

# EB DECISION

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**Decision n°: 2018/06**

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**SUBJECT : Application by analogy of the Commission Decision C(2018)4048 on outside activities and assignments and on occupational activities after leaving the Service**

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## **THE EXECUTIVE BOARD OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS**

HAVING REGARD to the Council Regulation (EC) n° 168/2007 of 15 February 2007 establishing the European Union Agency for Fundamental Rights (FRA), and in particular Article 24 thereof,

HAVING REGARD to the Staff Regulations of officials of the European Union and the Conditions of employment of other servants of the European Union as laid down by Council Regulation (EEC, EURATOM, ECSC) n° 259/68, and in particular Article 110(2) of the Staff Regulations,

Following consultation with the Staff Committee,

Whereas:

- (1) Implementing rules for the Agency should be adopted pursuant to Article 110(2) of the Staff Regulations.
- (2) FRA applies by analogy the Commission Decision C(2013)9037 adopted through EB decision on 12 December 2013.
- (3) On 6 July 2018 the Commission informed FRA of to the EU Agencies sent the Commission Decision on outside activities and assignments and on occupational activities after leaving the Service C(2018)4048.
- (4) In application of Article 110(2) of the Staff Regulations, the above-mentioned implementing rules shall apply by analogy to the agencies either nine months after the date of this information, or by decision of the Management Board at an earlier date.

HAS DECIDED AS FOLLOWS:

### *Article 1*

The implementing rules of the Staff Regulations, as adopted by the Commission, and listed in Annex 1, shall apply by analogy to the staff of the Agency.

## EB DECISION

### *Article 2*

This decision shall take effect on the day following that of its adoption.

Vienna, **05. Okt. 2018**

*For the European Union Agency for Fundamental Rights*



Sirpa Rautio

*Chairperson of the Executive Board*

# EB DECISION

## *Annex I*

- Commission Decision C(2018)4048 on outside activities and assignments and on occupational activities after leaving the Service.





Brussels, 29.6.2018  
C(2018) 4048 final

**COMMISSION DECISION**

**of 29.6.2018**

**on outside activities and assignments and on occupational activities after leaving the  
Service**

## COMMISSION DECISION

of 29.6.2018

### on outside activities and assignments and on occupational activities after leaving the Service

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Whereas:

- (1) It is necessary to give guidance on the application of the Staff Regulations of Officials (the 'Staff Regulations'), and the Conditions of Employment of Other Servants of the European Union (the 'CEOS'), laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68<sup>1</sup>, namely, the second and fourth paragraphs of Article 11, Article 11a, Article 12, Article 12b, Article 15, Article 16, Article 17, Article 17a, Article 19, Article 55(1) of the Staff Regulations, Articles 13(2) and 40 of Annex VIII to the Staff Regulations, and Articles 11, 17, 81 and 91 of the CEOS.
- (2) The Commission adopted on 5 March 2008 [Sec(2008) 301] a Communication on enhancing the environment for professional ethics in the Commission.
- (3) The Commission adopted on 16 December 2013 Decision C(2013) 9037<sup>2</sup> on outside activities and assignments to take into account the considerably strengthened provisions on activities involving lobbying and/or advocacy with respect to conflict of interest introduced in the Staff Regulations on 1 January 2014, while respecting the principle of proportionality.
- (4) When issuing a decision on outside activities and assignments and on occupational activities after leaving the service, the Appointing Authority should pay due regard to the principle of proportionality. Therefore, its decisions should not entail limitations that are not necessary and that would not genuinely meet the objective of protecting the interests of the institution as defined in the Staff Regulations and CEOS.
- (5) The practical application of the previous rules on outside activities and assignments has shown that certain provisions need to be adapted in the light of changing circumstances and that they require a number of clarifications.
- (6) Prior permission from the Appointing Authority is required to engage in outside activities during active service.
- (7) Staff members in active service regularly request permission to engage in outside activities which will clearly not interfere with the performance of their duties and are clearly not incompatible with the interests of the institution. In such cases, prior permission can therefore be deemed to be granted.

