European Ombudsman

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Decision

of the European Ombudsman in her strategic inquiry OI/3/2017/NF on how the European Commission manages 'revolving doors' situations of its staff members

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Abstract

The European Commission has a particular responsibility in relation to securing the highest possible standards of administration in the EU institutions. The Commission has generally high standards in the areas of ethics and transparency, however an ongoing and complex challenge - affecting many public administrations - is the so-called 'revolving doors' issue.

This inquiry was about how the Commission manages the 'revolving door' career moves of its staff, that is, where staff members leave to take up positions externally, for example in the private sector, or where individuals join the Commission particularly from the private sector. This may give rise to concerns about conflicts of interest, where inappropriate use is made of access and confidential information that assists in the lobbying of former colleagues in the EU civil service in the interests of external employers or clients.

The Ombudsman's inquiry found that, at a systemic level, while its practices generally comply with the rules governing EU staff, more can be done to make those rules become more effective and therefore meaningful. New rules introduced in September 2018 provide greater clarity on what activities are prohibited and what subsequent employment activities need to be authorised. These rules need to be fully utilised and potentially improved.

At a technical level, the Commission has made good progress since the Ombudsman closed her first inquiry in this area. It should, however, examine whether it can take a more robust approach to preventing or dealing with serious cases of conflict, especially in the small number of cases of senior staff who leave for the private sector.

The Ombudsman also calls on the Commission to publish more information, and on a more regular basis, about senior staff who leave the Commission.

Finally, the Ombudsman urges the Commission to follow-up on the good transparency practices she has identified and shared with 15 other EU institutions, bodies, offices and agencies. This includes publishing information on former senior staff members' lobbying bans directly on the Transparency Register. This would give the public a better picture of the hiring practices of lobbyists in the EU.

The Ombudsman closes the inquiry, encouraging the Commission to continue to lead by example but to take a more robust approach in its assessment of senior staff who leave the EU civil service. The Ombudsman also makes several detailed suggestions for improvement.

The Ombudsman also commits to a follow-up inquiry in 2020, looking more closely at how the Commission manages cases regarding a certain number of specific Commission departments (DGs).

The background to the strategic inquiry[1]

1. When staff members leave the EU civil service to take up positions externally, for example in the private sector, or individuals join the EU civil service from outside, and in particular the private sector, they are often described as going through the "revolving door". This is sometimes perceived as a normal part of professional life, and a number of high profile cases in recent years have drawn public attention to the matter. But whatever the personal perception of the professional legitimacy of the practice, problems arise when doubt is raised in the public mind about the possible compromising of the public interest through this practice. They may feel that a public servant may be inappropriately influenced by the contemplation of future potential roles or abuse their former public service role through the inappropriate monetising or other exploitation of that role when they leave that career behind.

2. Revolving door moves may give rise to 1) risks of a conflict of interest with the legitimate interests of the Commission or 2) risks that confidential information may be disclosed or misused; or 3) risks that former staff members may use their close personal contacts and friendships with ex-colleagues to lobby.

3. The above risks must be analysed taking into account the following considerations. Recruiting staff members with experience in the private sector can be beneficial for the EU civil service as it brings experienced individuals with up-to-date technical knowledge into the EU civil service. As the right to work is a fundamental right, restrictions on the rights of former EU civil servants to work externally, for example in the private sector must be a) necessary for the purposes of achieving a legitimate public interest and b) proportionate[2].

4. The Ombudsman highlights the fact that while all such moves need to be assessed on a case-by-case basis, greater scrutiny of moves by senior officials is imperative given the higher potential risks involved to the interests of the institution. The nature of the employment contracts also needs to be taken into consideration, whether it is a permanent official who is leaving or retiring, or a temporary or contract agent. The Commission has moved toward hiring more contract staff in recent years due to the reduction of permanent posts imposed by the Member States. This means fewer permanent officials and therefore a more mobile workforce with individuals who move several times in their careers between the public and private sectors, this making managing this 'revolving doors' issue more complex as it begins to resemble – even in a limited way - a more U.S. style model.

[1] Strategic inquiries are conducted on the Ombudsman's own initiative and look into issues of significant public interest. They enable the Ombudsman to investigate what appear to be systemic problems in the EU institutions and promote positive developments in key areas of activity.
[2] See Article 15 Charter of Fundamental Rights of the European Union.

5. It is very clear that many Brussels-based law firms and public affairs companies place a high premium on the recruitment and advertising of staff with experience of the EU institutions. The websites of these firms provide ample evidence of this with the individuals' former roles, responsibilities, and implied potential capacity to influence the administration openly described. The clear message from such firms is that "*we have insiders*" and can therefore provide a potential competitive advantage for their clients. This is not of course always problematic but the EU institutions must always assess 'revolving doors' cases from the perspective of the public interest and from their institutional knowledge of what information and access the public servant might potentially give to the new employer. To date, a small number of senior staff have left to work in the private sector advising clients who the Commission may have a legitimate interest in taking regulatory action against, while certain other senior Commission officials have gone to work for example, for American or Chinese companies that may obviously have an interest in EU regulation. Many of these moves can be unproblematic, but the Commission must always assess them with the legitimate interests of the EU in mind.

6. This strategic inquiry is a follow up to an inquiry already conducted into the Commission's management of revolving door moves regarding its staff. That inquiry led to Ombudsman recommendations and guidelines with a view to strengthening the Commission's procedures. Those included ensuring that all assessment decisions are correct, well-reasoned and well-documented and that the decision-making process is transparent (see Annex I for an overview of the Ombudsman's suggestions made in her inquiry based on complaints 2077/2012/TN and 1853/2013/TN). In closing[3] this first inquiry, the Ombudsman welcomed the cooperative approach of the Commission, and the progress made on most aspects covered by her inquiry. The Ombudsman also announced that she would follow up on the Commission's implementation of the rules governing revolving door moves by carrying out an own-initiative inquiry, starting with an inspection of Commission documents, in 2017.

7. The purpose of this this strategic inquiry[4] is therefore to follow up on her commitment to monitor the Commission's handling of revolving door moves of its staff.

8. Alongside this strategic inquiry, the Ombudsman contacted[5] a number of other EU institutions, bodies, offices and agencies to assess current practices regarding the requirement to publish information on how they apply the prohibition on lobbying former colleagues imposed on former **senior** staff

[3] The Ombudsman's decision closing the first inquiry as well as other correspondence is available here: https://www.ombudsman.europa.eu/en/decision/en/71136
[4] The correspondence in this strategic inquiry is available here: https://www.ombudsman.europa.eu/en/case/en/49502
[5] SI/2/2017/NF regarding the publication of information on the occupational activities of senior staff who have left the EU civil service with a view to enforcing the one-year lobbying and advocacy ban. All correspondence is available here: https://www.ombudsman.europa.eu/en/case/en/49765

members[6]. Based on the replies, the Ombudsman identified, and set out in a report[7], best practices aimed at ensuring an effective application of the lobbying and advocacy transparency requirement for former senior staff.

The inquiry

9. This inquiry concerned how the Commission manages revolving door moves of its staff, that is, officials, temporary agents and contract agents[8] (**it does not concern Commissioners**).

10. The Ombudsman's inquiry team inspected[9] a sample of **65 revolving door files**[10] and held a series of meetings with the Commission.[11]

11. The Ombudsman also took account of the Commission's recent human resources modernisation initiative, including the Commission's June 2018 Decision[12] on outside activities and on occupational activities after leaving the service.

