacy, with staff members of DG ENER on behalf of the Oxford Institute for Energy Studies;
- Mr Borchardt was required to make it clear to his interlocutors that this activity would be carried out in his personal capacity, not representing in any way the position or interests of the Commission. In this context, he was required to refrain from associating his former position at the European Commission with his new role and tasks within the Oxford Institute for Energy Studies;
- Mr Borchardt was furthermore required to refrain from any unauthorised disclosure of 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). In this context, Mr Borchardt was required to refrain from exploiting insights of confidential nature in policy or strategy that he may have acquired in the line of duty that have not yet been made public or are not commonly available in the public domain;
- In accordance with Article 339 of the Treaty on the Functioning of the European Union, Mr Borchardt was required, even after his duties had ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components;

- It was underlined to Mr Borchardt that, under the first paragraph of Article 16 of the Staff Regulations, he continued to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments and benefits from any new employer or its clients. In this context, Mr Borchardt was required to refrain from advising or working on behalf of his new employer or its clients on particular files or matters (for example: contracts, grants, cases, claims, investigations, ongoing legislative procedures), in which he had participated personally and substantially and that would entail relying upon information received in the line of duty which has not been made public.

Mr Borchardt was also reminded of all other applicable Staff Regulations' provisions.

End of Service: 30 April 2021

CONCERNS

Mr ESTEVA MOSSO Carles

Former Deputy Director-General DG COMP

NEW ACTIVITY

Partner for the law firm Latham & Watkins LLP

DECISION

Mr Esteva Mosso sought authorisation to work as a partner lawyer for Latham & Watkins, at their Brussels office.

The Appointing Authority gave its approval to Mr Esteva Mosso to carry out this activity subject to the following conditions:

- As a former senior manager, according to the third paragraph of Article 16 of the Staff Regulations, during 12 months after leaving the service, Mr Esteva Mosso was not allowed to engage, on behalf of Latham & Watkins or its clients, in lobbying or advocacy vis-à-vis staff of the Commission on matters for which he had been responsible during the last 3 years of service;
- During 2 years after leaving the service, Mr Esteva Mosso was required not to enter, on behalf of Latham & Watkins or its clients, into any professional oral or written contacts with staff of DG COMP and of other Commission services, which were or are involved in competition cases or policy files;
- Mr Esteva Mosso was not allowed to work directly or indirectly on any cases and policy files that had fallen under his responsibility while he was working in DG COMP, or on any cases directly related to them, including appeals brought before the European Courts against a decision of the European Commission. This included the prohibition to deal with any competition cases, including merger and State aid cases, handled by DG COMP and falling under his responsibility during the entire period during which he was working in DG COMP;
- During 2 years after leaving the service, Mr Esteva Mosso was not allowed to accept as clients any of the companies which, as major stakeholders in a given market, had actively participated in any high profile State aid or merger cases, which had been decided or on which he had taken a position when he was responsible for those instruments in his last 3 years of service;
- Mr Esteva Mosso was furthermore required to refrain from any unauthorised disclosure of 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). In this context, Mr Esteva Mosso was required to refrain from

exploiting insights of confidential nature in policy or strategy that he may have acquired in the line of duty that have not yet been made public or are not commonly available in the public domain.

- It was underlined to Mr Esteva Mosso that, under the first paragraph of Article 16 of the Staff Regulations, he continued to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments and benefits from any new employer or its clients. In this context, Mr Esteva Mosso was required to refrain from advising or working on behalf of his new employer or its clients on particular files or matters (for example: contracts, grants, cases, claims, investigations, ongoing legislative procedures), in which he had participated personally and substantially and that would entail relying upon information received in the line of duty that has not been made public.

Mr Esteva Mosso was finally reminded of all other applicable Staff Regulations' provisions.

End of Service: 30 September 2020

CONCERNS

Mr MADERO VILLAREJO Cecilio

Former Deputy Director-General DG COMP

NEW ACTIVITY

Of Counsel for the law firm Clifford Chance LLP

DECISION

Mr Madero Villarejo sought authorisation to work as an Of Counsel on a part-time basis (maximum 3 working days per week) for the law firm Clifford Chance LLP.