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<sup>1</sup> OJ L 56, 4.3.1968, p. 1.

<sup>2</sup> C(2013)9037 of 16.12.2013, Administrative Notice No 78-2013 of 19 December 2013.

- (8) At the same time, certain outside activities, by their very nature, are liable to interfere with the performance of the staff member's duties and/or are incompatible with the interests of the institution and should therefore be prohibited.
- (9) Certain activities, notably commercial activities giving rise to modest revenues, are prohibited under the previous rules. Experience has shown that the compatibility with the performance of the staff member's duties and the interest of the service of such activities should be subject to case-by-case analysis rather than a blanket ban. Any such analysis should take account of the changes that have occurred in the statutory composition of the Commission's staff.
- (10) The maximum remuneration a staff member may earn when engaging in an outside activity should be reviewed, given that the ceiling for such remuneration was not reviewed at the time of adoption of Decision C(2013) 9037 and remains the same as the one defined by Decision C(2004) 1597 of 28 April 2004.
- (11) The fact that staff members sometimes need to engage in outside activities in order to maintain their professional skills and/or upgrade their qualifications, as required by the interests of the service, should be formally recognised.
- (12) All the actors involved in the procedure shall act with celerity so as to respect the former staff member's fundamental right to engage in work and to pursue a freely chosen or accepted occupation.
- (13) Staff members leaving or having left active service are subject to Article 16 of the Staff Regulations, which requires them to inform the institution of their intention to engage in an occupational activity, whether gainful or not, during the first two years of leaving the service.
- (14) Practice has shown that the concept of 'occupational activity' in the meaning of Article 16 of the Staff Regulations requires clarification.
- (15) The obligations of staff members or former staff members benefiting from an invalidity allowance or invalidity pension should be clarified.
- (16) Staff members who intend to perform an activity whether in service, on leave on personal grounds or after having left the service have to be reminded of all relevant provisions of the Staff Regulations which apply to the concerned activity, in addition to the provision requiring that the Appointing Authority is informed or notified of the activity.
- (17) Special advisers are not covered by the present Decision.
- (18) For reasons of clarity, legal certainty and transparency, Commission Decision of 16.12.2013 on outside activities and assignments and occupational activities after leaving the service should be replaced by this Decision.

HAS DECIDED AS FOLLOWS:

## **TITLE ONE: SCOPE AND DEFINITIONS**

### *Article 1* *Scope and definitions*

This Decision shall apply to all Commission staff covered by the Staff Regulations or by the CEOS,<sup>3</sup> with the exception of special advisers. For seconded national experts (SNEs), the Commission Decision C(2008)6866 of 12 November 2008, and in particular Article 7 thereof, applies.

For the purposes of this Decision, the following definitions shall apply:

- (a) An 'outside activity' as referred to in Article 12b of the Staff Regulations means any activity, paid or unpaid, that:
  - (i) is not part of the staff member's duties at the Commission, including those covered by a mission order or an authorisation to travel for work-related reasons such as giving a speech or a presentation, and
  - (ii) cannot reasonably be considered a hobby or leisure activity.
- (b) An 'assignment outside the Union' as referred to in Article 12b of the Staff Regulations means a one-off task, paid or unpaid, that meets the conditions laid down in points (a) (i) and (ii) of this Article.
- (c) An 'occupational activity' as referred to in Article 16 of the Staff Regulations means any professional activity, whether gainful or not, other than the activities meeting the conditions set out in Article 20(3).
- (d) 'Structural part-time work' means part-time work pattern imposed to a contract agent upon hiring and not covered by Article 55(a) of the Staff Regulations.