12. The Ombudsman also drew on conclusions reached in her strategic initiative on the publication of information on outgoing revolving door moves of senior staff (see Annex III for an overview of the Ombudsman's main conclusions in the strategic initiative).

The rules governing the management of revolving door moves

13. The EU Staff Regulations govern the employment relationship between EU institutions, such as the Commission, and their staff. They impose a number of obligations on staff members regarding their conduct with a view to

[6] Article 16(3) and (4) of the Staff Regulations, Regulation 31 (EEC), 11 (EAEC) laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 1962 L 45, p. 1385.
[7] The report is available here: https://www.ombudsman.europa.eu/en/correspondence/en/110521
[8] Articles 11, 11a, 12b together with 40 and Article 16 of the Staff Regulations. The rules also apply to temporary agents and contract agents via Articles 11, 17, 81 and 91 of the Conditions of Employment of Other Servants of the European Union.
[9] The report on the inspection and the meetings is available here: https://www.ombudsman.europa.eu/en/correspondence/en/87815
[10] The Ombudsman selected a sample of 53 files (covering the recruitment of new staff, outside activities of staff while on unpaid leave, and occupational activities after leaving the service) and asked the Commission to choose another 12 files regarding occupational activities after leaving the service.
[11] Notwithstanding the fact that the inquiry **did not concern any specific individual**, but instead focused only on systemic issues, the Commission informed the individuals whose cases had been inspected as part of the sample file of the related processing of their personal data. The Ombudsman received copies of the notification letters.
[12] Commission Decision of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service, C(2018) 4048 final.

guaranteeing an ethical, accountable, and transparent EU administration.[13] As such, the Staff Regulations provide the legal basis for managing revolving door moves (the relevant rules of the Staff Regulations are set out in Annex IV).

14. The relevant sections of the EU Staff Regulations set out how to identify and manage risks, including guidance on conflict of interest situations and the safeguarding of sensitive information. For the purpose of this inquiry, it is important to note that the Staff Regulations set out specific rules in relation to revolving door situations. If the activity a staff member intends to take up could lead to a conflict with the legitimate interests of the Commission, **the Commission can forbid the new job or place restrictions on the new activity**. The 2014 Staff Regulations reform built on these rules by requiring former senior staff members not to lobby their former colleagues, or engage in advocacy directed at their former institution, for one year after leaving the EU civil service. In addition, staff members on long-term leave cannot lobby colleagues or take part in advocacy that could lead to a conflict with the interests of the EU institutions directed at their institution.

The main risks associated with revolving door moves

Conflicts of interest:

15. A **conflict of interest** exists when a staff member participates in an EU institution's decision-making process despite the fact that s/he has an interest in the outcome of that process. A conflict of interest undermines a staff member's independence and impartiality and thus their capacity to act only in the public interest. Conflicts of interest are typically related to a person's financial interests, for example when a person owns shares in a company, or to close personal bonds, for example with family members, close friends or with previous employers. The present inquiry deals with those conflicts of interest that may arise in relation to previous employment when a new staff member is recruited, when Commission staff members are thinking of going on unpaid leave and temporarily working outside the Commission, and also when a former Commission staff member leaves the EU civil service to take up a new role which may, in certain cases, conflict with the legitimate interests of the Commission.

Disclosing confidential information:

16. EU civil servants have an obligation not to use, or disclose, confidential information acquired during their time in the EU institutions. For this reason, the EU civil service must ensure that former staff members do not, at least for a certain period of time after leaving the EU civil service, carry out tasks that overlap with the work they performed in the EU institutions.

[13] For example, staff members are not allowed to accept gifts beyond those of minimal value, they have to request authorisation for publications and certain leisure time activities, and they are obliged to provide their institution with information on their spouse's gainful employment.

Ensuring that former staff members do not engage in inappropriate lobbying:

17. Former EU officials may also undermine the independence of the EU civil service if they directly or indirectly lobby their former colleagues. This is particularly important where the former staff members held senior positions, since their contacts within the institution where they worked will normally be extensive and, in some cases, influential. In order to ensure that inappropriate lobbying does not occur, measures need to be taken to prohibit former staff members, in particular senior members of staff, from directly or indirectly lobbying former colleagues, at least for a period of time.

18. A similar risk exists where EU civil servants take unpaid leave to temporarily take up employment in the private sector.[14]

The main statutory rules for managing revolving door moves

19. The Staff Regulations oblige EU civil servants to carry out their duties and conduct themselves solely with the interests of the Union in mind. EU civil servants must not, in the performance of their duties, deal with matters in which, directly or indirectly, they have any personal interest which might impair their independence. Before recruiting a staff member, an EU institution must examine whether the individual in question has interests which might impair his/her independence on starting work in the EU civil service (incoming revolving door move). The conflict of interest check is done in relation to the specific post to be taken up by the new staff member. If the EU institution concludes that there is a (potential) conflict of interest, it must take all appropriate measures, such as making recruitment conditional on mitigating measures or possibly offering the individual concerned a different post.[15]

20. Similar problems may arise when EU civil servants take leave on personal grounds. **EU civil servants may take up to 12 years of unpaid leave** during their career in an EU institution, for example to take care of a seriously ill family member.[16] However some such staff members may decide to work in the private sector while on leave on personal grounds. Before they take up such work, they must ask the EU institution concerned for permission, both for the leave as such and for the outside occupational activity they take up (this is known as an outgoing CCP authorisation and check).[17] The EU institutions can, if the outside job conflicts with the interests of the institution or if it is otherwise detrimental to the interest of the European Union, refuse such requests, or make the approval of the requests subject to appropriate conditions. They must refuse such requests when the outside job involves lobbying or advocacy towards the EU staff member's institution and could lead

[14] The EU Staff Regulations (Article 40) allow staff to take up to 12 years unpaid leave.
[15] Articles 11 and 11a Staff Regulations.
[16] Article 40 Staff Regulations.
[17] Article 12b together with Article 40 Staff Regulations. "CCP", the French acronym for "congé de convenance personelle", is commonly used in the institutions to refer to such leave.

to a (potential) conflict with the legitimate interests of the institution.[18] Once the staff member returns to work at the EU institution after leave on personal grounds, the EU institution must examine whether, as a consequence of the outside job carried out during the leave, or for other reasons, the staff member has any personal interest which impairs his or her independence, or otherwise constitutes a conflict of interest (this is known as an incoming CCP conflict of interest check).[19] If such concerns arise, the EU institution must take appropriate measures.

