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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 2020

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Annual Report 2020

On the basis of Article 16 of the Staff Regulations¹, officials, 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. Those former officials who intend to engage in an occupational activity within 2 years of leaving the service shall inform the Institution thereof in order to enable it to take an appropriate decision in this respect and, when necessary, to forbid an activity or give the 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 the last three years in the service.

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

The Commission explains below the criteria it has chosen in order to ensure the implementation of its obligation, and presents its analysis. In annex to this publication, the Commission provides summary information in relation to the decisions taken under this provision.

The Commission, in its publication, is basing itself on its 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.

The criteria applied 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 have been called upon to occupy temporarily such posts in accordance with Article 7(2) of the Staff Regulations) and “Hors Classe” Advisors, having exercised either of these functions at any time during the last 3 years before leaving the service;
- Directors (including officials that have been called upon to occupy temporarily such post in accordance with Article 7(2) of the Staff Regulations) and Principal Advisers, having exercised either of these functions at any time during the last 3 years before leaving the service;
- Heads of Cabinet, having exercised such function at any time during the last 3 years before leaving the service.

The decision making procedure in the case of the third paragraph of Article 16 of the Staff Regulations

Declarations by former senior managers about an envisaged activity are processed as any such declaration by all staff. The Directorate-General for Human Resources and Security receives the declaration and collects the views of the former 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. It is on the basis of these different views that the final decision is taken by the Appointing Authority.

Occupational activities declared by former senior managers in 2019

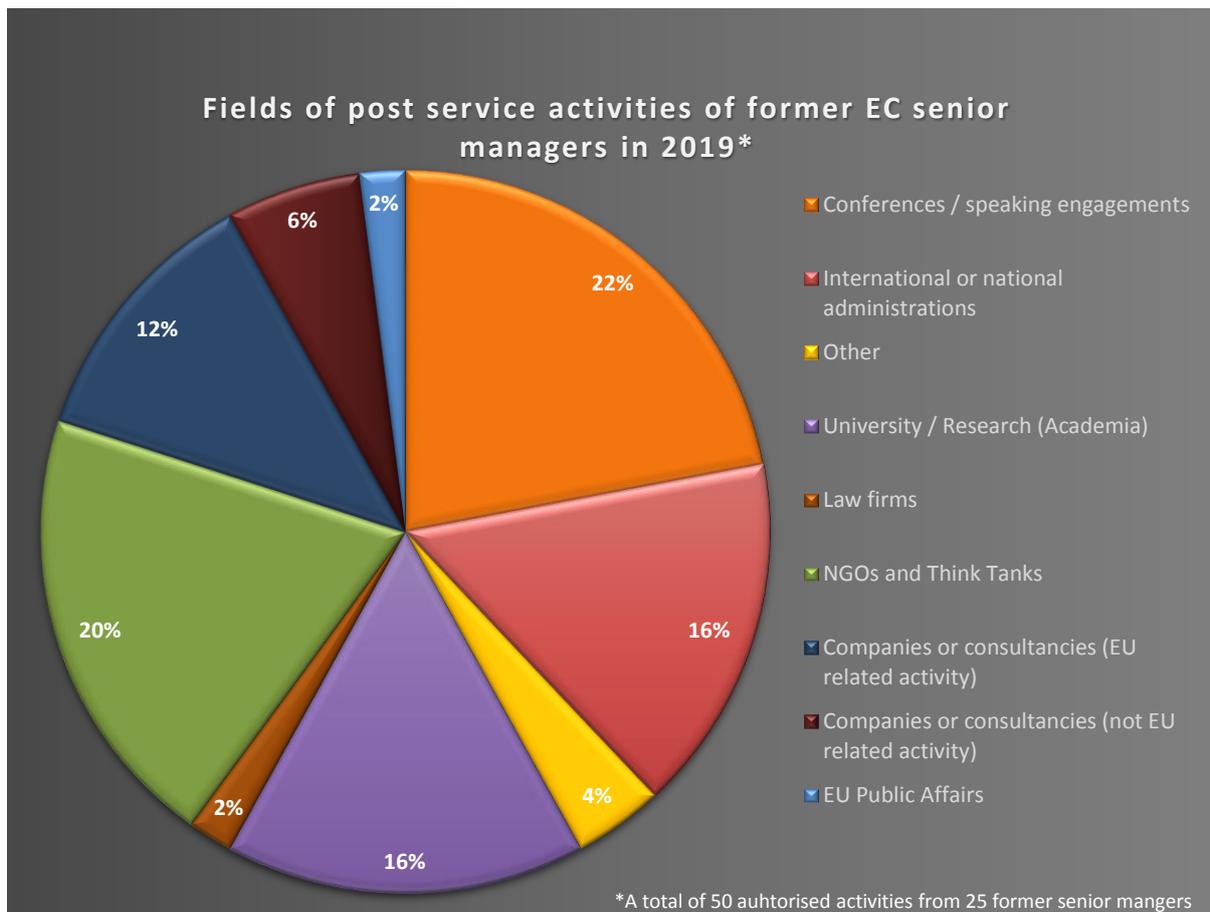
In 2019, the Commission adopted 40 decisions under Article 16 of the Staff Regulations for declarations lodged by 25 former senior managers. These declarations concerned 50 occupational activities. Some declarations included more than one activity, and consequently the related Appointing Authority decision 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 9 different categories.