## **TITLE TWO: STAFF MEMBERS IN ACTIVE SERVICE, STAFF MEMBERS SECONDED IN THE INTEREST OF THE SERVICE**

### *Article 2* *General principles*

1. Pursuant to Article 12b of the Staff Regulations, a staff member wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment, shall first obtain the permission of the Appointing Authority. Permission shall be refused only if the outside activity or assignment in question would interfere with the performance of the staff member's duties or is incompatible with the interests of the institution.
2. Permission to engage in an outside activity or an assignment shall not relieve the staff member, as regards the activity for which the permission is granted, of the other obligations under the Staff Regulations, for instance, those provided for in Article 17 regarding the unauthorised disclosure of information received in the line of duty, Article 55 obliging the staff member to be at all times at the disposal of the institution and Articles 11 and 11a related to situations of conflict of interest. In

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<sup>3</sup> Officials, temporary agents and contract agents.

addition, an authorisation for any outside activity does not mean that the staff member can disregard any national laws on the activity in question.

3. The staff member may not make use in his or her outside activity or assignment (i) of his or her status or of material or (ii) data to which he or she has access as a staff member and which has not yet been made public or is not accessible to the public.
4. The Appointing Authority, when considering whether to permit an outside activity or assignment, shall take into account the statutory link between the applicant and the institution, the nature of his or her duties and the level of his or her responsibilities. It may prohibit the activity or permit it subject to any restrictions it deems appropriate.

### *Article 3*

#### *The need for prior permission*

Without prejudice to the provisions of Article 4, all staff members, whether in active service at the Commission or seconded in the interest of the service, shall obtain prior permission from the Commission to engage in an outside activity or an assignment. In order to allow the Appointing Authority to assess the activity under Article 12b of the Staff Regulations, staff members must submit an application accompanied by supporting documents that includes an indication of the expected remuneration, if any.

### *Article 4*

#### *Activities for which prior permission is deemed to be granted*

1. By way of derogation from Article 3, staff members are not obliged to submit an application for activities that meet the conditions laid down in this Article, as they are deemed not to interfere with the performance of the staff member's duties and are deemed compatible with the interests of the institution.
2. Provided that they fall within the scope of this Decision as defined in Article 1, prior permission shall be deemed to be granted for activities meeting the following cumulative conditions:
  - (a) they are unpaid or do not generate revenues;
  - (b) they are neither pursued in a professional capacity nor are performed for a commercial entity;
  - (c) they are performed outside the working hours agreed with the line manager of the staff member concerned or are covered by a duly approved leave or recuperation;
  - (d) the impartiality and objectivity of the staff member while performing his duties are not compromised, or may not appear to be compromised in the eyes of third parties, because of interests which diverge from those of the institution;
  - (e) the outside activity or assignment has not a negative impact on the reputation and/or on the trustfulness of the institution;
  - (f) the other obligations laid down in the Staff Regulations are complied with.
3. As example, the following activities are in principle deemed to fulfil the mandatory conditions set out above for the prior permission to be considered granted:



- 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, in particular:
  - (i) charitable and humanitarian activities;
  - (ii) activities relating to sport or wellbeing;
  - (iii) activities deriving from political, religious, trade unionist and/or philosophical convictions;
  - (iv) craftwork, artistic or cultural activities;
- unpaid teaching activities unless they are performed for a commercial entity;
- the mere ownership of assets or holdings, or the management of the personal or family fortune, whether in a private capacity or as a shareholder of a company, but not running a business;
- the mere membership of a professional order or association, unless the code of conduct of the order or association conflicts with the staff member's obligations under the Staff Regulations.

*Article 5  
Prohibited Activities*

Permission for paid outside activities or assignments shall be refused if:

- (a) the activity in question is performed during the working hours agreed with the line manager of the official concerned and is not covered by a duly approved leave or recuperation ; and/or
- (b) the activity in question is such as to interfere with the performance of the staff member's duties; and/or
- (c) the activity in question is incompatible with the interests of the institution, for example because it:
  - (i) is detrimental to the reputation of the institution; and/or
  - (ii) damages public trust in the neutrality and objectivity of the institution; and/or
  - (iii) gives rise to an actual conflict of interest;
 and/or
- (d) the activity in question, by itself or combined with other authorised outside activities, gives rise to remuneration which exceeds the ceiling referred to in Article 7(1).

