


DIRECTORATE-GENERAL FOR INTERNAL POLICIES

POLICY DEPARTMENT **D**
BUDGETARY AFFAIRS

Budgets

Budgetary Control



Update of the study on "The Code of Conduct for Commissioners - improving effectiveness and efficiency"

STUDY





DIRECTORATE GENERAL FOR INTERNAL POLICIES
POLICY DEPARTMENT D: BUDGETARY AFFAIRS

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Abstract

This update relates to a European Parliament study on the Code of Conduct for Members of the European Commission (2009). The update compares the 2004 Code of Conduct with the new Code adopted in 2011. The new Code has failed to address most of the European Parliament's 28 recommendations for improvement. Overall, the Code is characterised by its poor checks and balances, the absence of a coherent implementation system, and opacity surrounding its operation. Whilst other ethics systems contribute to enhance public trust in government, the Commission's system appears tilted towards the Commissioners' political and career interests. The update recommends a comprehensive review of the Commissioners' ethics system with a focus on coherent implementation systems with genuine checks and balances. The Commission should establish a working group on this, involving the European Parliament and relevant civil society actors, and inviting experts knowledgeable about other ethics systems.

This document was requested by the European Parliament's Committee on Budgetary Control.

AUTHORS

Mr Roland Blomeyer (principal author), Mr Mike Beke, Mrs Michelle Cini (peer review)
Blomeyer & Sanz
Cerezos 545b – cd 250
El Clavín, ES-19163 Guadalajara
+34 650 480 051
rblomeyer@blomeyer.eu
www.blomeyer.eu

RESPONSIBLE ADMINISTRATOR

Mr Jean-Jacques Gay
Policy Department D: Budgetary Affairs
European Parliament
B-1047 Brussels
E-mail: poldep-budg@europarl.europa.eu

EDITORIAL ASSISTANCE

Mrs Dominique Fontaine-Lepage

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ABOUT THE EDITOR

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LIST OF ABBREVIATIONS

ACOBA	Advisory Committee on Business Appointments (UK)
AHEC	Ad Hoc Ethical Committee (EC)
AU	Australia
CA	Canada
CoC	Code of Conduct
EC	European Commission
EC SG	European Commission Secretariat General
EP	European Parliament
EU	European Union
EUR	Euro
IAMI	Independent Adviser on Ministers' Interests (UK)
OECD	Organisation for Economic Co-operation and Development
UK	United Kingdom
UNDP	United Nations Development Program
WB	World Bank

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EXECUTIVE SUMMARY

Introduction, objectives, research approach

This update was prepared by Blomeyer & Sanz between 1 July and 5 September 2014. The update relates to a study on the effectiveness and efficiency of the 2004 Code of Conduct (CoC) for Members of the European Commission (2009).¹ The 2009 study presented 28 recommendations for enhancing the efficiency and effectiveness of the CoC. In 2011, the European Commission (EC) revised the CoC.²

The update's specific objective is to '*provide the Committee on Budgetary Control and the Committee on Constitutional Affairs with an independent evaluation of the new Code of Conduct adopted in 2011 applicable to the European Commissioners, compared to the former one, and observe to what extent the new Code of Conduct reflects the 28 recommendations of the 2009 study*'. The update's wider objective is to further improve governance (with a specific focus on ethics) within the European Union (EU) institutions. This is a well justified concern considering citizen perceptions of integrity in the EU institutions. According to Eurobarometer, 47% of European citizens tend not to trust the EC.³ Similarly, 70% of Europeans are of the opinion that there is corruption within the EU Institutions.⁴

The update was prepared on the basis of desk research (comparative review of ethics regimes in Australia, Canada, the United Kingdom and other countries) and interviews.

Findings

The 2011 CoC introduced a series of improvements. However, the CoC's structure and approach was not altered significantly, and the overall approach to CoC revision can be considered incremental. For example, some additional detail was introduced on outside activities during the term of office; for post-office employment, the cooling-off period was increased from 12 to 18 months, and a minimum notice of 4 weeks was introduced; disclosure requirements were extended to Commissioners' partners; the declaration of interests needs to be revised when information changes, '*and at least every year*'; a separate section on reallocation of files in case of conflict of interest was included; coverage was extended to 'hospitality'; a separate section on the Ad Hoc Ethical Committee introduced the possibility of the President of the Commission asking the Committee to pronounce itself on 'any general ethical question concerning the interpretation of this Code of Conduct'.

Notwithstanding, the 2011 CoC has failed to address most of the European Parliament recommendations, and thus fallen short of a comprehensive alignment with EU and international best practice. Overall, we consider that the 2011 Code fails to address 19 recommendations made by the 2009 study; partly addresses five recommendations; and fully addresses four recommendations.

Indeed, limited follow up is observed with regard to the CoC's implementation arrangements (prevention, reporting, dissemination, complaints, sanctions, declarations of interest, handling of conflicts of interest). Looking at two key problem areas (political activity and post-office employment) progress has also been modest. Finally, with regard to Commissioner resources and gifts (travel, staff, register of gifts), follow-up has been, at best, partial.

A review of ethics systems in a selection of EU and third countries clearly demonstrates the feasibility of coherent implementation systems with checks and balances, transparency, and an overall balance between furthering public trust and the rights of the office holder.

¹ Blomeyer & Sanz on behalf of the European Parliament, The Code of Conduct for Commissioners - improving effectiveness and efficiency, 12 May 2009

² EC, Code of conduct for Commissioners C(2011)2904

³ http://ec.europa.eu/public_opinion/cf/showchart_line.cfm?keyID=54&nationID=11,1,27,28,17,2,16,18,13,32,6,3,4,22,33,7,8,20,21,9,23,31,34,24,12,19,35,29,26,25,5,14,10,30,15,&startdate=1993.04&enddate=2013.11, accessed on 22 July 2014

⁴ Special Eurobarometer 397, 2014, http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

Conclusions and recommendations

The EC commented with regard to the 2011 CoC: *The revision of the Code of Conduct reflects best practice in Europe and in the world. Due account has been taken of the comments made by the European Parliament and other stakeholders during its preparation*.⁵ This update's comparative review of ethics systems shows that the 2011 CoC is still far from best practice. Considering that the 2011 CoC fails to address about two thirds of the Parliament's recommendations it is not clear why the EC considers that it has taken the European Parliament comments into account. Overall, the CoC is characterised by its poor checks and balances, the absence of a coherent implementation system, and opacity surrounding its operation (e.g. with regard to the Ad Hoc Ethical Committee). Whilst other ethics systems contribute to enhance public trust in government, the EC's system appears tilted towards the Commissioners' political and career interests.

We recommend a review of the Commissioners' ethics system with a focus on introducing coherent implementation systems with genuine checks and balances and full transparency. The EC should establish a working group on this, involving the European Parliament and relevant civil society actors, and inviting experts knowledgeable of other ethics systems.

The following detailed recommendations, already made with regard to the 2004 Code, maintain their validity for the 2011 Code:

Area	Recommendation
Prevention	Establish a structure to oversee the application of the CoC, with members to be nominated by agreement between the EC and EP, and supported by a Secretariat
	Entrust this structure with providing guidance on the CoC's requirements, regular monitoring and evaluation, and oversight in relation to the EC President
	Establish guidance materials (e.g. define the term 'conflict of interest') and disseminate information on ethics 'cases'
Reporting	Publish annual reports on the CoC's application
Dissemination	Establish a dedicated website on the CoC's application
Complaints	Introduce a reference to the European Ombudsman function
Sanctions	For minor infringements: Introduce sanctions (e.g. reporting of infringements)
Declaration of interests	Declare all financial interests (assets and liabilities) over a certain value (e.g. €10,000)
	Dependent family members to disclose the same information as spouses / partners
	Introduce electronic format
Political activity	Limit national political activity to passive party membership
	Alternative: define 'availability for service' and provide criteria for assessing availability
	Publish assessments of availability for service
	Define timelines for notifying political activity (e.g. two months before engaging in political activity) and withdrawals (e.g. maximum withdrawal time of one month)

⁵ EC letter to ALTER-EU of 9 June 2011

Area	Recommendation
Post-office employment	Provide criteria for assessing the compatibility of post-office employment
	Publish assessments of compatibility
	Extend the post-office employment restriction to two years
	Introduce timelines for notifying post-office employment
Travel	Publish Commissioner travel on an annual basis, indicating the date of travel, the destination, the purpose of travel, the type of transport used, the number of persons accompanying the Commissioner, total travel costs and whether the Commissioner was accompanied by his spouse / partner
Register of gifts	No gifts to be accepted from donors from an EU Member State
	Disclose the identity of donors from outside the EU
Handling conflicts of interest	Establish a procedure for dealing with conflicts of interest
	Introduce divestment of financial interests above a certain value