21. EU civil servants are indefinitely subject to a duty to behave with **integrity and discretion** as regards the acceptance of certain appointments or benefits. This duty applies even after they retire, resign, are dismissed or otherwise leave the EU civil service[20]. Staff members who intend to take up an occupational activity, whether paid or unpaid, within two years of leaving the service must inform their institution of their intentions (this is known as an **outgoing revolving door move**). If the intended occupational activity is related to the work carried out by that person during the last three years they worked for the EU institution, and the work conflicts with the legitimate interests of the institution, **the institution has the right to forbid the person from taking up the job**. The institution can also make its authorisation of the new occupational activity subject to conditions designed to ensure that the legitimate interests of the institution are protected.[21]

22. An EU institution must also prohibit its former senior staff members from engaging in lobbying and advocacy activities vis-à-vis their former institution's staff on matters for which the former senior staff member was responsible during the last three years of service in the EU institution. The lobbying and advocacy ban should, by default, be imposed for the first year after the senior staff member left the institution. The EU institutions also have to publish information on their implementation of the senior staff lobbying and advocacy ban.[22]

Overview of Commission internal rules and procedures

23. The Commission in June 2018 revised its ethics rules for revolving door moves connected to leave on personal grounds, as well as for outgoing revolving door moves. The new rules are laid down in a Commission Decision[23], which entered into force on 1 September 2018. The new Decision builds on the Commission's previous experience in dealing with revolving door

[18] Article 40(1a) Staff Regulations.
[19] Article 11(4) Staff Regulations.
[20] The same applies, for example, to temporary staff or contract staff whose period of employment comes to an end.
[21] Article 16 Staff Regulations.
[22] Article 16(3) and (4) Staff Regulations.
[23] Commission Decision of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service, C(2018) 4048 final, which is available here: http://ec.europa.eu/transparency/regdoc/rep/3/2018/EN/C-2018-4048-F1-EN-MAIN-PART-1.PDF

moves and aims at making the rules clearer and the procedures more efficient. While the general principle is a **case-by-case assessment** of each request, the Decision has introduced a 'white list'[24] of activities for which prior permission is automatically granted to staff members as well as a 'black list'[25] of prohibited activities. The Decision also clarifies the meaning of an 'occupational activity'[26] for the purpose of granting authorisation upon the staff member leaving the service by identifying activities that do not qualify as 'occupational activities'[27]. Furthermore, it clarifies that staff members taking up new positions in another EU institution, body, office or agency do not trigger the obligation to request authorisation, given that those staff members do not leave the EU administration.[28]

24. Based on the principle of proportionality[29], the decision on a request for an outside activity during leave on personal grounds, or for an occupational activity after leaving the EU civil service, is either positive and unconditional (a blanket authorisation), positive but subject to conditions (a conditional authorisation), or negative (a refusal decision).

25. All Commission staff members[30] - that is permanent officials, temporary agents, and contract agents - are subject to the same general set of rules and procedures as regards obtaining authorisation for revolving door moves.[31] The Commission has made available to staff both a document giving an overview of the main changes under the new Commission Decision and an FAQ document that gives practical examples of what kinds of activities require authorisation and under what rules.

26. As regards new Commission staff members, conflict of interest checks for the recruitment of new Commission staff members (incoming revolving door move) are done in the same manner for future officials, temporary agents, and

[24] See Article 15(1) together with Article 4(2) and (3) Commission Decision.
[25] See Article 5 Commission Decision. For outside activities during leave on personal grounds, Article 15(2) Commission Decision implements the prohibition of activities involving lobbying and advocacy and which could lead to a conflict of interest, such as set out in Article 40(1a) Staff Regulations.
[26] Article 1(c) together with Article 20(3) and Article 4(3) Commission Decision.
[27] Among other things, any unpaid activity that has no link with the activities of the European Union, is carried out in a purely private capacity and is undertaken from time to time only, upon need, does not constitute an 'occupational activity, in particular charitable and humanitarian activities; activities relating to sport and wellbeing; activities deriving from political, religious, trade unionist and/or philosophical convictions; craftwork, artistic or cultural activities.
[28] See Article 20(2) Commission Decision.
[29] See, for example, recital (4) of the Commission Decision, which explains that "*decisions should not entail limitations that are not necessary and that would not genuinely meet the objectives of protecting the interests of the institution*".
[30] See Article 1 Commission Decision.
[31] In its new Decision, the Commission has done away with the previously applicable differential treatment of contract agents, according to which only those contract agents that had had access to sensitive information while working in the Commission had to request authorisation for occupational activities that they wanted to start within the first two years of having left the service. See Article 22(1) of the previously applicable Commission Decision of 16.12.2013 on outside activities and assignments, C(2013) 9037 final, which was repealed by the new Commission Decision.

contract agents and result either in an unconditional offer or an offer subject to conditions designed to manage (potential) conflicts of interest.[32]

27. Since 2016, the Commission has sought to centralise its human resources services within the Directorate-General for Human Resources ('DG HR'), which now centrally handle *day-to-day human resource matters* for all Directorates-General. DG HR plays the main role in the different procedures for dealing with revolving door moves of Commission staff members. Opinions are sought from the Directorate-General of employment or recruitment, which is best placed to assess the factual circumstances of the (future) staff member's professional situation. Depending on the type of revolving door move, other Commission departments, such as the Secretariat-General and the Legal Service, may be involved in the procedure. For an overview of the different procedures see Annex II.

28. The Commission has the possibility of enforcing staff members' ethics obligations through its Investigation and Disciplinary Office ('IDOC')[33], which carries out administrative inquiries, pre-disciplinary and disciplinary procedures. At the end of a disciplinary procedure, the Commission may impose sanctions on a (former) staff member, such as a reprimand, the non-extension of the work contract, or the reduction of pension rights.[34] The Commission has, in recent years, imposed such sanctions in relation to conflicts of interest, unauthorised outside activities, and unauthorised occupational activities after leaving the service.[35]

The Ombudsman's assessment

Incoming revolving door moves - conflict of interest check for new staff members

29. According to EU legislation, anyone who applies for a job with the EU institutions has to inform them of "*any actual or potential conflict of interest*" [emphasis added]. Future staff members do not, therefore, have to provide a declaration of all of their interests, but only of those that may impair their independence and thus constitute a potential or actual conflict with the interests of the EU institution. Such potentially problematic interests may be financial or family interests, as well as interests related to previous employment.

30. If the Commission identifies, or confirms, an actual or potential conflict of interest on the part of the applicant, it decides on appropriate mitigating measures. If the actual or potential conflict of interest can be managed through

[32] The procedure for the conflict of interest check for the recruitment of new staff is set out directly in Article 11(3) Staff Regulations.
[33] IDOC is part of the Legal Affairs Directorate of DG HR.
[34] See Article 25 Commission Decision together with Article 86 of, and Annex IX to, the Staff Regulations.
[35] See the 2016 and 2017 Activity Reports of the Investigation and Disciplinary Office of the Commission (IDOC).

mitigating measures, the Commission's recruitment offer is made conditional on those mitigating measures. Typical mitigating measures would be requiring the future staff member not to work on matters s/he previously worked on for another employer and not to have professional contacts with former colleagues for a certain period of time. Appropriate and targeted mitigating measures will prevent any risks associated with an actual or potential conflict of interest from materialising. It is thus only in the most exceptional situation that the Commission would have to refrain from offering a particular post to an applicant.

31. The conflict of interest check for incoming revolving door moves applies to external applicants as well as to EU staff members who want to join the Commission from another EU institutions, body, office or agency. The Commission carries out **around 2,000 incoming revolving door checks a year**.

32. Based on the Ombudsman's inspection of files and the related meetings with the Commission, the Ombudsman takes the view that the Commission's management of incoming revolving door moves is generally in line with the relevant rules of the Staff Regulations and appropriate in practice.

33. However, with a view to having in place the highest possible accountability standards, the Ombudsman makes several technical suggestions below (see points (i) to (iii) below).

Authorisation of and conflict of interest check in relation to outside employment while on leave on personal grounds

34. The Commission's conflict of interest check for outside occupational activities during leave on personal grounds is performed with a view to preventing any risks during the new activity or upon the staff member's reinstatement at the end of the leave. As a result, the Commission regularly makes authorisation decisions subject to conditions (such as the prohibition to work on specific cases, which the staff member dealt with in the Commission). An outside occupational activity that involves lobbying and advocacy directed at the Commission and which could lead to the existence, or possibility, of a conflict with the Commission's legitimate interests must be refused.[36] In assessing a request, the Commission takes into account the employment status of the staff member concerned (official, temporary agent or contract agent), the nature of their duties, and their level of responsibilities.[37] The Commission also checks whether the intended outside employer is registered in the EU Transparency Register. The Commission performs **approximately 700 conflict of interest checks a year** in relation to intended outside occupational activities during leave on personal grounds.