*Article 6  
Activities to be assessed on a case-by-case basis*

Permission to engage in outside activities which do not fall under Article 4 or 5 shall be assessed on a case-by-case basis by the Appointing Authority.

### *Article 7*

#### *Maximum net remuneration*

Without prejudice to Article 15 of the Staff Regulations, the annual ceiling for net remuneration which a staff member may receive for all his or her assignments or outside activities combined, including any fees received but after deduction of taxes or other duties linked to these activities, shall be EUR 10 000 per calendar year.

Reimbursements of reasonable expenses (such as transport and lodging) and royalties received for publications, artistic proceeds or intellectual property rights shall not be taken into account when calculating the maximum net annual remuneration.

The concept of maximum net annual remuneration does not include revenue received in the exercise of a public office or resulting from the authorised acceptance of a prize or award within the meaning of Article 8.

### *Article 8*

#### *Prizes and awards*

1. Staff members who, by reason of an authorised outside activity or assignment, are selected for a prize or an award which does not constitute a gift or favour within the meaning of Article 11, second paragraph, of the Staff Regulations<sup>4</sup>, are required to apply for permission to accept and receive it.
2. Permission shall be refused only if accepting the prize or award is incompatible with the interests of the institution or could impair, or appear to impair, the staff member's impartiality.

### *Article 9*

#### *Part-time work at the request of the staff member*

1. Staff members working part-time at their own request shall not engage in any paid outside activities, pursuant to Article 3, third paragraph, of Annex IVa of the Staff Regulations.
2. Staff members working part-time at their own request may engage in unpaid outside activities during the part of the time they are not working for the institution, in which case Articles 1 to 6 and 8 apply.
3. Staff members who have been authorised to work part-time to hold a public office, may take on unpaid or paid outside assignments and activities directly related to the public office concerned, subject to the conditions set out in Article 14.

### *Article 10*

#### *Structural part-time work*

Articles 1-4, 5 (a) to (c), 6 and 8 apply to staff members employed on structural part-time basis. When required, such staff members shall request prior permission and in principle, receive permission to engage in an outside activity or assignment, whether paid or not.

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<sup>4</sup> See Communication of 7 March 2012 from Vice-President SEFCOVIC to the Commission on Guidelines on gifts and hospitality for the staff members.

*Article 11*

*Staff members who need to maintain their professional skills and/or upgrade their qualifications*

Staff members shall in principle receive permission to exercise an outside activity or assignment, whether paid or not, if it is required in the interest of the service that they maintain their professional skills and/or upgrade their qualifications. Articles 1-4, 5 (a) to (c), 6 and 8 apply to such staff members.

*Article 12*

*Parental and family leave*

1. Staff members benefiting from parental or family leave may engage in unpaid outside activities only, whereby Articles 1- 6 and 8 apply.
2. During parental or family leave, paid activities are allowed only in the circumstances provided for in Article 10 and 11.

*Article 13*

*Procedures for obtaining permission - Withdrawal*

1. Where required, applications for obtaining permission, together with the relevant supporting documents, shall be submitted to the Appointing Authority at least two months before the activity or the assignment is due to commence.
2. An application shall be submitted to the Appointing Authority for any new activity or assignment and for any change in the activity or assignment.
3. A new application shall likewise be made if a staff member changes posts, to assess whether the new duties and the activity or assignment are compatible with the criteria set out in Article 12b of the Staff Regulations.
4. The Appointing Authority may withdraw its permission in exceptional circumstances only, on justified grounds and after informing the staff member. If the Appointing Authority withdraws its permission to carry out a given outside activity before the expiry date of the period of validity, if any, the staff member shall be granted an appropriate period to take any measures necessary to adapt to the new situation.