ZUSAMENFASSUNG

Einführung, Ziele, Forschungsansatz

Diese Aktualisierung wurde im Zeitraum zwischen dem 1. Juli und dem 5. September 2014 von Blomeyer & Sanz erstellt. Sie nimmt Bezug auf eine Studie aus dem Jahr 2009 über die Wirksamkeit und die Effizienz des Verhaltenskodex für Kommissionsmitglieder aus dem Jahr 2004.⁶ In der 2009 angefertigten Studie wurden 28 Empfehlungen zur Verbesserung der Wirksamkeit und der Effizienz des Verhaltenskodex abgegeben. Der Verhaltenskodex wurde 2011 von der Kommission überarbeitet.⁷

Mit der Aktualisierung soll dem Haushaltskontrollausschuss und dem Ausschuss für konstitutionelle Fragen ausdrücklich eine unabhängige Bewertung des neuen, 2011 verabschiedeten und für alle Kommissionsmitglieder geltenden Verhaltenskodex im Vergleich zu dem vorigen Kodex zur Verfügung gestellt und analysiert werden, inwieweit die 28 Empfehlungen der Studie aus dem Jahr 2009 in den neuen Verhaltenskodex aufgenommen wurden. Das allgemeiner gehaltene Ziel dieser Aktualisierung besteht in der weiteren Verbesserung der Amtsausübung (mit einem besonderen Schwerpunkt auf ethischen Fragen) innerhalb der Organe der Europäischen Union (EU). Hierbei handelt es sich angesichts der Art und Weise, wie die Integrität in den Organen der EU von den Bürgern wahrgenommen wird, um ein durchaus gerechtfertigtes Anliegen. Eurobarometer zufolge vertrauen 47 % der Bürger Europas der Kommission eher nicht.⁸ Außerdem sind 70 % der Europäer der Ansicht, dass in den Organen der EU Korruption zutage tritt.⁹

Die Aktualisierung wurde mithilfe einer Schreibtischstudie (vergleichende Begutachtung der Ethikregelungen in Australien, Kanada, dem Vereinigten Königreich und anderen Ländern) und Befragungen angefertigt.

Feststellungen

Mit dem Verhaltenskodex von 2011 wurde eine Reihe von Verbesserungen eingeführt. Die Struktur und das Konzept des Kodex wurden jedoch nicht wesentlich geändert, und generell wurden bei der Überarbeitung des Kodex meist Ergänzungen angefügt. Beispielsweise wurden Angaben zu externen Tätigkeiten während der Amtszeit hinzugefügt; bei den Tätigkeiten nach Beendigung der Amtszeit wurde die Karenzzeit von 12 auf 18 Monate verlängert, und es wurde eine Meldefrist von vier Wochen eingeführt; die Offenlegungspflichten wurden auf die Partner der Kommissionsmitglieder ausgeweitet; die Interessenerklärung muss bei Änderungen der Angaben, „jedoch mindestens einmal jährlich“ aktualisiert werden; es wurde ein gesonderter Abschnitt über die Neuzuteilung von Dossiers bei einem Interessenkonflikt aufgenommen; der Geltungsbereich wurde um „Gastfreundschaft“ ergänzt; in einem gesonderten Abschnitt über die Ethikkommission wurde die Möglichkeit vorgesehen, dass der Präsident der Kommission die Ethikkommission um eine Stellungnahme zu „allgemeinen ethischen Fragen im Zusammenhang mit der Auslegung dieses Verhaltenskodex“ ersucht.

Die meisten der vom Europäischen Parlament abgegebenen Empfehlungen wurden jedoch nicht in den 2011 überarbeiteten Kodex aufgenommen; er wurde somit nicht wesentlich an die europäischen und internationalen bewährten Verfahren angepasst. Zusammenfassend sind wir der Auffassung, dass die Fassung des Kodex von 2011 19 der in der Studie aus dem Jahr 2009 abgegebenen Empfehlungen gar nicht, fünf Empfehlungen teilweise und vier Empfehlungen vollständig widerspiegelt.

⁶ Blomeyer & Sanz im Auftrag des Europäischen Parlaments, „[The Code of Conduct for Commissioners – improving effectiveness and efficiency](#)“ (Der Verhaltenskodex für Kommissionsmitglieder – mehr Wirksamkeit und Effizienz), 12. Mai 2009.

⁷ Kommission, Verhaltenskodex für Kommissionsmitglieder, [K\(2011\)2904](#).

⁸ http://ec.europa.eu/public_opinion/cf/showchart_line.cfm?keyID=54&nationID=11,1,27,28,17,2,16,18,13,32,6,3,4,22,33,7,8,20,21,9,23,31,34,24,12,19,35,29,26,25,5,14,10,30,15,&startdate=1993.04&enddate=2013.11, Stand vom 22. Juli 2014.

⁹ Special Eurobarometer 397, 2014, http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

Insbesondere bei den Durchführungsbestimmungen des Kodex (Vorbeugung, Berichterstattung, Verbreitung, Beschwerden, Sanktionen, Interessenerklärungen, Umgang mit Interessenkonflikten) sind nur geringe Fortschritte zu verzeichnen. Auch in zwei wichtigen Problembereichen (politische Tätigkeit und Berufstätigkeit nach Beendigung der Amtszeit) wurde den Empfehlungen kaum Folge geleistet. Bei den Ressourcen und Geschenken für die Kommissionsmitglieder (Reisen, Personal, Register der Geschenke) wurden die Empfehlungen bestenfalls teilweise befolgt.

Bei einer Begutachtung der Bestimmungen über Ethik in einigen Mitgliedstaaten der EU und Drittländern wird deutlich, dass durchaus eine kohärente Umsetzung mit Kontrollen und Gegenkontrollen, Transparenz und einem allgemeinen Ausgleich zwischen der Förderung des Vertrauens der Öffentlichkeit und den Rechten der Amtsträger möglich ist.

Schlussfolgerungen und Empfehlungen

Die Kommission schrieb über die Fassung des Kodex von 2011, in die Überarbeitung seien die bewährten Verfahren Europas und der Welt aufgenommen worden. Bei der Ausarbeitung seien die Anmerkungen des Europäischen Parlaments und anderer Interessenträger angemessen berücksichtigt worden.¹⁰ Die vergleichende Begutachtung ethischer Bestimmungen in dieser Aktualisierung macht deutlich, dass der 2011 überarbeitete Kodex keineswegs bewährte Verfahren umfasst. Da circa zwei Drittel der Empfehlungen des Parlaments nicht in die Überarbeitung aufgenommen wurden, kann nicht nachvollzogen werden, warum die Kommission der Auffassung ist, sie habe den Anmerkungen des Europäischen Parlaments Rechnung getragen. Insgesamt zeichnet sich der Kodex durch unzureichende Kontrollen und Gegenkontrollen, das Fehlen kohärenter Durchführungsbestimmungen und Intransparenz bei der Umsetzung (beispielsweise bei der Ethikkommission) aus. Andere Regelwerke über ethische Fragen tragen dazu bei, das Vertrauen der Öffentlichkeit in die staatlichen Stellen zu stärken; die Bestimmungen der Kommission scheinen jedoch auf die politischen und karrierebezogenen Interessen der Kommissionsmitglieder ausgerichtet zu sein.

Wir empfehlen, die Ethikregeln für die Kommissionsmitglieder dahingehend zu überarbeiten, dass ein kohärentes System für die Umsetzung mit wirklichen Kontrollen und Gegenkontrollen und umfassender Transparenz eingeführt wird. Die Kommission sollte hierzu eine Arbeitsgruppe einrichten, an der auch das Europäische Parlament und einschlägige Akteure der Zivilgesellschaft beteiligt sind und zu der Sachverständige für andere Ethikregelungen eingeladen werden.

Die nachstehenden detaillierten Empfehlungen, die bereits zu der Fassung des Kodex von 2004 abgegeben wurden, gelten ebenso für die Fassung von 2011:

Bereich	Empfehlung
Vorbeugung	Aufbau einer von einem Sekretariat unterstützten Struktur zur Überwachung der Anwendung des Kodex; die Mitglieder sollten einvernehmlich von der Kommission und dem EP ernannt werden
	Diese Struktur sollte in die Lage versetzt werden, zu den Anforderungen des Kodex beratend tätig zu werden, ihn regelmäßig zu überprüfen und zu bewerten und die Aufsicht für den Präsidenten der Kommission zu leisten
	Erstellung von Leitfäden (beispielsweise zur Definition des Begriffs „Interessenkonflikt“) und Bereitstellung von Informationen über ethische Fragen

¹⁰ Schreiben der Kommission an ALTER-EU vom 9. Juni 2011.