[36] Article 40(1a) Staff Regulations and Article 15(2) Commission Decision.
[37] Article 2(4) Commission Decision.

35. While the Ombudsman takes the view based on her inspection that the Commission's practices for authorising outside occupational activities are generally in line with the Staff Regulations, she encourages the Commission to be as robust as necessary especially for senior staff members. She also encourages the Commission to ensure that the opinions given by the different actors throughout the authorisation procedure are *consistently* 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. The Ombudsman also makes a further technical suggestion below (see points (iv) and (v) below).

36. At the end of a leave on personal grounds and before reinstating a staff member, the Commission performs the same conflict of interest check as it does before recruiting new staff (incoming revolving door moves).[38] The Commission will reinstate a staff member on a post for which they have no (potential) conflict of interest or make reinstatement subject to conditions. Given that the authorisation of the outside occupational activity is done with a view to the future reinstatement of the staff member, the Commission does not, very often, have to impose conditions upon a staff member's return from leave on personal grounds. The Commission deals with **around 100 conflict of interest checks a year** before reinstating a staff members.

Outgoing revolving door moves

Occupational activities after leaving the EU civil service:

37. Commission staff members who leave the EU civil service remain, *without any time limit*, bound by the duty to behave with **integrity and discretion** as regards the acceptance of certain appointments or benefits.[39]

38. In addition to the above permanent obligation, staff members leaving the EU civil service have to comply with an authorisation system for new occupational activities, whether paid or unpaid, **within the first two years of leaving the EU civil service**.[40] Within this time period, former staff members have to notify the Commission of their intention to take up any type of occupational activity, using a dedicated form. If the intended occupational activity is linked to the work that the former staff member performed during the last three years of service in the Commission and could lead to a conflict with the Commission's legitimate interests, the Commission may prohibit the former staff member from taking up the occupational activity or authorise it subject to any conditions it sees fit. However, the option of prohibiting a former

[38] Article 11(4) Staff Regulations and Article 18 Commission Decision.
[39] Article 16(1) Staff Regulations and Article 19 Commission Decision.
[40] Article 16(2) Staff Regulations and Articles 20 and following Commission Decision.

staff members from taking up an occupational activity is rarely used by the Commission.[41]

39. All former Commission staff members, whether they held senior positions or not, are subject to the same authorisation procedure, which involves a number of actors. While factual input and an opinion on the request are sought from the former staff member's hierarchical superior (and the relevant Commissioner's Cabinet[42] for senior staff), it is DG HR that plays the main role in handling, in a centralised and independent manner, a request for the authorisation of a new occupational activity. It prepares a draft decision, based on standardised wording, and coordinates the other actors' involvement in the procedure. As such, DG HR seeks the opinion of the Secretariat-General, which carries out a consistency and proportionality check of the draft decision, including possible conditions. It also seeks the opinion of the Legal Service, which performs a legality check. As required by the Staff Regulations, DG HR also consults the 'Joint Committee'/'Commission paritaire' ('COPAR')[43]. As a final step, the Appointing Authority (which is the Director-General of DG HR for senior staff, and the Director of DG HR's Directorate E for other staff) assesses the case and takes the final decision. The Commission deals with **around 400 requests a year** for the authorisation of an occupational activity within two years of a staff member leaving the service.

40. The Ombudsman takes the view that the Commission's management of requests for authorisation of occupational activities after leaving the service is technically in line with the Staff Regulations and appropriate in practice for most cases. **In an effort to ensure it continues to lead by example, however, the Ombudsman urges the Commission to take a more robust approach in the small number of cases involving senior staff leaving the service**.

41. The Commission's implementing rules, adopted in 2018, outline clearly and comprehensively the factors it should take into account when assessing any conflict of interest situation:

"(a) any relation between the occupational activity and the work carried out by the former staff member during the last three years of service;

(b) whether the occupational activity would involve working on specific files for which the former staff member was responsible during the last three years of service;

(c) whether the occupational activity would ***risk harming the reputation of the former staff member and the Commission****, for example by retroactively casting*

[41] In 2015 and 2016, there was no case in which the Commission prohibited a former staff member from engaging in an occupational activity.
[42] The term 'Cabinet' means the private office of a Commissioner.
[43] The Joint Committee is consulted on certain staff-related decisions to be taken by the Appointing Authority and is composed of an equal number of members appointed by the Appointing Authority and the Staff Committee. See Article 9 of the Staff Regulations and Articles 2 to 3a of Annex II to the Staff Regulations.

*doubt on the former staff member's impartiality while he or she was still in service, thereby **tarnishing the Commission's image**;*

*(d) the **quality of a future employer** (for example whether it is a public authority or a private/commercial company) or the situation of self-employment;*

(e) whether the envisaged activity would involve representing outside interests vis-à-vis the institution;

(f) whether or not the envisaged activity is remunerated."

42. The Staff Regulations allow the Commission to forbid any new job, if it is related to the official's work in the last three years of service and could "*lead to a conflict with the legitimate interests of the institution*". T**he Commission very rarely uses this legal option**. This is despite the wide discretion EU institutions have in this area[44]. Furthermore, the implementing rules for these staff obligations, adopted by the Commission in 2018, do not specify categories of situations that would typically warrant a prohibition decision. Article 21(3) of the implementing rules spells out only the following two restrictions:

a) Prohibiting former officials from dealing with files, cases, or matters related to the work carried out in the past three years;

b) Imposing a "professional contacts ban" to prevent them contacting their former colleagues in order to lobby;

43. The files inspected by the Ombudsman suggest that the Commission largely limits itself to these two types of restrictions. As regards "*matters related to the work carried out*", the Commission's interpretation seems largely to focus on files, cases and related cases. So for example, a former DG COMP official who worked on the technology sector, would be prohibited from working on cases they worked on while in the Commission, but could work immediately after leaving DG COMP for a law firm that had clients in the technology sector. Many of these clients could be employing such law firms to help them avoid, delay or otherwise hinder the progress of Commission anti-trust or state aid actions. The Commission arguably needs to make a more robust assessment when senior staff leave the Commission for the private sector and where such a move could lead to a conflict with the interests of the Commission. This is particularly relevant at this time in light of the very significant and high profile cases initiated in recent years by DG COMP, the results of which have had, or may have in the future, significant implications for individuals, for Member States, and more generally for the EU and third countries.

44. One area where the Commission seems to have taken a slightly more robust approach, has been for senior officials who worked on the issue of **Brexit**, and later

[44] See also: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1549037343294&uri=CELEX:62013FJ0086

left the Commission.[45] For example, one senior official who joined a global public affairs firm was, for two years, required to refrain from contributing to his new employer's activities or to their client's files directly linked to Brexit negotiations.

45. The conditions typically imposed by the Commission also include what it describes as a 'cooling off period' for direct professional contacts between the former staff member and Commission colleagues and the prohibition to work, for the new employer and during a specified period of time, on matters that the staff member dealt with during the last three years in service.[46] Targeted conditions are typically set in order to attempt to mitigate any potential conflicts of interest. It is important to note that while the generally accepted **definition of a 'cooling off period'** is a time period after one leaves the civil service[47], and before one takes up a new role, this is not the Commission definition. The Commission's 'cooling off period' normally equates **only** to a ban on professional contacts with former colleagues for a certain period of time.