*Article 14*

*Public office*

Articles 1 to 8 continue to apply where staff members who benefit from Article 15 of the Staff Regulations engage in activities other than those directly related to the public office mandate.

## TITLE THREE: STAFF MEMBERS ON LEAVE ON PERSONAL GROUNDS

### *Article 15*

#### *Activities and assignments*

1. Under Article 40(1a) of the Staff Regulations, Article 12b of the Staff Regulations shall continue to apply during a period of leave on personal grounds. Accordingly, staff members on leave on personal grounds must request prior permission for any outside activity or assignment at any time during the period of leave, except in the cases listed under Article 4, paragraphs 2 and 3 applied *mutatis mutandis*.
2. Under Article 40(1a) of the Staff Regulations, staff members shall not be granted permission to engage in an occupational activity or assignment, whether gainful or not, which involves lobbying or advocacy vis-à-vis the institution and which could lead to a conflict of interest, or the possibility of such a conflict, with the legitimate interests of the institution.
3. In other cases than those covered by paragraph 2, permission shall, in principle, be granted except where the outside activity or assignment could give rise to a conflict of interest or be incompatible with the interests of the institution. If a potential conflict of interest is identified or a detrimental effect on the interests of the institution is shown, the Appointing Authority may authorise the activity in question while imposing appropriate restrictions or not grant such an authorization.

### *Article 16*

#### *Remunerated tasks for the Commission during leave on personal grounds*

1. A staff member on leave on personal grounds may not receive remuneration for tasks carried out for the Commission. Reimbursement of expenses is not counted as remuneration in this context.
2. 'Task' for the purposes of this Decision means:
  - (a) any direct contract, other than a contract concluded under the conditions of employment of other servants, between the staff member on leave on personal grounds and the Commission;
  - (b) any relationship with a company in which the staff member holds a substantial direct or indirect financial interest and which entertains a contractual relationship with the Commission
3. Notwithstanding the general prohibition provided for in paragraph 1, the Appointing Authority may, in agreement with the Director-General for Human Resources and Security, grant an exception if the staff member takes leave on personal grounds to follow his or her spouse who is also a staff member of the European Union. This exception shall, however, not be made for tasks consisting of a contractual relationship between the Commission and a company in which the staff member who is on leave on personal grounds holds a substantial direct or indirect financial interest.
4. In cases where the exception under paragraph 3 is granted, the remuneration to which the tasks give rise shall not exceed the remuneration the staff member would have received had he or she been in active service. This may be increased to cover

reasonable professional costs which the staff member incurs through his or her new activity.

5. Working as an employee or sub-contractor for a company with which the Commission has a contractual relationship, and provided the staff member has no direct or indirect substantial financial interest in that company, shall be declared as an outside activity pursuant to Article 15 of this Decision. The Appointing Authority shall make a case-by-case assessment.

#### *Article 17*

##### *Procedure for granting permission to engage in outside activities and assignments during leave on personal grounds*

1. Decisions on requests for permission to engage in an activity during leave on personal grounds are taken by the Appointing Authority, in agreement with the Director-General for Human Resources and Security.
2. Applications must be submitted to the Appointing Authority at least two months before the beginning of the activity or the assignment. The permission is valid for the period which is set out in the application, and should not be longer than 12 months.

In addition,

- (a) the staff member shall sign a declaration confirming he or she is fully aware of his or her obligations under the Staff Regulations. The staff member shall declare therein that the provisions of Article 11a have at all times been complied with, including when negotiating the terms and conditions of the envisaged activity while being in active employment;
- (b) for every additional activity, a new application needs to be submitted at least two months before the beginning of the activity or the assignment;
- (c) for every extension or renewal of the activity or assignment, a new application must be submitted at least two months before the expiry of the current permission. A new application must also be made for each change in the activity or assignment - in which case the Appointing Authority shall decide whether to maintain the permission or withdraw it;
- (d) in the event of non-renewal or withdrawal of permission, the Appointing Authority may give the staff member an appropriate period of time to take the necessary measures to adapt to the situation.