Bereich	Empfehlung
Bericht- erstattung	Veröffentlichung von Jahresberichten über die Anwendung des Kodex
Verbreitung	Einrichtung einer gesonderten Website über die Anwendung des Kodex
Beschwerden	Aufnahme eines Hinweises auf das Amt des Europäischen Bürgerbeauftragten
Sanktionen	Bei geringfügigen Verstößen: Einführung von Sanktionen (z. B. Berichterstattung über die Verstöße)
Interessen- erklärung	Angabe aller finanziellen Interessen (Vermögenswerte und Verbindlichkeiten) ab einem festgelegten Wert (beispielsweise 10 000 EUR)
	Unterhaltsberechtigten Familienmitglieder sollten die gleichen Angaben wie Ehegatten bzw. Partner vorlegen müssen
	Einführung eines elektronischen Formats
Politische Tätigkeit	Einschränkung der politischen Aktivität im Mitgliedstaat auf eine passive Parteimitgliedschaft
	Alternativ: Festlegung der „Verfügbarkeit für den Dienst“ und von Kriterien für die Bewertung der Verfügbarkeit
	Veröffentlichung der Bewertungen der Verfügbarkeit für den Dienst
	Festlegung von Fristen für die Meldung politischer Aktivitäten (beispielsweise zwei Monate vor der Aufnahme einer politischen Aktivität) und für Ruhezeiten (beispielsweise eine maximale Ruhezeit von einem Monat)
Tätigkeiten nach Beendigung der Amtszeit	Aufstellung von Kriterien für die Bewertung der Angemessenheit einer Tätigkeit nach Beendigung der Amtszeit
	Veröffentlichung der Bewertungen der Angemessenheit
	Verlängerung der Frist, in der nur eingeschränkt Tätigkeiten aufgenommen werden dürfen, auf zwei Jahre
	Festlegung von Fristen für die Meldung einer Tätigkeit nach Beendigung der Amtszeit
Reisen	Jährliche Veröffentlichung der Reisetätigkeiten der Kommissionsmitglieder mit Angabe des Datums der Reise, des Zielorts, des Zwecks der Reise, des verwendeten Transportmittels, der Zahl der Begleitpersonen, der gesamten Reisekosten sowie einer etwaigen Begleitung durch den Ehegatten / Partner des Kommissionsmitglieds
Register der Geschenke	Verbot der Annahme von Geschenken von Gebern aus den Mitgliedstaaten der EU
	Offenlegung der Identität von Gebern aus Drittstaaten
Umgang mit Interessen- konflikten	Ausarbeitung eines Verfahrens für den Umgang mit Interessenkonflikten
	Einführung einer Pflicht zur Veräußerung von finanziellen Interessen ab einem festgelegten Wert

SYNTHÈSE

Introduction, objectifs, méthodologie

Cette mise à jour a été réalisée par le cabinet Blomeyer & Sanz, entre le 1^{er} juillet et le 5 septembre 2014. Elle reprend une étude sur l'efficacité et l'efficience du code de conduite de 2004 applicable aux membres de la Commission européenne.¹¹ Menée en 2009, cette étude formulait 28 recommandations pour améliorer l'efficacité et l'efficience dudit code de conduite. En 2011, la Commission européenne a procédé à la révision de ce code.¹²

La mise à jour avait spécifiquement pour objectif de *"fournir à la commission du contrôle budgétaire et à la commission des affaires constitutionnelles une évaluation indépendante du nouveau code de conduite, adopté en 2011, applicable aux commissaires européens, qui le compare avec le précédent et indique dans quelle mesure il reprend les 28 recommandations formulées dans l'étude de 2009"*. Plus généralement, il s'agissait de poursuivre l'amélioration de la gouvernance (tout particulièrement en matière d'éthique) au sein des institutions de l'Union européenne. Cette préoccupation est pleinement justifiée par l'image qu'ont les citoyens du respect de l'intégrité au sein des institutions européennes. Ainsi, selon l'Eurobaromètre, 47 % des citoyens européens ne font plutôt pas confiance à la Commission.¹³ Ils sont également 70 % à être d'accord avec l'affirmation selon laquelle la corruption est présente au sein des institutions de l'Union.¹⁴

La mise à jour a été réalisée à partir de recherches documentaires (étude comparative des systèmes d'éthique mis en place par l'Australie, le Canada, le Royaume-Uni et d'autres pays) et d'entretiens.

Constatations

Le code de conduite de 2011 a apporté plusieurs améliorations. Néanmoins, ni sa structure ni son approche globale n'ont évolué significativement et l'on peut dire que la révision du code s'est faite par petits ajouts. Certaines précisions ont ainsi été apportées en ce qui concerne les activités extérieures pendant la durée du mandat; pour les activités professionnelles post-mandat, le délai de viduité a été porté de 12 à 18 mois et un préavis d'au moins 4 semaines a été introduit; les partenaires des commissaires sont désormais soumis eux aussi aux obligations d'information; la déclaration d'intérêts doit être révisée en cas de modification des données *"et au moins une fois par an"*; un point spécifique a été inséré pour régler la réattribution des dossiers en cas de conflit d'intérêts; les "offres d'hospitalité" sont désormais prises en compte; un point spécifique consacré au comité d'éthique ad hoc crée la possibilité, pour le président de la Commission, de demander à ce comité d'émettre un avis sur *"toute question générale d'éthique relative à l'interprétation du présent code de conduite"*.

Pour autant, le code de conduite de 2011 ne reprend pas la plupart des recommandations du Parlement européen et on reste donc loin d'un alignement général sur les meilleures pratiques européennes et internationales. De manière générale, nous estimons que 19 recommandations de l'étude de 2009 ne sont pas reprises dans le code de 2011, cinq le sont partiellement et quatre en totalité.

Ainsi, les dispositions proposées en matière d'application du code (prévention, rapports, diffusion, plaintes, sanctions, déclarations d'intérêts, gestion des conflits d'intérêts) ont été reprises de manière limitée. Dans deux domaines particulièrement sensibles (activités politiques et activités professionnelles post-mandat), les progrès restent également modestes. Enfin, les recommandations

¹¹ Blomeyer & Sanz, pour le Parlement européen, *"The Code of Conduct for Commissioners – improving effectiveness and efficiency"* ["Code de conduite des commissaires. Pour une efficacité et une efficience renforcées"], 12 mars 2009 (en anglais uniquement).

¹² Commission européenne, Code de conduite des commissaires, [C\(2011\)2904](#)

¹³ http://ec.europa.eu/public_opinion/cf/showchart_line.cfm?keyID=54&nationID=11,1,27,28,17,2,16,18,13,32,6,3,4,22,33,7,8,20,21,9,23,31,34,24,12,19,35,29,26,25,5,14,10,30,15,&startdate=1993.04&enddate=2013.11&lang=fr, consulté le 2 septembre 2014.

¹⁴ Eurobaromètre spécial n° 397, 2014, http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf (en anglais uniquement).

portant sur les ressources des commissaires et les cadeaux qui leur sont faits (déplacements, personnel, registre des cadeaux) n'ont été, au mieux, que partiellement suivies.

L'étude des systèmes d'éthique de plusieurs pays membres de l'Union ou pays tiers démontre clairement qu'il est possible de mettre en place des systèmes d'application cohérents, qui comprennent des mécanismes de contrôle et de contre-pouvoir et garantissent la transparence et un équilibre global, entre renforcement de la confiance de l'opinion publique et droits des titulaires des mandats.

Conclusions et recommandations

Le code de conduite de 2011 était accompagné du commentaire suivant de la Commission européenne: *"La révision du code de conduite reprend les meilleures pratiques européennes et internationales. Les avis émis par le Parlement européen et d'autres parties prenantes ont été dûment pris en compte lors de son élaboration"*.¹⁵ L'étude comparative des systèmes d'éthique, dans le cadre de la présente mise à jour, montre que le code de conduite de 2011 reste éloigné des meilleures pratiques. Dans la mesure où les deux tiers environ des recommandations formulées par le Parlement n'ont pas été reprises dans le code de 2011, on comprend mal en quoi la Commission estime avoir pris en compte l'avis du Parlement. De manière générale, le code de conduite se caractérise par la faiblesse des mécanismes de contrôle et de contre-pouvoir, par l'absence d'un système d'application cohérent et par le secret entourant sa mise en œuvre (par exemple, en ce qui concerne le comité d'éthique ad hoc). Alors que d'autres systèmes d'éthique contribuent à renforcer la confiance de l'opinion publique dans les autorités, le système de la Commission apparaît tourné vers les intérêts politiques et professionnels des commissaires.

Nous recommandons la révision du système d'éthique applicable aux commissaires-, et notamment l'introduction de systèmes d'application cohérents, comprenant de véritables mécanismes de contrôle et de contre-pouvoir et garantissant une totale transparence. La Commission devrait mettre en place un groupe de travail sur ce sujet, auquel elle associerait le Parlement européen et des acteurs concernés de la société civile et inviterait des experts spécialistes d'autres systèmes d'éthique.