46. Where a (former) senior staff member[48] requests authorisation for an occupational activity within the first year of leaving the service, the Commission additionally assesses the request with a view to imposing the lobbying and advocacy ban provided for by the Staff Regulations. While the Commission has replicated, in its Decision[49], the wording[50] of the Staff Regulations, which leaves a margin of discretion to the EU institutions regarding the imposition of a lobbying and advocacy ban, the Commission, in practice, applies the lobbying and advocacy ban as a matter of principle. However the potential for indirect lobbying and advising clients is normally left unrestricted. It is obviously of benefit to an employer to know who might be worth lobbying and how that might be done, even if someone other than the former Commission staff member is engaged in the practice.

47. One major difficulty, even if the Commission wished to avail of their legal option to forbid new jobs, is that they **must answer any such request within 30 working days** according to the Staff Regulations. Failure to respond within those 30 days grants an implicit acceptance of the new job. From the Ombudsman inspection, it is clear that some senior staff members wait until close to the start of their new role before requesting permission under Article 16. It is natural that the Commission then finds it very difficult to respond before the new role is taken up. In some cases, the Commission is not,

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[45] In addition to the usual steps in the procedure, the Taskforce on Article 50 negotiations with the United Kingdom and the President's Cabinet are consulted on requests linked to Brexit.
[46] See Article 21(3) and (6) Commission Decision.
[47] https://www.transparency.org/glossary/term/revolving_door
[48] The Commission defines 'senior staff member' as staff occupying functions corresponding to the basic post of Director-General in grades AD16 or AD15 as well as those occupying functions corresponding to the basic post of Director in grades AD15 or AD14. Basic post in this context means all positions falling within the function group of Director-General or Director. See footnote 5 Commission Decision.
[49] Article 21(6) Commission Decision.
[50] "*[ ] the appointing authority shall, in principle, prohibit* [*senior staff members*]*, 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.*"

moreover, able to respond within the prescribed 30 working days. In the most extreme cases, the Commission responded only months after the former official had notified, and possibly already taken up, the new role. The Ombudsman therefore urges the Commission to setup a **'fast-track' process for requests from senior staff**, to ensure that their 'revolving doors' moves can in fact be thoroughly assessed and decided upon within 30 working days.

48. Furthermore, the Ombudsman is not aware of any measures the Commission takes to monitor compliance of former staff with their obligations. Therefore it must be difficult for the Commission to be confident any of the restrictions placed on former staff are indeed followed. The Ombudsman urges the Commission to develop measures to monitor compliance of the Staff Regulations, to the extent that this is legally and practically possible. As an example at Member State level, the French authority responsible for the ethics obligations of public officials does this already by using "intelligence software" to monitor such activities[51]. For more **best practice examples**, see Annex V. The Commission does, however, **have the possibility to** enforce staff members' ethics obligations through the imposition of sanctions if it learns that obligations have not been respected (see point 28 above).

49. In addition, the Ombudsman makes several technical suggestions below for further improvement (see points (vi) to (xii) below).

Publication of information on the imposition of the senior staff lobbying and advocacy ban:

50. The Staff Regulations require the EU institutions to publish information on the outgoing revolving door moves of senior staff in relation to a potential lobbying and advocacy ban. The publication of information allows the wider public, including future employers, to check whether a former senior staff member is subject to a temporary lobbying and advocacy ban and thus contributes to ensuring that former senior staff honour their ethics obligations.

51. The Ombudsman has already informed the Commission - in her decision[52] closing her first inquiry into how the Commission manages revolving door moves of its staff - of her views on what information the Commission should publish in relation to outgoing revolving door moves of senior staff members. The Ombudsman has now set out her views on this matter in even more detail in the context of her strategic initiative regarding the publication of information on the occupational activities of senior staff who have left the EU civil service with a view to enforcing the one-year lobbying and advocacy ban. She refers the Commission to her report[53] closing the strategic initiative.

[51] https://ec.europa.eu/home-affairs/sites/homeaffairs/files/docs/pages/20170615_ginocchi_en.pdf
[52] Decision closing the inquiry based on complaints 2077/2012/TN and 1853/2013/TN, points 46 and 47.
[53] The report is available here: https://www.ombudsman.europa.eu/en/correspondence/en/110521

52. While the type of information published by the Commission is generally appropriate, the Ombudsman believes that the Commission's publication policy suffers from **significant shortcomings** in two regards. First, the Commission does not publish information on all the cases that a (former) senior staff member notified within the first year of leaving the service. The Commission currently takes the view that it is sufficient to publish information on those cases where the notified intended occupational activity could, by its nature, give rise to or entail lobbying or advocacy.[54] However, given that the number of cases for which the Commission publishes information appears to be a very small share of the total number of notifications received from (former) senior staff members per year[55], the Ombudsman takes the view that the Commission's current publication policy **does not allow for adequate public scrutiny**. Second, the Commission publishes information only in the form of a report[56], which is released **only once a year** with a significant time lapse[57]. The cases in one calendar year are only published at the very end, usually days before Christmas, of the following year. It does not, as called for by the Ombudsman, publish information on individual cases directly on its ethics website on a regular basis.

53. The Ombudsman calls on the Commission to reconsider its policy in relation to the above issues. She suggests that the Commission publish 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 and that it does so directly on its ethics website and in a timely manner (see points (xiii) and (xvi)).

54. With a view to further strengthening public scrutiny and the enforcement of imposed lobbying and advocacy bans, the Ombudsman moreover suggests that the Commission include, in the information it publishes on an individual case, a link to the former senior staff member's (intended) employer's, or self-owned company's, entry on the Transparency Register, where applicable (see point (xiv)). She also suggests that the Commission consider actively informing 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 (see point (xv)).

55. Beyond the above technical suggestion to link the published information to a new or intended employer's or self-owned company's entry on the

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[54] The Commission does not, therefore, publish any information on cases where it takes the view that the notified activities could not, by their very nature, give rise to or entail lobbying or advocacy.

[55] By way of example, in 2016 the Commission received around 100 senior staff requests for the authorisation of an occupational activity after leaving the service. Notwithstanding the fact that not all of the 100 requests will have been submitted within the first year of the senior staff member leaving the service, and some of them may have concerned moves to other EU institutions, the Commission published information on only 5 cases.

[56] The latest report is the following: 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), C(2017) 9030 final of 22.12.2017. It is available here: https://ec.europa.eu/info/sites/info/files/occupational-activities-of-former-senior-officials-annual-report_2017_en.pdf

[57] The Commission's report setting out information on 2016 cases was published on 22 December 2017.

Transparency Register, the Ombudsman believes that a further step should be taken towards **turning the Transparency Register into a central EU transparency hub**. As set out in her related strategic initiative, the Ombudsman suggests in this regard that the Commission - as well as other EU institutions, bodies, office, and agencies - publish information on individual cases assessed with a view to the imposition of a lobbying and advocacy for former senior staff members also on the Transparency Register entry of the (intended) employer or the self-owned company. Central publication of this information would provide a better picture of interest representatives' hiring practices in showing, directly on the Transparency Register, where former senior EU staff members pursue their careers after having left the EU civil service. It would also make it easier for institutions' staff members to verify, in advance of a meeting with an interest representative, whether that interest representative has recently recruited a former senior colleague (or the self-employed interest representative him- or herself recently left the EU civil service) and whether, for this reason, measures need to be taken with a view to respecting an imposed lobbying and advocacy ban.