#### *Article 18*

##### *Reinstatement in the Commission upon return from leave on personal grounds*

Upon reinstatement in a post at the Commission following leave on personal grounds, a staff member shall complete a specific form declaring any personal interest. In particular, the declaration shall include any family or financial interest, such as to impair his or her independence or any other actual or potential conflict of interest relevant to the post in which he or she is being reinstated. Should a conflict of interest be confirmed in a reasoned opinion, the Appointing Authority shall take the measures referred to in Article 11a (2) of the Staff Regulations.

**TITLE FOUR: STAFF MEMBERS LEAVING OR HAVING LEFT THE  
COMMISSION SERVICE**  
(including staff members receiving an invalidity allowance or an allowance provided for  
in Annex IV to the Staff Regulations)

*Article 19*  
*Obligations of integrity and discretion unlimited in time*

Under Article 16, first paragraph, of the Staff Regulations, staff members who have left the service continue, without any limit in time, to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments and benefits.

Under Article 17, second paragraph, of the Staff Regulations, staff members who have left the service shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or accessible to the public.

*Article 20*  
*Obligations under Article 16 of the Staff Regulations*

1. Under Article 16, second paragraph, of the Staff Regulations, all staff members, including former staff members, must inform the Commission beforehand of their intention to engage in an occupational activity, whether gainful or not, by using a specific form. This obligation applies for two years after leaving the service. If that activity is related to the work carried out by the staff member during the last three years of service and could lead to a conflict of interest with the legitimate interests of the institution, the Appointing Authority may, having regard to the interests of the service, either forbid him or her to undertake it or give its approval subject to any conditions it thinks fit. Moreover, the staff member shall declare in the specific form that, the provisions of Article 11a have at all times been complied with, including when negotiating the terms and conditions of the envisaged activity while being in active employment.
2. Taking up employment at a European Union institution or body in the meaning of the Treaty on European Union and/or the Staff Regulations does not trigger the obligation to inform the Commission, as described in paragraph 1, as engaging in this activity does not lead to leaving the service of the Union for the purpose of applying Article 16, second paragraph, of the Staff Regulations. This is without prejudice of Article 40 of Annex VIII of the Staff Regulations.
3. The activities expressly listed as examples under Article 4, paragraph 3, do not constitute occupational activities within the meaning of Article 16, second paragraph, of the Staff Regulations provided that:
  - (a) they do not give rise to lobbying or advocacy vis à vis staff of their former institution;
  - (b) are not remunerated;
  - (c) are carried out in the staff member's personal capacity.
4. The occupational activities which are not in any way directly related to the work of the former staff member in the Commission, cannot by their very nature, give rise to a conflict of interest with the legitimate interests of the Commission. They shall

however be notified to the Appointing Authority using the specific form referred to in paragraph 1.

#### *Article 21*

##### *Information on occupational activities pursuant to Article 16 of the Staff Regulations*

1. When leaving the service of the Commission the staff member must sign a declaration confirming that he or she is aware of the obligations under Article 16, second paragraph, of the Staff Regulations.
2. On the basis of the specific form referred to in Article 21(1), the Appointing Authority shall assess whether the notified activity could lead to a conflict with the legitimate interests of the institution. When assessing the possibility of any actual or potential conflict of interest, the Appointing Authority takes into account factors such as:
  - (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 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.
3. The Appointing Authority defines an appropriate balance between the need to ensure integrity through temporary prohibitions and restrictions and the need to respect the former staff member's fundamental right to engage in work and to pursue a freely chosen or accepted occupation. In particular, the Appointing Authority may, during the two year period after the staff member has left the service:
  - (a) prohibit the former staff member from dealing with files, cases or matters related to the work carried out by him or her during his or her last three years of service, including related or subsequent cases and/or court proceedings; and/or
  - (b) impose a 'cooling off period' excluding the former staff member from, for example, professional contacts with former colleagues or from representing opposing parties.
4. Staff members shall inform the Commission of their intention to engage in an occupational activity at least 30 working days before the envisaged starting date. Staff members shall not start the activity before receiving either explicit or implicit acceptance, whichever comes first.
5. The Appointing Authority shall, within 30 working days after being informed of the occupational activity, notify its decision, after consulting the Joint Committee as

provided in Article 16, second paragraph of the Staff Regulations. Failure by the Appointing Authority to notify its decision within the 30 day period constitutes implicit acceptance of the occupational activity. 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.