Les recommandations détaillées ci-après, déjà formulées pour le code de 2004, restent valables pour le code de 2011:

Domaine	Recommandation
Prévention	Mettre en place une structure chargée de surveiller l'application du code de conduite, dont les membres seraient désignés d'un commun accord par la Commission et le Parlement et qui serait assistée d'un secrétariat
	Charger la structure d'émettre des recommandations sur les règles du code de conduite, d'effectuer un suivi régulier et des évaluations et d'exercer une surveillance à l'égard du président de la Commission
	Rédiger des documents d'orientation (pour définir, par exemple, la notion de "conflit d'intérêts") et diffuser des informations sur les "affaires" de déontologie
Rapports	Publier des rapports annuels sur l'application du code de conduite
Diffusion	Mettre en place un site internet spécialement consacré à l'application du code
Plaintes	Insérer une référence à la fonction du Médiateur européen

¹⁵ Lettre adressée le 9 juin 2011 par la Commission européenne à ALTER-EU.

Domaine	Recommandation
Sanctions	Manquements mineurs: instaurer des sanctions (par exemple, signaler les manquements dans des rapports)
Déclaration d'intérêts	Déclarer l'ensemble des intérêts financiers (passif et actif) au-delà d'un montant donné (10 000 EUR, par exemple)
	Les membres de la famille à charge doivent communiquer les mêmes informations que les conjoints ou partenaires.
	Mettre en place un formulaire électronique
Activités politiques	Limiter les activités politiques nationales à l'adhésion passive à un parti
	Autre option possible: définir la notion de "disponibilité au service" et définir des critères pour évaluer cette disponibilité
	Publier les évaluations de la disponibilité au service
	Fixer des délais pour déclarer une activité politique (deux mois avant le début de l'activité politique, par exemple) ou se mettre en congé de son mandat de commissaire (congé électoral maximum d'un mois, par exemple)
Activités professionnelles post-mandat	Définir des critères pour évaluer la compatibilité des activités professionnelles post-mandat
	Publier les évaluations de la compatibilité
	Porter à deux ans la durée des restrictions en matière d'activités professionnelles post-mandat
	Fixer des délais pour déclarer une activité professionnelle post-mandat
Déplacements	Publier les déplacements des commissaires chaque année en précisant la date du déplacement, sa destination, son objet, le moyen de transport utilisé, le nombre de personnes accompagnant le commissaire, le montant total des frais de déplacement et en indiquant si le commissaire était accompagné de son conjoint ou partenaire
Registre des cadeaux	Refus des cadeaux offerts par des donateurs d'un État membre de l'Union
	Publier l'identité des donateurs extérieurs à l'Union
Gestion des conflits d'intérêts	Définir une procédure pour gérer les conflits d'intérêts
	Prévoir l'obligation de renoncer aux intérêts financiers au-dessus d'un certain montant

1. INTRODUCTION

This update was prepared by Blomeyer & Sanz between 1 July and 5 September 2014. The update relates to a study conducted by Blomeyer & Sanz during 2008/2009 (2009 study), and focusing on the effectiveness and efficiency of the 2004 Code of Conduct (2004 CoC) for Members of the European Commission (EC).¹⁶ The 2009 study presented 28 recommendations for enhancing the efficiency and effectiveness of the CoC. Following the adoption of a revised CoC in 2011 (2011 CoC),¹⁷ the European Parliament (EP) assessed the new CoC on its alignment with the 28 recommendations, and found 18 recommendations not addressed, five recommendations partly and five recommendations fully addressed.¹⁸

The introduction briefly presents the update's objectives (section 1.1), the methodology (1.2), and the structure (1.3).

1.1. RESEARCH OBJECTIVES

In line with the specific terms of reference for the update, this report aims to '*provide the Committee on Budgetary Control and the Committee on Constitutional Affairs with an independent evaluation of the new Code of Conduct adopted in 2011 applicable to the European Commissioners, compared to the former one, and observe to what extent the new Code of Conduct reflects the 28 recommendations of the 2009 study*'.

The update's wider objective is to further improve governance (with a specific focus on ethics) within the European Union (EU) institutions. This is a well justified concern considering citizen perceptions of integrity in the EU institutions. For example, according to Eurobarometer (2013) 47% of European citizens tend not to trust the EC (35% trust the EC and 18% do not know).¹⁹ Similarly, 70% of Europeans agree that there is corruption within the EU institutions (71% agreed on this in 2005 and 60% in 2008).²⁰

1.2. METHODOLOGY

The update was prepared on the basis of desk research and interviews.

- Desk research focused on existing documentation related to the 2004 and 2011 CoC; and a review of ethics regimes in Australia (AU),²¹ Canada (CN),²² the United Kingdom (UK), and other countries.²³
- Desk research also comprised a systematic review of the minutes of the Commissioner weekly meetings (2011-2014), and EC Secretariat General (EC SG) Annual Activity Reports (2011-2013).

¹⁶ Blomeyer & Sanz on behalf of the European Parliament, [The Code of Conduct for Commissioners - improving effectiveness and efficiency](#), 12 May 2009

¹⁷ EC, Code of conduct for Commissioners [C\(2011\)2904](#)

¹⁸ Committee on Budgetary Control, letter to the Chairman of the Conference of Committee Chairs, IPOL-COM-CONT D (2011)10572

¹⁹ http://ec.europa.eu/public_opinion/cf/showchart_line.cfm?keyID=54&nationID=11,1,27,28,17,2,16,18,13,32,6,3,4,22,33,7,8,20,21,9,23,31,34,24,12,19,35,29,26,25,5,14,10,30,15.&startdate=1993.04&enddate=2013.11, accessed on 22 July 2014

²⁰ Special Eurobarometer 397, 2014, http://ec.europa.eu/public_opinion/archives/ebs/ebs_397_en.pdf

²¹ Government of Western Australia, Ministerial Code of Conduct, April 2013

²² Privy Council Office Canada, Accountable Government: a guide for ministers and ministers of state, 2011

²³ UK Cabinet Office, Ministerial Code, May 2010

Desk research followed a two-step approach:

- Step 1: Comparative review of the 2004 and 2011 CoC. This identified the extent to which the 2011 CoC represents improvements over the 2004 CoC, and the extent to which the EP recommendations (2009 study) were addressed.
- Step 2: Desk research focusing on the EP recommendations that the 2011 CoC failed to address or only addressed partly. For each recommendation: (a) summary of weaknesses identified in 2009 / persisting to date (including illustration of current implementation practices if relevant); (b) existing feedback from civil society, MEP questions, academic literature; (c) concrete examples to illustrate how the recommendations can be addressed.

Interviews were conducted with Member of the European Parliament Dr. Ingeborg Gräßle on 23 July 2014; with the EC Secretariat General (Directorate B, Unit 3) on 27 August and 4 September 2014; and with the Transparency International EU Office on 3 September 2014.

Concerning the wider principles underlying government ethics regimes and the history of the Code of Conduct the reader is referred to the 2009 study. Concerning the definition of a conflict of interest, the definitions established by the Organisation for Economic Co-operation and Development (OECD) are used:²⁴

- Existing conflict of interest: *'A conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities'*.
- Apparent conflict of interest: *'...where it appears that a public official's private interests could improperly influence the performance of their duties but this is not in fact the case'*
- Potential conflict of interest: *'where a public official has private interests which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future'*.

1.3. REPORT STRUCTURE

This report is organised in three sections:

- Section 1 Introduction;
- Section 2 Findings;
- Section 3 Conclusions and recommendations.

²⁴ OECD, Recommendation of the Council on guidelines for managing conflict of interest in the public service, June 2003, page 4

2. FINDINGS

This section first presents a comparative review of the 2004 and 2011 CoC. This identifies the extent to which the 2011 CoC represents improvements over the 2004 CoC, and the extent to which the EP recommendations (2009 study) were addressed / (section 2.1).

The section then moves on to reviewing the EP recommendations (2009 study) that the 2011 CoC failed to address or only addressed partly (section 2.2).

2.1. COMPARATIVE REVIEW

KEY FINDINGS

- The 2011 CoC presents a series of improvements over the 2004 CoC. Whilst the CoC's structure and approach was not altered significantly, and the overall approach to CoC revision can be considered incremental, some minor revisions were introduced, for example, on outside activities during the term of office.
- Despite the improvements introduced, the 2011 CoC has failed to address most EP recommendations, and thus fallen short of a more comprehensive alignment with EU and international best practice. Overall, we consider that the 2011 Code fails to address 19 recommendations made by the 2009 study; partly addresses four recommendations; and fully addresses four recommendations.

This section first presents the improvements introduced by the EC's 2011 CoC (section 2.1.1). The section then reviews the extent to which the 2011 CoC addressed the EP's recommendations on improving the Commissioners' ethics system (section 2.1.2).