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.

Of the 50 activities that were declared, 7 fell out of the temporal scope of the third paragraph of Article 16 of the Staff Regulations as they took place after more than 12 months since the former senior managers who declared them left the service. Of the 43 activities that fell in the above mentioned temporal scope, only 4, performed for a law firm and for companies or consultancies (EU related activities), could potentially give rise to, or entail, lobbying or advocacy vis-à-vis staff of the former senior manager’s former Institution on matters for which they were responsible during the last 3 years in the service, as stated in the third paragraph of Article 16 of the Staff Regulations, as further analysed below.

The pie chart below summarises the occupational activities fields of former senior managers who received a decision by the Appointing Authority in 2019.



The occupational activities concerned by the Report

The activities as described in the third paragraph of Article 16 of the Staff Regulations are those 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 the 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 43 declared activities that fell in the temporal scope of the third paragraph of Article 16 of the Staff Regulations to those whose

only object or core object would have been lobbying or advocacy activities. Certain declarations concerned 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 such instances, the Commission has decided to widen the analysis to take account of these possibilities and to assess the declared activity within the framework of the third paragraph of Article 16 of the Staff Regulations.

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

The Commission further clarifies that the present information covers activities that have been declared and actually undertaken. In line with the legal provisions in force, it does not cover declarations received and relating to activities which could not, by their very nature, give rise to or entail such lobbying or advocacy.

The present publication represents the 6th annual information released by the Commission on the implementation of fourth paragraph of Article 16 of the Staff Regulations.

Number of activities concerned

Bearing in mind that 1 declaration may refer to several activities the present information is presented by activities examined, so as to provide for an exhaustive overview.

Analysis

The present information 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 2019.

The Commission did not receive any declaration of an activity taking place within the first year after leaving the service where the only or core purpose was that of lobbying or advocacy. There has thus been no corresponding decision of the Appointing Authority.

The Commission has however received declarations concerning 4 envisaged activities (by 2 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 impose a prohibition of lobbying or advocacy in a conditional authorisation. In other cases falling in 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 4 decisions regarding activities declared which have been taken in 2019, 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 2019:

End of Service: 31 March 2018

CONCERNS

Mr Alexander ITALIANER

Former Director-General at Directorate General for Competition

Former Secretary-General of the European Commission

Former Hors Class Adviser at the Secretariat General

NEW ACTIVITY

Managing partner and director of his own company, under the provisional name “Italianer Pro-Europe”, to deliver services (as examples: independent consultancy services to law firm, but also other remunerated potential activities, including, but not limited to, speeches, individual consultancy, teaching, advisory or supervisory board memberships).

DECISION

Mr Italianer sought authorisation to act as a managing partner/director of a company named “Italianer Pro-Europe” that he intended to set up and which scope was to deliver services.

The Appointing Authority gave its approval, subject to certain conditions, to Mr Italianer to carry out this activity, but explicitly required him to notify the Commission, by introducing a specific request under Article 16 of the Staff Regulations, when he intends to engage in a specific activity or group of activities within the framework of his company during the 2 years after leaving the service, in order to receive separate clearance.

In addition, the following conditions were imposed for this activity:

- As a former senior manager, according to third paragraph of Article 16 of the Staff Regulations, during 12 months after leaving the service, Mr Italianer was not allowed to engage in lobbying or advocacy vis-à-vis staff of the Commission on behalf of his company or its clients on matters for which he was responsible during the last three years in the service in the Secretariat-General;
- During an additional period of 6 months which follows the above mentioned period of 12 months, Mr Italianer was prohibited from engaging in professional contacts aiming at lobbying or advocacy, vis-à-vis staff of the Commission on behalf of his company,

or its clients, on matters for which he was responsible during the last three years in the service;

- Mr Italianer was required also to make it clear to his interlocutors in case he would teach or provide opinions that he would do so in his personal capacity, not representing in any way the position or interests of the Commission;
- Mr Italianer 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 Italianer was required to refrain from exploiting insights of confidential nature in policy or strategy that he may have acquired in the line of service that have not yet been public or are not commonly available in the public domain;
- It was underlined to Mr Italianer that, under the first paragraph of Article 16 of the Staff Regulations, he continues to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits from any new employer or its clients. In this context, Mr Italianer 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 participated personally and substantially and that would entail relying upon information received in the line of duty that have not been made public.