56. The Ombudsman calls on the Commission to lead by example in this area (see point (xvii)). She also trusts that the Commission will, in its role of Joint Transparency Register Secretariat, adopt an ambitious approach in facilitating publication of such information directly on the Transparency Register in relation to former staff of other EU institutions, bodies, offices, and agencies (see point (xviii)).[58]

57. Finally, the Ombudsman believes that the Commission should further raise its accountability standards by compiling, and publishing, as a general post-employment policy measure, aggregate and anonymised data on all staff departures during a given year (see point (xix)). It could make available the following information:

i. The total number of (senior and non-senior) staff who left the service during the year, among them the number who left to join the private sector, who returned to a Member State administration, and who joined another EU institution[59];

ii. the number of senior staff members who left the service during the year, specifying the number who did not declare any intention to engage in an occupational activity and the number who joined another EU institution or returned to a Member State administration;

[58] See point 35. of the Interinstitutional Agreement on the Transparency Register (heading 'VIII. Involvement of other institutions and bodies'), which states that "*[ ] Other EU institutions, bodies and agencies are encouraged to use the framework created by this agreement themselves as a reference instrument for their own interaction with organisations and self-employed individuals engaged in EU policy-making and policy implementation.*"

[59] While staff members who join another EU institution do not leave the EU civil service and do not, therefore, fall under Article 16 of the Staff Regulations, it would nevertheless be in the Commission's and the public's interest to compile these numbers.

iii. the total number of requests submitted by (former) staff members to engage in an occupational activity after leaving the service, the number of unconditional authorisations, the number of authorisations with conditions, and the number of refusal decisions.

Conclusion

Based on the inquiry, and not having sought to take a view on the specific outcome in individual revolving door cases, the Ombudsman closes this inquiry with the following suggestions:

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.**

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.**

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.**

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

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.**

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.

Technical suggestions for improvement

The Ombudsman encourages the Commission to follow up on the detailed technical points set out in this suggestion for improvement so that it can continue to lead by example in this area.

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);

(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;

(iii) make the Business Correspondent 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);

(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;

(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';

(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;

(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;

(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;

(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;

(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;

(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;

(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.

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;

(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;

(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;

(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;

(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;

(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;

(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.

The Ombudsman invites the Commission to inform her, within six months from the date of this decision, of any action it has taken, or intends to take, in relation to the above suggestions.

Emily O'Reilly
European Ombudsman

Strasbourg, 28/02/2019

Annex I - Suggestions made by the European Ombudsman in her inquiry based on complaints 2077/2012/TN and 1853/2013/TN and *main findings of this strategic inquiry in relation to those suggestions*

(i) Ensure that the assessment of applications from officials leaving the service is carried out by staff who have not had any direct professional connections with the official concerned. It is particularly important to pay close attention to this requirement in the case of senior officials;

✓ *Centralised procedure involving many actors ensuring an objective and independent assessment (see overview in Annex II)*

(ii) Where applicable, analyse applications to work outside the Commission on the basis of DG-specific Codes of ethics and integrity;

✓ *Same set of rules applicable to all staff; appropriateness, consistency and legality of conditions checked by the Secretariat-General and the Legal Service, taking account of the staff member's previous tasks*

(iii) Publish online, in respect of decisions to approve requests to work outside the Commission from senior officials, (i) the name of the senior official concerned, (ii) details of the duties carried out in the Commission by that senior official, (iii) details of the duties to be carried out in the new activities, and (iv) the Commission's detailed assessment and conclusions. The Commission should publish all such decisions and the publication should be done as soon as possible and within a timescale and frequency appropriate to the importance of this matter;

X *Appropriate type of information published; however, not for all 'cases assessed'; no timely online publication (see suggestions for improvement (xiii) and (xvi))*

(iv) Inform the Ombudsman of each case where exceptional and compelling privacy reasons prevent the publication referred to in point (iii) above. The Ombudsman will then inspect and assess the file on the decision taken to allow that senior official to work outside the Commission.

Not applicable so far

(v) Analyse fully each individual application to work outside the Commission and set out that analysis in well-reasoned and well-documented decisions;

✓ *Comprehensive and fully documented decision-making process*

(vi) Properly record that it has analysed whether the information provided by the official regarding the proposed outside work is sufficiently detailed to allow the Commission to carry out a full analysis of that outside work;

✓ *See 2018 Commission Decision, Article 21(5) last sentence: "If a declaration submitted by the applicant is incomplete, the Commission shall request additional information and the 30 day period is suspended until the requested information is provided."*

(vii) Properly record and analyse comments made by other Commission services, particularly when the eventual position of the Commission deviates from those comments;

✓ *Comprehensive and fully documented decision-making process*

(viii) Take all the necessary steps to ensure that the Commission applies the rules on conflicts of interests consistently across the Commission, including by alerting DGs whenever inconsistencies as regards the imposition of conditions are identified;

✓ *Centralised procedures; template text for conditions; consistency check by the Secretariat-General (in case of occupational activities after leaving the service)*

(ix) Improve the Ethics and conduct website of the Commission;

✓ *Generally satisfactory level of information; link to the Staff Regulations, the Transparency Register, and the website with information on the rules applicable to Commissioners*

(x) Publish online DG-specific codes or guidelines;

✓ *DG-specific codes or guidelines are available to staff on the Commission's intranet*

(xi) Put in place a centralised register of staff applications to work outside the Commission and for conflict of interest assessments of incoming staff;

X *Currently no compilation of anonymised and aggregate data on revolving door moves of staff beyond mere numbers (see suggestion for improvement xix)*

(xii) Use the Ombudsman's recommendations when assessing possible conflicts of interest of incoming staff and when analysing whether the prohibition on senior staff leaving the Commission from engaging in lobbying or advocacy vis-à-vis the Commission is complied with;

✓ *Commission has made good progress on the matters into which the Ombudsman looked in the context of her first inquiry concerning how the Commission handles revolving door moves of its staff*

(xiii) Take the necessary steps to ensure that all future cases reflect the policy that commitments offered by the officials, aimed at eliminating conflicts of interest, are expressly referred to and analysed in the file.

✓ *Commitments offered by staff members are consistently considered, and referred to, in the decision-making process and generally set out in the decision itself*

Annex II - Simplified overview of the Commission's procedures for managing revolving door moves of its staff

Since 2016, the Commission has sought to centralise its human resources services (which previously were handled by dedicated local units in the different Directorates-General. As a result, it created 8 so-called 'Account Management Centres' ('MCs') within the Directorate-General for Human Resources ('DG HR'), which now centrally handle day-to-day human resource matters for all Directorates-General. Each AMC provides its services to a group of client Directorates-General and has units specialised in the different HR areas. The Commission also newly created the role of 'Business Correspondents' ('BCs'), who are, within the different Directorates-General and supported by a small team, responsible for strategic human resource issues. The BCs help to set the strategic HR priorities for the Directorate-General and assist the Director-General in taking key HR decisions. The modernisation process, which was completed in mid-2018, has resulted in efficiency gains and the harmonisation and simplification of processes. Tasks are now split between day-to-day matters (dealt with by the AMCs), strategic HR issues (dealt with by the BCs), and the Commission's central HR function, which is to set the rules, provide tools and advice, which is carried out by the other Directorates of DG HR[60].[61]

DG HR, mainly through its Unit E.3 ('Ethics & Ombudsman') and its AMCs, and the Appointing Authority/Authority Empowered to Conclude Contracts ('the Appointing Authority')[62] play the main role in the different procedures for dealing with revolving door moves of Commission staff members. The different procedures are thus, for the most part, centralised in DG HR. However, opinions are sought from the Directorate-General of employment or recruitment, which is best placed to assess the factual circumstances of the (future) staff member's professional situation. Depending on the type of revolving door move, other Commission departments, such as the Secretariat-General and the Legal Service, may be involved in the procedure.