2.1.1. Improvements under the 2011 Code

The 2011 CoC presents a series of improvements over the 2004 CoC. These improvements are noted in Table 1 below.

Whilst the CoC's structure and approach was not altered significantly, and the overall approach to CoC revision can be considered incremental,²⁵ some minor revisions were introduced, for example, on outside activities during the term of office; for post-office employment, the cooling-off period was increased from 12 to 18 months, and a minimum notice of 4 weeks was introduced; disclosure requirements were extended to Commissioners' partners; the declaration of interests needs to be revised when information changes, '*and at least every year*'; a separate section on reallocation of files in case of conflict of interest was included; coverage was extended to '*hospitality*'; a separate section on the Ad Hoc Ethical Committee introduced the possibility of the President of the Commission

²⁵ Michelle Cini explains change in the ethics regime of the Commissioners as follows: '*the Commissioners' ethics regime has evolved through a process identified by Mahoney and Thelen (2010) as 'layering'. This is the form that institutional change has taken since the late 1990s. Revisions to the ethics regime in 2004 and 2011 were not transformative, but rather layered change upon change in two ways; first, by detailing aspects of the regime already referred to explicitly in the Treaty and /or Code; and second, by introducing new elements into the Code in response to salient issues that had been criticised*' Michelle Cini, Institutional Change and Ethics Management in the EU's College of Commissioners, British Journal of Politics and International Relations, 2013, page 10

asking the Committee to pronounce itself on 'any general ethical question concerning the interpretation of this Code of Conduct'.

Civil society actors have criticised the 2011 Code for failing to introduce more substantial reform: 'We note that the final version of the Code of Conduct includes only minor changes compared to the draft text from January. Constructive and workable suggestions for improvements from numerous MEPs and from other stakeholders, including ALTER-EU, have unfortunately not been taken up'.²⁶ They have called for stricter requirements on a series of issues, e.g. a three-year cooling-off period.²⁷ The Alliance for Lobbying Transparency and Ethics Regulation in the EU (ALTER-EU) also argued for the need for a more consistent approach to restricting lobbying by former Commissioners, noting that restrictions are largely limited to a former Commissioner's portfolio. Transparency International also highlighted their concerns over revolving-door and lobbying activities. Noting the example of a former Commissioner in charge of industry, ALTER-EU notes: 'Earlier this year ex-Commissioner Verheugen was given green light for his lobby consultancy firm 'The European Experience Company' with similar limited conditions. This means that Mr Verheugen, for instance, is allowed to lobby on behalf of industry clients towards DG Environment and other DG's on issues where he was involved in the decision making but for which he was not directly responsible as commissioner'.²⁸ Finally, there were calls for more transparency and independence for the Ad Hoc Ethical Committee.

Table 1 - Improvements introduced by the 2011 CoC

Code Section	Changes	Comparison with previous code?
Outside activities during the term of office (CoC, Section 1.1)	Introduces additional detail on permitted outside activity: 'Unpaid courses given from time to time in the interests of European integration and other communication activities on areas of European interests'	+
	Adds 'writing articles' to the activities covered by the CoC ('Commissioners may not accept any form of payment for writing articles')	+
	Provides a more detailed definition of 'honorary posts' and introduces an illustration of conflict of interest: 'This risk exists in particular whenever the body receives any kind of financing from the EU Budget'	+
	Emphasises the requirement of independence for Commissioners who are 'politically active'; Introduces the requirement to 'abstain from public statements or interventions on behalf of any political party or trade union of which they are members'	+
	Introduces additional detail on Commissioners participating in elections (without defining 'active role'): 'The period of unpaid electoral leave of Members of the Commission participating actively in electoral campaigns as candidates for European elections shall start at least as of the end of the last part session of the European Parliament before these elections'	+
	Introduces additional detail on the prohibition of holding a public office	+

²⁶ Alliance for Lobbying Transparency and Ethics Regulation in the EU, Letter to the President of the European Commission, 10 May 2011

²⁷ European Public Health Alliance, news item, dated 15 May 2011, <http://www.epha.org/a/4540>. Members of the European Parliament have also supported the three-year period. See European Voice, dated 20 January 2011, <http://www.europeanvoice.com/article/imported/group-leaders-to-question-barroso-over-code-of-conduct-for-commissioners/69969.aspx>

²⁸ Alliance for Lobbying Transparency and Ethics Regulation in the EU, Letter to the President of the European Commission, 10 May 2011

Code Section	Changes	Comparison with previous code?
Post term-of-office activities (Section 1.2)	Can be considered to strengthen the requirements for post-EC employment by placing the requirement in a separate section ' <i>Post term-of-office activities</i> '. Extends the cooling-off period from 12 to 18 months, and introduces a minimum notice of 4 weeks. Restricts lobby / advocacy activities of former Commissioners. Compatibility of planned employment with Article 245 to be reviewed by Ad Hoc Ethical Committee. Emphasises that Article 245 requires integrity and discretion beyond the 18-month period.	+
Financial interests and assets (Section 1.3)		=
Activities of spouses / partners (Section 1.4)	Extends requirement to ' <i>partners</i> ' and provides a definition (' <i>Stable non matrimonial partner</i> ')	+
Declaration of interests (Section 1.5)	Requires revision when information changes, ' <i>and at least every year</i> '	+
Reallocation of files between Members of the Commission in case of potential conflicts of interest (Section 1.6)	Introduces separate section on reallocation of files in case of conflict of interest and the provision of information of the EP on such a reallocation	+
Collective responsibility and confidentiality (Section 1.7)	Extends discretion requirement to post-EC in line with Article 339 TFEU	+
Rules for missions (Section 1.8)	Specifies that missions are covered by the ' <i>Guide to Missions</i> ', Financial Regulation and a series of other documents	+
Rules governing receptions and professional representation (Section 1.9)		=
Rules governing the use of Commission's resources (Section 1.10)	Introduces separate section on use of resources	+

Code Section	Changes	Comparison with previous code?
Acceptance of gifts, hospitality, decorations or honours (Section 1.11)	Introduces coverage to 'hospitality': <i>'Commissioners shall not accept hospitality except when in accordance with diplomatic and courtesy usage'</i> . Prizes to be donated to charity.	+
Composition of the cabinets of the Members of the Commission (Section 1.12)	Introduces separate section on cabinet composition, and bars spouses, partners and direct family members from cabinets.	+
Resignation of Commissioners (Section 2.1)	Refers specifically to Article 17.6 of the Treaty	=
Compulsory retirement and sanctions to Commissioners (Section 2.2)	Introduces separate section on compulsory retirement and sanctions, with reference to Court action in line with articles 245 and 247 TFEU	+
Consultative competence of the Ad Hoc Ethical Committee (Section 2.3)	Introduces separate section on Ad Hoc Ethical Committee and introduces the possibility of the President of the Commission asking the Committee to pronounce on <i>'any general ethical question concerning the interpretation of this Code of Conduct'</i>	+
Objective and interpretation of the Code of Conduct (Section 2.4)	Introduces separate section on the purpose of the CoC with direct reference to Articles 17 TEU and 245 TFEU	+
Annex 1 Declaration of interests	Extends declaration requirements to posts held in companies; Requires additional detail (<i>'nature of the post, the name of the body, and its objective/activity'</i>); Specifies that assets exclude <i>'homes reserved for the exclusive use of the owner and his/her family'</i> ; Requires declaration of spouses/partners' <i>'financial interests which might entail a conflict of interests'</i>	+

2.1.2. Follow-up on EP recommendations

Despite the improvements introduced, the 2011 CoC has failed to address most EP recommendations, and thus fallen short of a more comprehensive alignment with EU and international best practice (EP recommendations were based on concrete examples of European / international best practices). The table below shows the 28 EP recommendations, and our overall assessment of the extent to which the 2011 CoC addresses the recommendations. A traffic light assessment is used (green: 2011 CoC addresses the recommendation; orange: 2011 CoC partly addresses the recommendation; red: 2011 CoC fails to address the recommendation).

Overall, we consider that the 2011 Code fails to address 19 recommendations made by the 2009 study; partly addresses four recommendations; and fully addresses four recommendations. Limited follow up is observed with regard to the CoC's implementation arrangements (prevention, reporting, dissemination, complaints, sanctions, declarations of interest, handling of conflicts of interest). Looking at two key problems areas (political activity and post-office employment) progress has also been modest, though the extension of the 'cooling-off' period from 12 to 18 months is an improvement. Finally, with regard to Commissioner resources and gifts (travel, staff, register of gifts), follow-up has been at best partial (e.g. the 2011 CoC has extended the rules on gifts to cover hospitality).

