

## 2022 Annual Report on implementation of Article 18 of the EDA Staff Regulations

### **1. Legal basis**

On the basis of Article 18 of the EDA Staff Regulations,<sup>1</sup> members of temporary staff continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits, after leaving the service.

Those former members of temporary staff who intend to engage in an occupational activity within two 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 18 of the Staff Regulations stipulates that for former senior officials, the authority authorised to conclude contracts (hereinafter “AACC”)<sup>2</sup> 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 18 of the Staff Regulations foresees that, in compliance with Regulation (EU) 2018/1725 on data protection<sup>3</sup>, each institution shall publish annually information on the implementation of the third paragraph, including a list of the cases assessed.

The Agency, in its publication, is basing itself on its obligation under the fourth paragraph of Article 18 of the Staff Regulations in combination with Article 5(1)(a) and (b) of Regulation (EU) 2018/1725.

### **2. Approach for the assessment of cases**

The assessment of the cases reported in 2022 was based on the criteria and procedure set out below:

#### Definition of senior members of temporary staff

“senior members of temporary staff”, as referred under Article 18(3) refers to staff members occupying functions corresponding to the type of post in grades AD 14 and above, namely:

- Chief Executive and the Deputy Chief Executive
- Directors (including officials that have been called upon to occupy temporarily such post in accordance with Article 9(2) of the Staff Regulations)

They are referred to hereinafter as “senior managers”.

---

<sup>1</sup> Council Decision (EU) 2016/1351 of 04 August 2016 concerning the Staff Regulations of the European Defence Agency, and repealing Decision 2004/676/EC. (OJ L 219, 12.08.2016, p.1)

<sup>2</sup> In accordance with Article 1.2 of the EDA Staff Regulations, the AACC is determined in accordance with the relevant provisions of the EDA Council Decision (Council Decision (CFSP)2015/1835, OJ L 266, 13.10.2015).

<sup>3</sup> 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. (OJ L 295, 21.11.2018, p.39).

### The decision-making procedure

Notifications by former senior managers about an envisaged activity are treated as any such notification made by staff under Article 18, i.e. CSD/HR Unit receives the notification and collects the views of the relevant service(s) in which the former staff member has worked during the last three years of service, as well as the view of the Legal Advisor, as needed. The AACC will take a final decision based on these different views.

### Occupational activities of senior managers

In addition, for senior managers, “occupational activities” constituting 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 that senior manager was responsible during the last three years in service, shall in principle be prohibited by the AACC during the 12 months after leaving the service.

The assessment of the Agency is not limited to envisaged activities whose only object or core object would have been lobbying or advocacy activities. Indeed, even if lobbying or advocacy is excluded at the point in time of the notification, certain activities could, in practice or theory, give rise to, or entail, lobbying or advocacy because of their nature. In such instances, the Agency has decided to widen the analysis to take account of these possibilities and to assess the notified activity within the framework of Article 18(3) of the Staff Regulations.

It is further clarified that the present information covers activities that have been notified and effectively undertaken. In line with the legal provisions in force, it does not cover notifications received and relating to activities which could not, by their very nature, give rise to or entail such lobbying or advocacy.

### Scope of publication of individual cases assessed

EDA publishes an overview of all the individual cases of senior staff members it assesses, providing the following details:

- name of the former senior staff member;
- date of end of service;
- description of the former senior staff member's tasks during the last three years at the Agency;
- if applicable, name of proposed employer/client and description of the proposed tasks during the twelve months after leaving the service;
- summary assessment by the AACC and decision.

### **3. Specific cases in 2022**

In 2022, the Director Capability, Armament and Planning (CAP) at the European Defence Agency left the Agency and filed a first application for authorisation to engage in an occupational activity after leaving EDA, followed by a second application a few months after his departure.

The first request was authorised, the second was refused by the Chief Executive, acting as AACC.

Further details of this specific case and the summary of the assessment and conclusion by the AACC are given below.

\*\*\*

## Summary of relevant Decisions by the AACC in 2022

### CONCERNS

Mr Martin KONERTZ – Former Director Capability, Armaments and Planning (CAP) Directorate at the European Defence Agency.

Mr KONERTZ was appointed EDA CAP Director as of 1 April 2017, as temporary staff (AD 14) under the EDA Staff Regulations for an initial duration of three years, extended for two years in 2020.

Mr. KONERTZ's duties included the management of six (6) Units (Cooperation Planning, PESCO, Air Domain, Maritime Domain, Land & Logistics, Information Superiority) with activities covering capability projects and activities including ad hoc projects, CDP/SCC. CARD, PESCO annual products.

---

END OF SERVICE: 31/03/2022

---

### NEW ACTIVITY

#### First application

On 16 February 2022, Mr KONERTZ applied for authorisation to engage in an occupational activity after leaving service indicating he would be returning to the German Ministry of Defence (*Kommando Territoriale Aufgaben der Bundeswehr*) for a period of two months to prepare for his retirement from active service.

#### Second application

On 02 September 2022, Mr KONERTZ filed a new application for authorisation to engage in an occupational activity after leaving service, describing the role a Senior Advisor/Expert for KPMG providing advice and support to the company when replying to a call for tender launched by the European Defence Agency.

---

### ASSESSMENT & DECISION

#### First application

On 10 March 2023, based on an assessment of the initial application and elements provided, the AACC authorised Mr KONERTZ's occupational activity with the German Ministry Defence.

Additionally, Mr KONERTZ was reminded of his duty under Article 19 of the EDA Staff Regulations 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.

#### Second Application

On 19 September 2022, the AACC responded to the application noting that Mr KONERTZ, in his former capacity as CAP Director, had direct oversight of the issues covered by the tender and had been involved in a broad range of related strategic issues and information, not available for public disclosure.

The assessment concluded there was a significant risk of conflict between Mr KONERTZ's previous position at EDA and the envisaged role at KPMG, and that this could adversely affect the Agency's legitimate interests and reputation. Based on this assessment, the AACC refused Mr KONERTZ's occupational activity as a Senior Advisor/Expert for KPMG and further reminded him of the strict prohibition to engage in lobbying or advocacy vis-à-vis the staff of the Agency for 12 months after leaving service.

\*\*\*