The Appointing Authority gave its approval to Mr Madero Villarejo to carry out this activity subject to the following conditions:

- As a former senior manager, according to the third paragraph of Article 16 of the Staff Regulations, during 12 months after leaving the service, Mr Madero Villarejo was not allowed to engage, on behalf of Clifford Chance or its clients, in lobbying or advocacy vis-à-vis staff of the Commission on matters for which he had been responsible during the last 3 years of service;
- During 2 years after leaving the service, Mr Madero Villarejo was required not to enter, on behalf of Clifford Chance or its clients, into any professional oral or written contacts with staff of DG COMP and of other Commission services, which were or are involved in competition cases or policy files;
- Mr Madero Villarejo was not allowed to work directly or indirectly on any cases and policy files that had fallen under his responsibility while he was working in DG COMP, or on any cases directly related to them, including appeals brought before the European Courts against a decision of the European Commission. This included the prohibition to deal with any competition cases, including merger and State aid cases, handled by DG COMP and falling under his responsibility during the entire period during which he was working in DG COMP;
- During 2 years after leaving the service, Mr Madero Villarejo was not allowed to accept as clients any of the companies which, as major stakeholders in a given market, had actively participated in any high profile State aid or merger cases, which had been decided or on which he had taken a position when he was responsible for those instruments in his last 3 years of service;
- Mr Madero Villarejo was furthermore required to refrain from any unauthorised disclosure of 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). In this context, Mr Madero Villarejo was required to refrain from exploiting insights of confidential nature in policy or strategy that he may have acquired in the line of duty that have not yet been made public or are not commonly available in the public domain.

- It was underlined to Mr Madero Villarejo that, under the first paragraph of Article 16 of the Staff Regulations, he continued to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments and benefits from any new employer or its clients. In this context, Mr Madero Villarejo was required to refrain from advising or working on behalf of his new employer or its clients on particular files or matters (for example: contracts, grants, cases, claims, investigations, ongoing legislative procedures), in which he had participated personally and substantially and that would entail relying upon information received in the line of duty that have not been made public.

Mr Madero Villarejo was finally reminded of all other applicable Staff Regulations' provisions.

End of Service: 31 January 2021

CONCERNS

Mr RUNGE-METZGER Artur

Former Director DG CLIMA

NEW ACTIVITIES

Member of the Board of Germanwatch e.V.

Temporary contractor at the School of Transnational Governance of the European University Institute

DECISIONS

Mr Runge-Metzger sought authorisation to perform an unpaid occupational activity as a Member of the Board of Germanwatch e.V. The purpose of the activity was to oversee the activities of the organisation and to supervise the work of the executive board for 1 or 2 days per month.

Mr Runge-Metzger also sought authorisation to work as a temporary contractor at the School of Transnational Governance of the European University Institute in Florence, Italy. The role consisted in assisting in the preparation for a high-level dialogue on climate policy, carrying out background research and preparing a background paper, engaging with stakeholders and participating in the selection of speakers/participants, participating in the high-level policy dialogue, and preparing a policy brief in light of the high-level policy dialogue.

The Appointing Authority gave its approvals to Mr Runge-Metzger subject to the following conditions:

- As a former senior manager, according to the third paragraph of Article 16 of the Staff Regulations, during 12 months after leaving the service, Mr Runge-Metzger was not allowed to engage, on behalf of Germanwatch e.V and on behalf of the European University Institute, in lobbying or advocacy vis-à-vis staff of the Commission on matters for which he had been responsible during the last 3 years in the service;
- Mr Runge-Metzger was also required to make it clear to his interlocutors that those activities would be carried out in his personal capacity, not representing in any way the position or interests of the Commission;
- Mr Runge-Metzger was furthermore required to refrain from any unauthorised disclosure of 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). In this context, Mr Runge-Metzger was required to refrain from exploiting insights of confidential nature in policy or strategy that he may have

acquired in the line of duty and which have not yet been made public or are not commonly available in the public domain;

- With specific regard to the activity as Member of the Board of Germanwatch e.V., it was underlined to Mr Runge-Metzger that, under the first paragraph of Article 16 of the Staff Regulations, he continued to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments and benefits from any new employer or its clients. In this context, Mr Runge-Metzger was required to refrain from advising or working on behalf of the above-mentioned entities or their clients on particular files or matters (for example: contracts, grants, cases, claims, investigations, ongoing legislative procedures), in which he had participated personally and substantially and that would entail relying upon information received in the line of duty which have not been made public.

Mr Runge-Metzger was also reminded of all other applicable Staff Regulations' provisions.