This assessment is in line with a summary review conducted by the EP in 2011.²⁹

Table 2 - EC follow-up on EP recommendations

Area	Recommendation in 2009 study	2011 Code (relevant Code section in brackets)
Prevention	Establish a structure to oversee the application of the CoC (Advisory Group on Standards in Public Life or 'widened' Ad Hoc Ethical Committee), with members to be nominated in agreement between the EC and EP, and supported by a Secretariat (e.g. 1 staff within the EC SG)	–
	Entrust this structure with providing guidance on the CoC's requirements, regular monitoring and evaluation, and oversight in relation to the EC President	–
	Establish guidance materials (e.g. define the term ' <i>conflict of interest</i> ') and disseminate information on ethics 'cases'	– (no definition; one example of conflict of interest in section 1.1)
Reporting	Publish annual reports on the CoC's application	–
Dissemination	Establish a dedicated website on the CoC's application	–
Complaints	Introduce a reference to the European Ombudsman function	–
Sanctions	For major infringements: Introduce a reference to existing Treaty sanctions	+
	For minor infringements: Introduce sanctions (e.g. reporting of infringements)	–

²⁹ Committee on Budgetary Control, letter to the Chairman of the Conference of Committee Chairs, IPOL-COM-CONT D (2011)10572

Area	Recommendation in 2009 study	2011 Code (relevant Code section in brackets)
Declaration of interests	Provide information on the objectives of organisations in which outside activity takes place	+ (Declaration of interests requires indication of objective (Annex 1))
	Declare all financial interests (assets and liabilities) over a certain value (e.g. €10,000)	- (1.3)
	Update information annually and whenever information changes	+ (1.5)
	Partners and dependent children to disclose the same information as spouses	= (partners covered, 1.4)
	Introduce electronic format	-
Political activity	Limit national political activity to party membership	-
	Alternative: define 'availability for service' and provide criteria for assessing availability	-
	Publish assessments of availability for service	-
	Introduce timelines for notifying political activity (e.g. two months before engaging in political activity) and withdrawals (e.g. maximum withdrawal time of one month)	- (only for EP elections, 1.1)
Post-office employment	Provide criteria for assessing the compatibility of post-office employment	-
	Publish assessments of compatibility	-
	Extend the post-office employment restriction to two years	= (extended to 18 months, 1.2)
	Introduce timelines for notifying post-office employment (e.g. two months before engaging in post-office employment)	= (‘in good time, as far as possible with minimum four weeks notice’, 1.2)

Area	Recommendation in 2009 study	2011 Code (relevant Code section in brackets)
Travel	Publish Commissioner travel on an annual basis, indicating the date of travel, the destination, the purpose of travel, the type of transport used, the number of persons accompanying the Commissioner, total travel costs and whether the Commissioner was accompanied by his spouse / partner	-
Staff	Provide for abstention from staff decisions involving family / close relations	=
Register of gifts	Clarify the definition of gifts (including hospitality)	+ (1.11)
	No gifts to be accepted from donors from a EU Member State	-
	Disclose the identity of donors from outside the EU	-
Handling conflicts of interest	Establish a procedure for dealing with conflicts of interest	= (1.6)
	Introduce divestment of financial interests above a certain value	-

2.2. DETAILED REVIEW

KEY FINDINGS	
-	A review of ethics systems in a selection of EU (e.g. the United Kingdom) and third countries (e.g. Canada, Australia) clearly demonstrates the feasibility of coherent implementation systems with checks and balances, transparency, and an overall balance between furthering public trust and the rights of the office holder.
-	The 2011 CoC shows deficiencies with regard to overall implementation systems, the handling of Commissioner political activity, post-office employment, and the management of travel and gifts.

This section presents a detailed review of the 2011 CoC with a focus on the areas where the 2011 CoC failed to address the EP's recommendations. The section is organised in three sub-sections:

- Implementation of the Code of Conduct (prevention, reporting, dissemination, complaints, sanctions, declarations of interest, handling conflicts of interest) (section 2.2.1)
- Key areas (political activity, post-office employment) (2.2.2)
- Commissioner travel and gifts / hospitality (2.2.3)

The organisation of the sub-sections follows the order of issues noted in section 2.1.2 above (Table 2 - EC follow-up on EP recommendations).

2.2.1. Implementing the Code of Conduct

The section on CoC implementation covers prevention (2.2.1.1), reporting and dissemination (2.2.1.2), complaints and sanctions (2.2.1.3), declarations of interest (2.2.1.4), handling conflicts of interest (2.2.1.5).

2.2.1.1 Prevention

Implementation system

Comparing the CoC's implementation system with similar systems in the Member States and in third countries, it is worth noting the limited articulation of responsible implementation structures and functions. Indeed, the CoC entrusts implementation / enforcement to the Commissioners, and most notably the Commission's President, with only limited functions allocated to other actors (Ad Hoc Ethical Committee, Head of Cabinet):

- The President is notified on a Commissioner's intention to publish a book (CoC, section 1.1, paragraph 2);
- The President is informed on a Commissioner's intention to participate in an election campaign, and the President decides on compatibility with Commissioner duties (section 1.1, paragraph 8);
- The President informs the President of the Parliament on decisions to grant leave to a Commissioner (section 1.1, paragraph 10);

- The Commission is informed of a Commissioner's intention to engage in an occupation during the 18 months after they have ceased to hold office (section 1.2, paragraph 1);
- The Commission seeks the opinion of the Ad Hoc Ethical Committee if the planned occupation is related to the content of the portfolio of the Commissioner (section 1.2, paragraph 2);
- The President can seek the opinion of the Ad Hoc Ethical Committee in cases of doubt over a Commissioner engaging in a public office (section 1.2, paragraph 4);
- The Commissioners are responsible for their declarations of interest, with scrutiny under the authority of the President (section 1.5, paragraph 2);
- The President is informed on a Commissioner's personal interest in a file within the Commissioner's portfolio, and the President decides on reallocations (section 1.6, paragraph 2);
- The President informs the President of the Parliament on reallocations (section 1.6, paragraph 4);
- Commissioner resources are distributed between Commissioners under the authority of the President (section 1.10, paragraph 1);
- Commissioner expenses are authorised by the respective Head of Cabinet (legal authorising officer); and related payments are made under the responsibility of the Director of the Office for the Administration and Payment of Individual Entitlements (a EC Directorate General) (section 1.10, paragraph 1);
- Gifts worth more than €150 are handed over to the Commission's Protocol Department (a service under the Secretariat General's Deputy Secretary General) (section 1.10, paragraph 1); in case of doubt the gift is valued under the authority of the Director of the Office for Infrastructure and Logistics in Brussels (a EC Directorate General) (section 1.11, paragraph 1); and the Protocol Department keeps the register of gifts (section 1.11, paragraph 2);
- The President is notified on decorations, prizes or honours awarded to a Commissioner (section 1.11, paragraph 4);
- The Ad Hoc Ethical Committee can be requested by the President to deliver an opinion on any general ethical question concerning the interpretation of the CoC (section 2.3); in 2013, an EC answer to a parliamentary question clarified the provision: 'According to paragraph 2.3 of the Code of Conduct for Commissioners, the Ad hoc Ethical Committee may be requested by the President to deliver opinions on any general ethical question concerning the interpretation of the Code of Conduct, but the appreciation of specific situations — other than those regarding post term-of office activities of Commissioners under paragraph 1.2 does not enter in the Ad hoc Ethical Committee's remit'.³⁰

It is worth noting that the role of the EC Secretariat General with regard to implementing the CoC is hardly mentioned (only in respect of the Protocol Department). However, the Secretariat General provides support for the implementation of the CoC. For example, in its latest Annual Activity Report (2013), the Secretariat General refers to its support on the implementation of the Code of Conduct in terms of '*answers to requests from Commissioners and their Cabinets on the implementation of the Code of Conduct for Commissioners*'.³¹

³⁰ EC answer of 4 January 2013 to parliamentary question E010037/2012 dated 6 November 2012

³¹ EC, Secretariat General, Annual Activity Report for 2013, page 34

Moreover, the report refers to two main outputs in 2013: an '*Update of a list of frequently-asked questions and answers on issues related to ethical matters, especially concerning the implementation of the code of conduct for Commissioners: the first draft has been finalized*' and the '*Annual update of the declarations of interests of Commissioners*'.³² The Secretariat General's organisation chart refers to a policy officer in charge of policy coordination on professional ethics and in particular the CoC (Unit 3 Ethics, Directorate B Institutional and Administrative Policies).