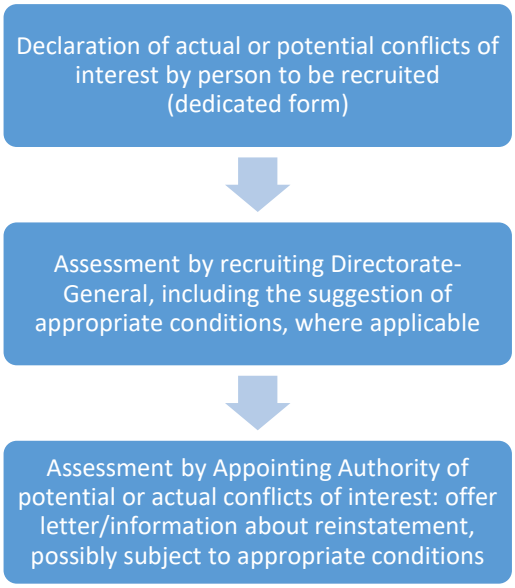
[60] For an overview of the organisational structure of DG HR, see the organisation chart that is available here: https://ec.europa.eu/info/sites/info/files/organisation-chart-dg-hr_en.pdf

[61] For an overview of the HR modernisation process see Communication to the Commission, Synergies and Efficiencies in the Commission - New Ways of Working, SEC(2016) 170 final, 4.4.2016, point 3.1. Human resources management, page 5

[62] The role of Appointing Authority is exercised by different persons depending on the type of revolving door move and the status of the staff member concerned. It may be the Director-General of DG HR, the Director of DG HR.E, the Head of Unit of unit DG HR.B.1, B.4, C.1, C.4, and the Director-General of the staff member's Directorate-General concerned.

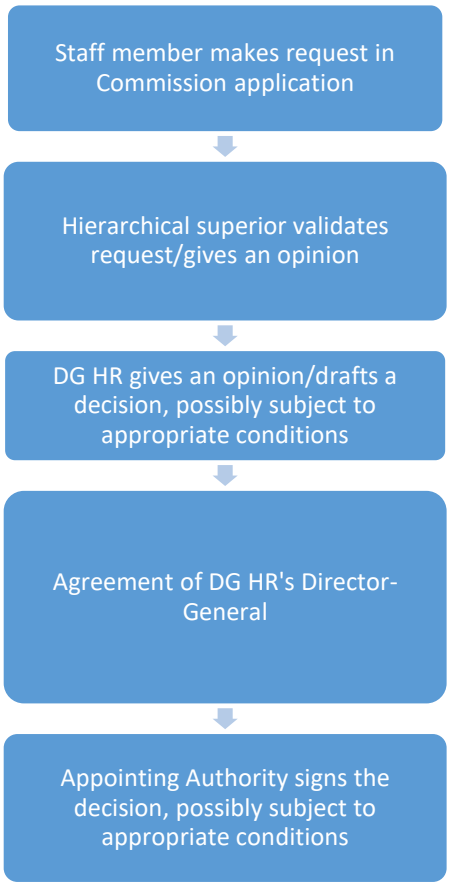
Incoming revolving door moves (Article 11(3) Staff Regulations) and staff returning from leave on personal grounds after having exercised an outside activity (Article 11(4) Staff Regulations)

Around 2000 cases per year



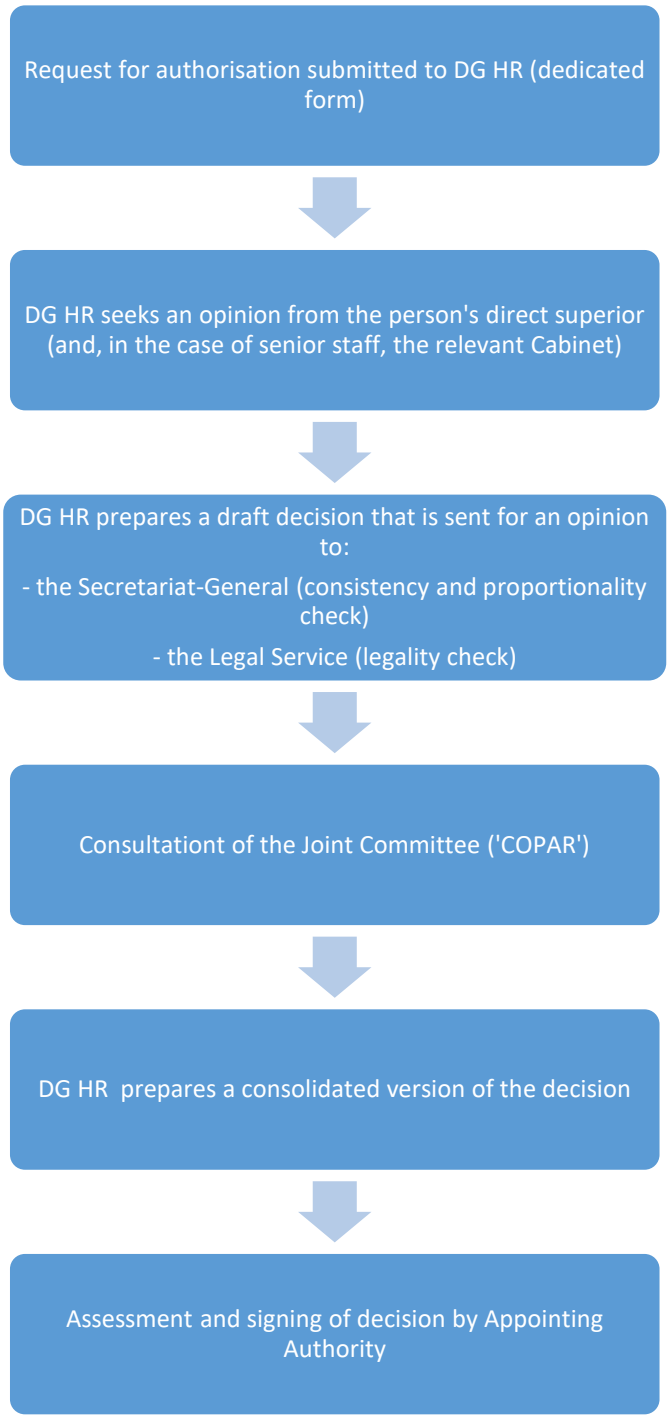
Staff going on leave on personal grounds during which they wish to exercise an outside occupational activity (Article 12b together with Article 40 Staff Regulations)

Around 700 cases per year



Outgoing revolving door moves (Article 16 Staff Regulations)

Around 400 cases per year



Annex III - The Ombudsman's main conclusions in her strategic initiative SI/2/2017/NF regarding the implementation of Article 16(3) and (4) of the Staff Regulations

The publication of information on the occupational activities of senior staff who have left the EU civil service with a view to enforcing the one-year lobbying and advocacy ban

1. Have in place fit-for-purpose implementing measures that include a functional definition of senior staff, a fully effective lobbying and advocacy ban, and a procedure for notifying colleagues that a senior staff member has been placed under a lobbying and advocacy ban;
2. Publish information under Article 16(4) of the Staff Regulations as soon as possible but at least once a year, and include information as to whether or not cases were assessed;
3. Publish information on all cases that were submitted by senior staff within the first year of their leaving the EU civil service;
4. Publish the information on a dedicated section of the institution's website;
5. Publish revolving door moves of senior staff members on the EU Transparency Register entry of the senior staff member's new employer or self-owned company and explore the possibility of listing all such moves from the EU institutions on the EU Transparency Register (similar to ACOBA in UK civil service[63]);
6. Use a broad definition of 'lobbying and advocacy' that would encompass any direct or indirect promotion of interests by a former senior staff member in relation to matters for which s/he was responsible during the last three years in service;
7. Adopt a post-employment policy for all staff, including the publication of anonymised and aggregate information on all outgoing staff moves;
8. Use an 'open data' approach to the publication of such information, to facilitate the use of such public data by third parties.