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

End of Service: 31 March 2018

CONCERNS

Mr Alexander ITALIANER

Former Director-General at Directorate General for Competition

Former Secretary General of the European Commission

Former Hors Class Adviser at the Secretariat General

NEW ACTIVITY

Service provider to Arnold & Porter Kaye LLP, in Brussels

DECISION

Mr Italianer sought authorisation to provide consultancy services through his company “Italianer Pro-Europe” to Arnold & Porter LLP on an exclusive basis, including seminars or through the publication of articles on matters of specific clients interest, and participate in business development activities of the law firm.

Because he would provide his services via his company, the Appointing Authority gave its approval to Mr Italianer to carry out this activity subject to the full set of conditions already imposed for his activity as managing partner/director of his company “Italianer Pro-Europe”.

In addition, Appointing Authority imposed the following supplementary restrictions

- During two years after the date of the retirement, of Mr Italianer shall refrain from having professional contacts for his clients and for the clients of Arnold & Porter Kaye LLP with his former colleagues in the Secretariat-General and DG COMP.

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

End of Service: 31 July 2019

CONCERNS

Mr Dominique RISTORI

Former Director-General for Energy policies, technologies and research

NEW ACTIVITY

Senior Advisor at JLB Conseil, in Paris

DECISION

Mr Ristori sought authorisation to act as Senior Advisor at JLB Conseil which mission is to provide analysis, strategic thinking, and high-level confidential assignments for top management. The main field of activity was indicated in the areas of facilities management, infrastructure, telecommunications, services, recycling, security using new technologies and the housing sector. The activity is based in Paris with a focus on Africa and United States of America. The activity was mainly indicated as not relevant for the domain of energy, with this being marginal, but rather oriented towards strategic advising for the international aspects and without any operational role.

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

- As a former senior manager, according to third paragraph of Article 16 of the Staff Regulations, during 12 months after leaving the service, Mr Ristori was not allowed to engage in lobbying or advocacy vis-à-vis staff of the Commission on behalf of JLB Conseil on matters for which he was responsible during the last 3 years in the service;
- During two years after the date of the retirement, Mr Ristori shall refrain from having professional contacts for JLB Conseil and for its clients with his former colleagues in DG ENER, in particular contacts aiming at lobbying or advocacy;
- Mr Ristori was required also to make it clear to his interlocutors that this activity is carried out in his personal capacity, not representing in any way the position or interests of the Commission;
- Mr Ristori 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 Ristori was required to refrain from exploiting insights of confidential nature in policy or strategy that he may have acquired in the line of service that have not yet been public or are not commonly available in the public domain;

- It was underlined to Mr Ristori that even after his duties have ceased, under the first paragraph of Article 16 of the Staff Regulations, he continues to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits from any new employer or its clients. In this context, Mr Ristori 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 participated personally and substantially and that would entail relying upon information received in the line of duty that have not been made public. This includes in particular files or topics related to energy policies.

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

End of Service: 31 July 2019

CONCERNS

Mr Dominique RISTORI

Former Director-General for energy policies, technologies and research

NEW ACTIVITY

Senior External Advisor at Viessmann Werke GmbH & Co. KG

DECISION

Mr Ristori sought authorisation to act as Senior External Advisor at Viessmann Werke GmbH & Co. KG to provide strategic advice as regards energy transition and the international agenda, without any executive responsibility.

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

- As a former senior manager, according to third paragraph of Article 16 of the Staff Regulations, during 12 months after leaving the service, Mr Ristori was not allowed to engage in lobbying or advocacy vis-à-vis staff of the Commission on behalf of Viessmann Werke GmbH & Co. KG on matters for which he was responsible during the last three years in the service;
- During two years after the date of the retirement, Mr Ristori shall furthermore refrain from having professional contacts for Viessmann Werke GmbH & Co. KG with his former colleagues in the DG ENER;
- Mr Ristori was required also to make it clear to his interlocutors that this activity is carried out in his personal capacity, not representing in any way the position or interests of the Commission;
- Mr Ristori 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 Ristori was required to refrain from exploiting insights of confidential nature in policy or strategy that he may have acquired in the line of service that have not yet been public or are not commonly available in the public domain;

- It was underlined to Mr Ristori that even after his duties have ceased, under the first paragraph of Article 16 of the Staff Regulations, he continues to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits from any new employer or its clients. In this context, Mr Ristori 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 participated personally and substantially and that would entail relying upon information received in the line of duty that have not been made public.

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