Secretariat General feedback on this update confirms the support function (already developed in the context of the 2004 CoC), and notes the following key points:³³

- The 2011 CoC has not been accompanied by an increase in implementation resources at the Secretariat General (Unit 3, Directorate B), with two staff dedicated part-time to the CoC; the Secretariat General considers that this resource allocation is sufficient within the framework of the current CoC, and considering that there are only 28 'subjects' under the CoC;
- At the beginning of the current Barroso Commission, the Secretariat General organised training on the CoC;
- The Secretariat General advises Commissioners on the CoC, however, no statistical detail on this is available; advice is provided informally (e.g. via telephone calls) and most requests related to Commissioners accepting honorary functions or decorations; at the beginning of the current Commission, most questions came from Commissioners from the new Member States;
- The Secretariat General is indeed planning to finalise a list of (anonymised) frequently-asked questions on the CoC by the end of the current Commission;
- The Secretariat General does not have the means to scrutinise the Commissioner's declarations of interest. The declarations are made under the responsibility of the Commissioners, and the Secretariat General's role is limited to collecting the declarations and ensuring annual updating;
- Finally, the introduction of a network of ethical correspondents in 2008 covering all EC Directorates General and the Cabinets is considered a significant improvement with regular exchanges between the Secretariat General and Cabinet ethical correspondents.³⁴

Looking specifically at the Ad Hoc Ethical Committee (AHEC), the following comments can be made:

- The EC does not publish information on AHEC's meetings and decisions (however, summary information is presented in the minutes of Commission weekly meetings); this limited visibility is in contradiction with EC intentions dating back to 2011: referring to the AHEC, an EC letter noted: 'We intend to publish these decisions on the Europa web site, so that there will be no need to request such documents under provisions of the Regulation 1049/2001'.³⁵
- A review of Commission weekly meeting minutes for the years 2011-2014 suggests that there has only been very limited use of the AHEC; The meeting minutes of the Commission meeting on 25 February 2014 refer to one instance of AHEC being asked for advice (on former Commissioner Ferrero-Waldner's post-EC employment); the related Commission Decision (C(2014) 1328) is not directly available but can be requested via the Register of Commission Documents;³⁶

³² EC, Secretariat General, Annual Activity Report for 2013, page 35

³³ EC, Secretariat General (Directorate B, Unit 3), telephone conversation on 27 August 2014

³⁴ This network was introduced in the framework of the Communication on ethics: EC, Communication from Vice-President Kallas to the Commission on enhancing the environment for professional ethics in the Commission, SEC(2008) 301, 2008

³⁵ EC letter to ALTER-EU of 9 June 2011

³⁶ EC, Minutes of the 2076th meeting of the Commission, PV(2014)2076 final, 5 March 2014

- The appointment of AHEC members is published in the Commission weekly meeting minutes; The meeting minutes of the Commission meeting on 12 December 2012 refer to the appointment of a member of the Ad Hoc Ethical Committee, however no detail is provided; the related Commission Decision (C(2012) 9343) is not directly available but can be requested via the Register of Commission Documents;³⁷ The meeting minutes of the Commission meeting on 18 December 2013 refer to the appointment of Nikolaus Van Der Pas to replace Michel Petite; the related Commission Decision (C(2013) 9674) is not directly available but can be requested via the Register of Commission Documents.³⁸
- The Commission Decision on the AHEC dates back to 2003 (ten articles), relates to the first CoC (Prodi CoC, 1999) and was not touched by subsequent CoC reforms (CoC 2004, CoC 2011).³⁹ The decision refers to an estimate of five meetings per year; 3 members (Article 4); the remit of the AHEC is limited to advising the Commission (on the Commission's request) on post-Commission employment (Article 2) (whilst the current CoC foresees a wider consultative role); appointment by the Commission on the proposal of the President (Article 5); there is a general requirement for members to be independent and have 'an impeccable record of professional behaviour' (Article 4). This contrasts starkly with the practice of similar structures in other ethics systems, requiring members to abide by detailed standards and publicly declare their interests, e.g. members of Canada's Office of the Conflict of Interest and Ethics Commissioner need to abide by a detailed code,⁴⁰ and members of the UK Advisory Committee on Business Appointments follow a 'Code of Practice',⁴¹ and declare their interests publicly.⁴²
- Secretariat General feedback on this update confirms that the new provision allowing the President to ask the AHEC for 'opinions on any general ethical question concerning the interpretation of this Code of Conduct' (CoC, Section 2.2) was not used; the Secretariat General also indicated that it was not in a position to share minutes of meetings of the Committee with the authors of the study, since the Secretariat was not informed of the business of this Committee.⁴³
- In 2013, the AHEC has been the subject of a European Ombudsman case over the reappointment of one of the Committee's three members (over conflict of interest issues), and resulting in the EC replacing this member.⁴⁴ The Ombudsman case also refers to EC intentions to enhance the operation of the AHEC: 'In its opinion sent to the Ombudsman, the Commission indicated that it will devote a specific page on its EUROPA website to the Ad Hoc Ethical Committee, on which it will publish the Commission decision creating the Ad hoc Ethical Committee and the decisions appointing the members of Ad hoc Ethical Committee. It will also include their CVs, as well as a declaration on their honour attesting the absence of conflicts of interest between their function as member of the Ad Hoc Ethical Committee, and their other activities or interests. The Commission stated that it is also considering publishing an extract from the Ad Hoc Ethical Committee's formal opinions (while protecting personal data)'.⁴⁵ In this context the Ombudsman issued a remark: 'The Commission should comply with its commitment to create a specific page on its EUROPA website relating to the Ad Hoc Ethical Committee and its work'.⁴⁶ By the time of writing this update, the EC's 'Transparency

³⁷ EC, Minutes of the 2027th meeting of the Commission, PV(2012)2027 final, 9 January 2013

³⁸ EC, Minutes of the 2070th meeting of the Commission, PV(2013)2070 final, 14 January 2014

³⁹ EC, C(2003)3750, 14 October 2003

⁴⁰ Office of the Conflict of Interest and Ethics Commissioner, Code of Values and Standards of Conduct for Employees of the Office of the Conflict of Interest and Ethics Commissioner, 1 April 2012

⁴¹ http://acoba.independent.gov.uk/committee/code_of_practice.aspx

⁴² http://acoba.independent.gov.uk/committee/register_of_interests.aspx

⁴³ EC, Secretariat General (Directorate B, Unit 3), telephone conversation on 27 August 2014

⁴⁴ Case: 0297/2013/(RA)FOR, Opened on 12 Mar 2013, Decision on 19 Dec 2013

⁴⁵ Case: 0297/2013/(RA)FOR, Opened on 12 Mar 2013, Decision on 19 Dec 2013, point 77

⁴⁶ Case: 0297/2013/(RA)FOR, Opened on 12 Mar 2013, Decision on 19 Dec 2013, Conclusions

Portal' failed to present any of this information (information on the CoC is limited to links to the CoC, the Commissioners' declarations of interest, and the spreadsheet listing gifts).⁴⁷

- Considering the experience with similar bodies in other ethics systems (e.g. the UK's Advisory Committee on Business Appointments), the EC's current practice of limiting the composition of the Committee to former EC civil servants and/or former Members of the European Parliament or the European Court of Justice could also be questioned. Indeed, whilst possibly familiar with the functioning of the EC, these Committee members might lack the necessary 'business / industry' expertise to assess conflicts with regard to business appointments of former Commissioners. Similar structures in other ethics systems have addressed this by allowing for a more balanced composition of relevant committees, including (former) business/industry representatives besides civil servants. This weakness is confirmed by a review of the AHEC's assessment of post-office employment of former External Relations Commissioner Ferrero-Waldner. The AHEC found no link between her portfolio and post-office employment, however a civil society review of the case identified possible conflicts of interests between the external relations portfolio and the business initiative that were not considered by the Committee: 'This clear link between her new employers and her former portfolio appears to have been completely overlooked by the ad-hoc ethical committee in its assessment of her jobs, which concluded that there was no connection at all to Ferrero-Waldner's Commissioner's portfolio.'⁴⁸

Comparing the CoC system with other ethics systems points to ample room for further developing the CoC system.

The following paragraphs review the UK system of ministerial ethics. Besides the prime minister's and ministers' functions in ensuring compliance, the UK system implies six further agents in ensuring compliance: the Cabinet Secretary, the Ministers' Permanent Secretaries (or Secretaries of State in the case of Junior Ministers), the Independent Adviser on Ministers' Interests, the Accounting Officer, the Advisory Committee on Business Appointments and the Departments. Implementation functions are shown in the figure below. Two agents are of particular interest in the context of reviewing the CoC, namely the Advisory Committee on Business Appointments (ACOPA), and the Independent Adviser on Ministers' Interests (IAM).

ACOPA delivers a function similar to the EC's AHEC. The following comparative comments can be made:

- ACOPA has a wide remit: former Ministers intending to take up any appointment or employment are required to seek advice and abide by this advice;
- ACOPA composition: currently eight members; appointed by the Prime minister with the exception of three nominees from political parties, following open competition in line with the Commissioner for Public Appointment's Code; the position of the chairman is subject to a pre-appointment hearing before the House of Commons' Public Administration Select Committee
- ACOPA is highly visible: A dedicated website (www.acopa.independent.gov.uk) presents ACOPA's objectives, ACOPA members and relevant documentation.