[63] https://www.gov.uk/government/collections/appointments-taken-up-by-former-crown-servants

Annex IV - Staff Regulations provisions in relation to revolving door moves

Article 11

An official shall carry out his duties and conduct himself solely with the interests of the Union in mind. He shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and in keeping with his duty of loyalty to the Union.

An official shall not without the permission of the appointing authority accept from any government or from any other source outside the institution to which he belongs any honour, decoration, favour, gift or payment of any kind whatever, except for services rendered either before his appointment or during special leave for military or other national service and in respect of such service.

Before recruiting an official, the appointing authority shall examine whether the candidate has any personal interest such as to impair his independence or any other conflict of interest. To that end, the candidate, using a specific form, shall inform the appointing authority of any actual or potential conflict of interest. In such cases, the appointing authority shall take this into account in a duly reasoned opinion. If necessary, the appointing authority shall take the measures referred to in Article 11a(2).

This Article shall apply by analogy to officials returning from leave on personal grounds.

Article 11a

1. An official shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which, directly or indirectly, he has any personal interest such as to impair his independence, and, in particular, family and financial interests.

2. Any official to whom it falls, in the performance of his duties, to deal with a matter referred to above shall immediately inform the Appointing Authority. The Appointing Authority shall take any appropriate measure, and may in particular relieve the official from responsibility in this matter.

3. An official may neither keep nor acquire, directly or indirectly, in undertakings which are subject to the authority of the institution to which he belongs or which have dealings with that institution, any interest of such kind or magnitude as might impair his independence in the performance of his duties.

Article 12

An official shall refrain from any action or behaviour which might reflect adversely upon his position.

Article 12b

1. Subject to Article 15, an official wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Union, shall first obtain the permission of the Appointing Authority. Permission shall be refused only if the activity or assignment in question is such as to interfere with the performance of the official's duties or is incompatible with the interests of the institution.

2. An official shall notify the Appointing Authority of any changes in a permitted outside activity or assignment, which occur after the official has sought the permission of the Appointing Authority under paragraph 1. Permission may be withdrawn if the activity or assignment no longer meets the conditions referred to in the last sentence of paragraph 1.

Article 13

If the spouse of an official is in gainful employment, the official shall inform the appointing authority of his institution. Should the nature of the employment prove to be incompatible with that of the official and if the official is unable to give an undertaking that it will cease within a specified period, the appointing authority shall, after consulting the Joint Committee, decide whether the official shall continue in his post or be transferred to another post.

Article 15

1. An official who intends to stand for public office shall notify the Appointing Authority. The Appointing Authority shall decide, in the light of the interests of the service, whether the official concerned:

(a) should be required to apply for leave on personal grounds, or

(b) should be granted annual leave, or

(c) may be authorised to discharge his duties on a part-time basis, or

(d) may continue to discharge his duties as before.

2. An official elected or appointed to public office shall immediately inform the Appointing Authority. The Appointing Authority shall, having regard to the interests of the service, the importance of the office, the duties it entails and the remuneration and reimbursement of expenses incurred in carrying out those duties, take one of the decisions referred to in paragraph 1. If the official is required to take leave on personal grounds or is authorised to discharge his duties on a part-time basis, the period of such leave or part-time working shall correspond to the official's term of office.

Article 16

An 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.

Officials intending to engage in an occupational activity, whether gainful or not, within two years of leaving the service shall inform their institution thereof using a specific form. If that activity is related to the work carried out by the official during the last three years of service and could lead to a conflict with the legitimate interests of the institution, the appointing authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit. 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.

In the case of former senior officials as defined in implementing measures, 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.

In compliance with Regulation (EC) No 45/2001 of the European Parliament and of the Council [ ], each institution shall publish annually information on the implementation of the third paragraph, including a list of the cases assessed.

Article 17

1. An official shall 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.

2. An official shall continue to be bound by this obligation after leaving the service.

Article 40

1. An established official may, in exceptional circumstances and at his own request, be granted unpaid leave on personal grounds.

1a. Article 12b shall continue to apply during the period of leave on personal grounds. The permission under Article 12b shall not be granted to an official for the purpose of his engaging in an occupational activity, whether gainful or not, which involves lobbying or advocacy vis-à-vis his institution and which could lead to the existence or possibility of a conflict with the legitimate interests of the institution. [ ]

Article 86

1. Any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action.

2. Where the Appointing Authority or OLAF becomes aware of evidence of failure within the meaning of paragraph 1, they may launch administrative investigations to verify whether such failure has occurred.

3. Disciplinary rules, procedures and measures and the rules and procedures covering administrative investigations are laid down in Annex IX.

The above provisions of the Staff Regulations also apply to temporary agents and contract agents, see Articles 11, 17, 81 and 91 of the Conditions of Employment of Other Servants of the European Union.

Annex V - International best practice examples

France

French civil servants who fail to follow their ethics obligations can face **criminal sanctions**[64]. Former officials are not allowed for three years to join any company if they:

- ensured supervision or control of this company;

- concluded or advised on contracts with this company;

- suggested decisions to the competent authorities about this company.

Ireland

Irish civil servants who hold positions which are "designated positions" for purposes of the Irish Ethics Acts shall not, within **twelve months** of resigning or retiring from the service[65]:

• accept an offer of appointment from an employer outside the Civil Service or

• accept an engagement in a particular consultancy project,

where the nature and terms of such appointment or engagement could lead to a conflict of interest.

USA

In January 2019, Senator Tammy Baldwin re-introduced the *Executive Branch Conflict of Interest Act*[66] which if passed would:

- Increase the prohibition on lobbying the federal government from one to two years and expand the definition of "lobbying contact" to include any lobbying activities and strategy.
- Require senior government employees to recuse themselves from any official actions that directly or substantially benefit the former employer or client(s) for whom they worked in the previous two years before joining federal service.

Norway

Senior Norwegian public officials can be given a "temporary disqualification" for up to six months from taking a new role outside the public sector[67]. In such cases, the official receives remuneration for this period.

[64] https://ec.europa.eu/home-affairs/sites/homeaffairs/files/docs/pages/20170615_ginocchi_en.pdf
[65] https://hr.per.gov.ie/wp-content/uploads/2011/06/Civil-Service-Code-of-Standards-and-Behaviour.pdf
[66] https://www.baldwin.senate.gov/press-releases/baldwin-re-introduces-expanded-legislation-to-slow-the-revolving-door
[67] https://read.oecd-ilibrary.org/governance/post-public-employment_9789264056701-en#page101