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Dear Executive Vice-President Vestager,

Dear Director General Guersent,

We would like to draw your attention to the revolving door case of Nicholas Banasevic.

As you are likely aware, Nicholas Banasevic left the European Commission in 2021 after more than 20 years of service across various directorates. In his most recent position, he served as a director in the Information, Communication, and Media Directorate at DG Competition.

In January 2022, Mr. Banasevic began a new role as Managing Director at the law firm Gibson, Dunn & Crutcher, where he represented clients on EU competition and regulatory matters, including the Digital Markets Act (DMA). This transition raises significant ethical and legal concerns. Since Mr. Banasevic is not a lawyer, it is highly probable that he was hired for his specialized competition expertise and insider knowledge. The Commission appeared to share this concern, granting authorization with restrictions to mitigate the risk of real, potential, or perceived conflicts of interest. However, it remains unclear whether these restrictions have been effective.

In July 2024, Mr. Banasevic transitioned once again, this time to Microsoft, as Corporate Vice-President and Head of Competition and Regulation for Europe, the Middle East, and Africa, based in Brussels. During his tenure at the Commission, he was involved in key decisions related to

Microsoft, including the 2004 Microsoft Decision<sup>1</sup> and the 2009 agreement concerning competition law issues related to Windows, Office, and other high-volume products.<sup>2</sup>

### **Risk of a Violation of the Staff Regulations in the Case of Nicholas Banasevic**

Given Mr. Banasevic's insider knowledge, professional experience, and the interests of his current employer, there is a strong suspicion that he has violated, and continues to violate, his obligations under Articles 16 and 17 of the Staff Regulations.

Our concern is supported by our extensive experience as a non-governmental organization that has monitored and analyzed similar cases for many years. Moreover, the Commission itself recently underscored this concern, specifically mentioning Mr. Banasevic's latest career move.<sup>3</sup>

Article 16 (1) of the Staff Regulations requires that former officials behave with integrity and discretion concerning the acceptance of certain roles or benefits after leaving public service. In its decision of June 29, 2018, C(2018) 4048,<sup>4</sup> the European Commission clarified that this duty of integrity and discretion applies indefinitely to former staff members (Article 19 of the decision).

Furthermore, the Commission elaborated on these obligations in a recent response to the Ombudsman regarding the case of former DG Competition staff member Henrik Morch: „In line with the duty to act with discretion and integrity, former staff members involved in legal cases (such as in DG COMP) are required to refrain from advising or working on behalf of a new employer or new clients on matters in which they participated personally and substantially and which would entail relying upon information received in the line of duty which has not been made public. This concerns for example contracts, policy files, grants, ongoing legislative procedures, and in particular competition cases, claims, and investigations.“<sup>5</sup> The Commission also emphasized that such staff members are prohibited indefinitely from working directly or indirectly on cases they were involved with during their time at the Commission, including appeals or related cases before the European Courts. (SI/5/2024/KR, paras. 20 and 22).

Article 17 prohibits an official from disclosing confidential information acquired during their service, and this duty remains in effect post-service unless such information has been made public.

Recent events suggest that Mr. Banasevic may have breached these duties. Microsoft recently criticized its 2009 agreement with the European Commission, particularly in relation to the global IT outage in July 2024.<sup>6</sup> Mr. Banasevic, holding a senior position in Microsoft's Brussels office, is likely to have provided strategic advice regarding this criticism. Based on the available evidence, it appears probable that Mr. Banasevic is leveraging knowledge gained during his time at the Commission to benefit his new employer, potentially to the detriment of the Commission's interests.

Given the high probability that Mr. Banasevic may use his insider knowledge to harm the public interest, it is essential to enforce the Staff Regulations rigorously and prevent any further misuse.

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1 <https://www.politico.eu/person/nicholas-banasevic/>

2 <https://news.microsoft.com/2009/12/16/microsoft-statement-on-european-commission-decision/>

3 <https://www.euronews.com/my-europe/2024/08/05/private-and-public-office-the-double-edged-sword-of-revolving-doors-in-the-eu>

4 [https://www.era.europa.eu/system/files/2022-12/decision\\_n182\\_commission\\_decision\\_on\\_outside\\_activities\\_en.pdf](https://www.era.europa.eu/system/files/2022-12/decision_n182_commission_decision_on_outside_activities_en.pdf)

5 <https://www.ombudsman.europa.eu/en/doc/correspondence/en/193023>

6 <https://x.com/fxshaw/status/1814894383982125496>

In light of these concerns, we urge the Commission to take action:

- Retroactively block his transition to Microsoft to prevent him from working on any cases he handled during his time at the Directorate-General for Competition, to ensure that he upholds his indefinite obligations.

We look forward to receiving the Commission's perspective concerning Banasevic's job transition. Given the potential implications for the public interest and the integrity of the Commission's work, we hope the Commission will take decisive action to address this situation.

Yours sincerely,

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