6. For former senior officials<sup>5</sup>, the Appointing Authority shall, in principle, prohibit them during the first 12 months after leaving the service from engaging in lobbying or advocacy, vis-à-vis staff of their former institution, on behalf of their business, clients or employers on matters for which they were responsible during the last three years in the service. This is without prejudice to a possible “cooling off period” as in paragraph 3b).
7. The Commission shall publish information annually on how the provisions regarding former senior officials are implemented, including a list of the cases assessed having due regard to the rules on the protection of personal data as contained in Regulation (EC) No 45/2001 of 18 December 2000.

#### *Article 22*

##### *Recipients of an invalidity allowance under Article 78 of the Staff Regulations*

1. The recipient of an invalidity allowance<sup>6</sup> shall sign a declaration confirming that he or she has full knowledge of his or her obligations.
2. The recipient may not be given an assignment of any kind, paid or unpaid, by the Commission.
3. If the recipient intends to engage in employment, whether gainful or not, which does not fall under paragraph 2, and at the request of the person concerned:
  - (a) the Appointing Authority shall, under Article 15 of Annex VIII to the Staff Regulations, require the recipient to undergo a medical assessment to ascertain whether he or she still satisfies the requirements for payment of the invalidity allowance.
  - (b) if this medical assessment is positive, and if the person concerned is or intends to engage in gainful employment, the Appointing Authority shall assess whether, under Article 13(2) of Annex VIII, such employment is consistent with the current basis for granting the invalidity allowance.
  - (c) Any income from such activity shall comply with Article 13(2) of Annex VIII to the Staff Regulations. This provision states that any income from such gainful employment which, in combination with the invalidity allowance, exceeds the final total remuneration received while in active service as determined on the basis of the salary scale in force on the first day of the month in which the allowance is to be paid shall be deducted from the invalidity allowance.

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<sup>5</sup> The term ‘senior officials’ refers to officials 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, and in accordance with Annex 1 of the Staff Regulations, means all positions falling within the function group of Director-General or Director, as the case may be.

<sup>6</sup> For the purpose of this provision, the term ‘invalidity allowance’ also covers ‘invalidity pension’.



- (d) If the Appointing Authority considers that the envisaged employment is consistent with the current basis for granting the invalidity allowance, it shall subsequently assess on a case by case basis whether the activity in question, gainful or not, is compatible with the conditions of application of Article 12b of the Staff Regulations.
4. Once the recipient of an invalidity allowance reaches pensionable age, he or she shall be subject to Article 16 of the Staff Regulations and the relevant provisions of this Decision from the date of retirement, if he or she has been in active service at any time during the last three years preceding the date of retirement.

#### *Article 23*

*Staff members to whom Articles 41 (non-active status), Article 42c (leave in the interest of the service), and Article 50 (retirement in the interests of the service) apply: applicability of Article 16 of the Staff Regulations*

1. Staff members to whom Articles 41 and 50 of the Staff Regulations apply shall comply with the obligations under Article 16 of the Staff Regulations and the relevant provisions of this Decision applied by analogy, until the end of the period of entitlement to the allowance as defined by Articles 41 and 50 of the Staff Regulations.
2. Staff members to whom Article 42c of the Staff Regulations applies shall comply with the obligations under Article 12b of the Staff Regulations and the provisions of Title Three of this Decision. When the period of entitlement to the allowance as defined by Article 42c has ended, the staff member is subject to Article 16 of the Staff Regulations and the relevant provisions of this Decision.
3. Remuneration received by staff members from any new employment during the period of entitlement to the allowance provided by Articles 41, 42c and 50 of the Staff Regulations shall be deducted from that allowance, if the remuneration and allowance together exceed the total remuneration last received by the staff member. This calculation is based on the table of salaries applicable on the first day of the month for which the allowance is to be paid.

#### *Article 24*

*Activities for or assignments by the Commission*

1. The Commission may ask a former staff member to carry out activities for its benefit. A procedure under Article 16 of the Staff Regulations is not required in such cases.
2. In principle, such activities exclude remuneration of any kind other than reimbursement of any expenses reasonably incurred by the former staff member. An agreement is concluded between the Commission and the former staff member.
3. Paid activities are authorised on an exceptional basis only and are generally subject to the following cumulative conditions, for which the Commission must provide evidence:
  - (a) the activities are in the Commission's general interest;
  - (b) they meet a specific need requiring knowledge that is not available other than through the former staff member in question.

Any payment made by the Commission may not exceed the difference between the total annual amount of the last salary when the former staff member was still in service and his retirement pension in the year in question. Annual remuneration is established on the basis of the salary table applicable on the first day of the month in which the salary is paid. The reimbursement of expenses for which the former staff member has provided supporting documents shall not be taken into account for this purpose.

4. The Commission must conclude a contract with the former staff member.  
Nevertheless, the Commission shall not conclude any contract, paid or unpaid or otherwise, with former temporary agents or former contract agents as long as they are in receipt of unemployment allowance from the Union Budget.

## TITLE FIVE: FINAL PROVISIONS

### *Article 25* *Disciplinary measures*

Infringements of the rules on outside activities and assignments and occupational activities carried out after leaving the service expose staff members and former staff members to the risk of disciplinary penalties under Article 86 and Annex IX of the Staff Regulations.

### *Article 26*

Eighteen months after the date at which this Decision will take effect, the Commission shall undertake a review of its implementation, in particular with respect to Article 4.

### *Article 27* *Repeal*

Commission Decision C(2013)9037 is repealed.

### *Article 28* *Day of taking effect*

**This Decision enters into force on the date of the adoption and shall take effect on 1 September 2018.**

Done at Brussels, 29.6.2018

*For the Commission*  
*Günther OETTINGER*  
*Member of the Commission*

## NOTICE OF INTERPRETATION

**Application to the FRA of the implementing rule giving effect to the amended Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union on outside activities and assignments and on occupational activities after leaving the service**

### A. Introduction

1. Regulation (EU, EUROATOM) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union introduces, with effect from 1 January 2014, significant structural changes to the applicable legal framework. It is therefore necessary to adapt the relevant implementing rules to this new legal framework. It is also necessary to adapt to the internal structure of the FRA some words used in the implementing rules adopted by the Commission.
2. FRA applies by analogy the Commission Decision C(2013)9037 adopted through EB decision 2013/02 on 12 December 2013. The Commission adopted a new Decision C(2018)4048 that entered into force on 29 June 2018. On 06 July 2018 the Agency was notified of the said Commission's decision. Pursuant to Article 110 (2) of the Staff Regulations, these rules should apply by analogy to FRA nine months after their entry into force at the Commission or nine months after being communicated to the Agency, whichever is later, or by decision of the Management Board at an earlier date (i.e. decision of the Executive Board in the Agency's case).
3. For reasons of clarity and legal certainty, the Commission Decision C(2013)9037 should be repealed and replaced by the Commission Decision C(2018)4048.

### B. Definitions

It should be understood by:

- "Commission", FRA
- "Institution", FRA
- "Directorate-General for Human Resources and Security", Corporate Services Department

### C. Text of EC decision

- Gender neutral language: use of the personal pronoun throughout the document should be understood as a gender neutral language.

Done in Vienna on

5/10/18

  
The Director  
Michael O'Flaherty