⁴⁷ http://ec.europa.eu/transparency/index_en.htm, accessed On 20 August 2014

⁴⁸ Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), Revolving door provides privileged access, February 2011, page 9

The 2011 CoC has widened the remit of AHEC by allowing the President to request AHEC *'to deliver opinions on any general ethical question concerning the interpretation of this Code of Conduct'* (CoC, Section 2.3). This advisory function can be compared with the UK's Independent Adviser on Ministers' Interests (IAMl). The following comparative comments can be made:⁴⁹

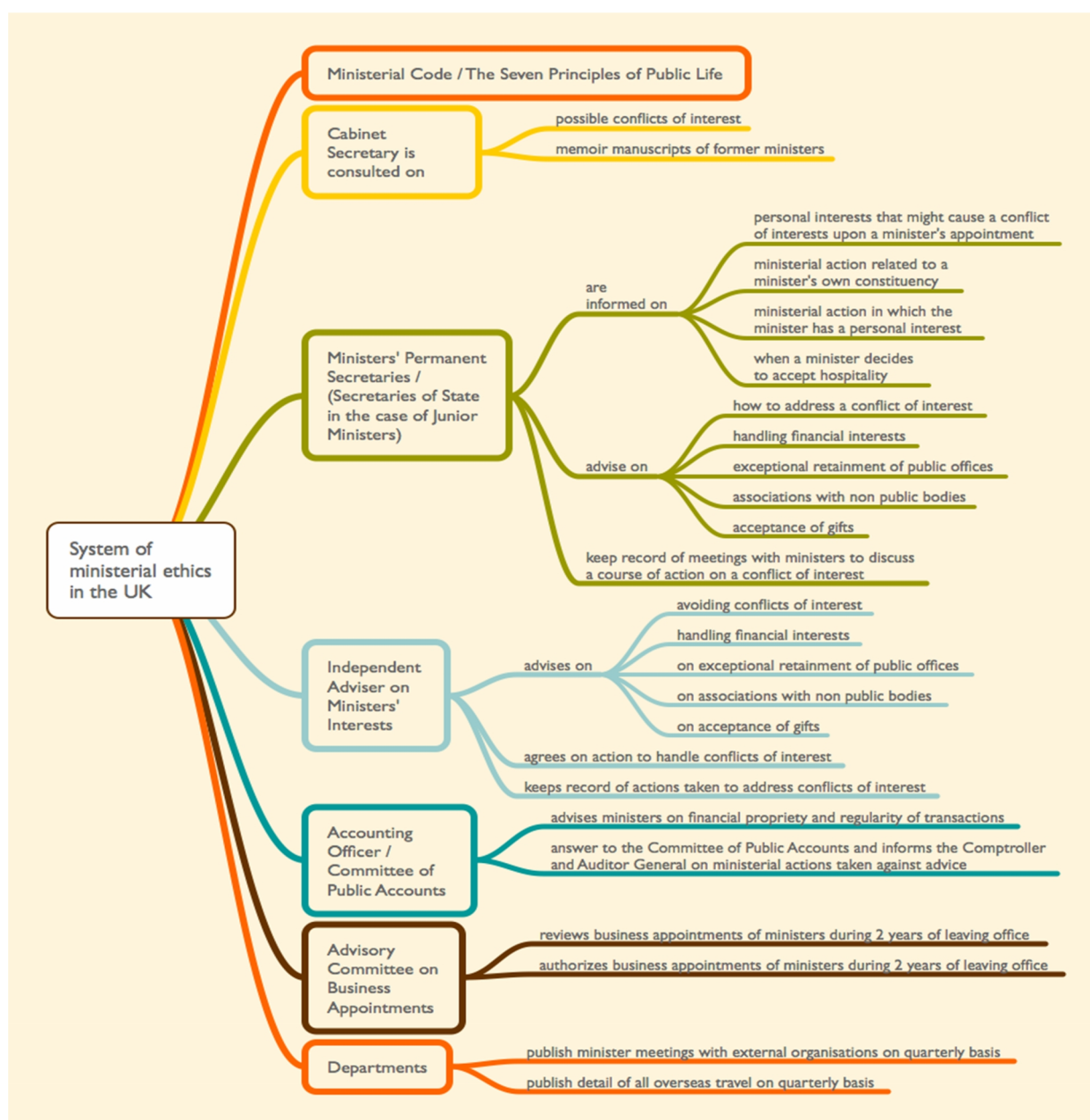
- IAMl is appointed by the Prime Minister
- IAMl remit: IAMl provides an independent check and source of advice to government ministers on the handling of their private interests, in order to avoid conflict between those interests and their ministerial responsibilities; IAMl investigates – when the Prime Minister, advised by the Cabinet Secretary, so decides – allegations that individual ministers may have breached the Ministerial Code of Conduct.
- IAMl is visible: A website presents IAMl's objectives and relevant documentation.

Finally, it is worth noting the figure of 'Accounting Officer' in the UK, and the related oversight mechanism: *'Accounting Officers have a particular responsibility to see that appropriate advice is tendered to Ministers on all matters of financial propriety and regularity and more broadly as to all considerations of prudent and economical administration, efficiency and effectiveness and value for money. If a Minister in charge of a department is contemplating a course of action which would involve a transaction which the Accounting Officer considers would breach the requirements of propriety or regularity, the Accounting Officer will set out in writing his or her objections to the proposal, the reasons for the objection and the duty to inform the Comptroller and Auditor General should the advice be overruled'*.⁵⁰ Commissioner expenses are authorised by the respective Head of Cabinet (section 1.10, paragraph 1), however, considering the close relation between a Commissioner and his Head of Cabinet, the extent to which the Head of Cabinet can exert genuine control over Commissioner expenses can be questioned.

⁴⁹ <https://www.gov.uk/government/publications/independent-adviser-on-ministers-interests-annual-report-2010-11>

⁵⁰ UK Cabinet Office, Ministerial Code, May 2010, section 5.4

Graph 1 - Implementation functions under the UK system of ministerial ethics



The Canadian system for ministerial ethics also illustrates a thorough approach to implementation: *'The Conflict of Interest and Ethics Commissioner is responsible for administering both the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, investigating allegations involving conflicts of interest, applying compliance measures, and briefing Ministers, Ministers of State and Parliamentary Secretaries on their responsibilities under the Act and Code'*.⁵¹ Considering the EC's implementation approach the following comparative comments can be made on the Conflict of Interest and Ethics Commissioner (CIEC):

- CIEC is appointed by the Canadian Parliament and only responds to Parliament;
- CIEC implements the ethics requirements for the House of Commons and appointed public office holders, including ministers (the Conflict of Interest Act applies to some 3,000 public office holders;

⁵¹ Accountable Government - A Guide for Ministers and Ministers of State, 2011, page 15

- CIEC is highly visible: a dedicated website provides information on the institution, activities and publications;⁵² most remarkably, CIEC operates an online database (Public Registry under the Conflict of Interest Act) allowing searches related to 'Summary Statements of ministers, parliamentary secretaries and other reporting public office holders, as well as their public declarations relating to gifts or other advantages, travel, certain assets and liabilities, outside activities and other declarations as necessary'.⁵³

Guidance

The ethics system in place for Commissioners also compares poorly with regard to the provision of guidance on ethics requirements, i.e. practical guidance for Commissioners on how to ensure compliance with the CoC. However, at the level of Cabinet staff, a guide was prepared by the EC.⁵⁴

The CIEC stands out for the comprehensive guidance provided to help ministers comply with the Conflict of Interest Act:

- Comprehensive guidance on integrity requirements is provided in the form of the publication 'Accountable Government - A Guide for Ministers and Ministers of State' to support the implementation of Conflict of Interest Act. This guidance exists since 2003 and is regularly updated (the current version was issued in 2011, and includes an annex dedicated to lobbying: 'Fundraising and Dealing with Lobbyists: Best Practices for Ministers and Parliamentary Secretaries'). The document explains the motivation behind comprehensive guidance: 'Accountable Government is a reminder not only of the rigorous legal system that has been enacted to support integrity and accountability in Canadian government, but equally of the fact that public sector ethics require more than mere compliance with legal rules. Ultimately, no system of rules, however comprehensive and robust, can substitute for our individual and collective commitment to the public interest'.⁵⁵
- The CIEC's website provides additional guidance in the form of: the 'Overview of the Conflict of Interest Act' (April 2014), detailed guidance on the establishment of blind trusts for the handling of financial interests (August 2013), 'Conflict of Interest Screens' (October 2012),⁵⁶ and information on the 'Initial Compliance Process for Ministers and Parliamentary Secretaries' (May 2011).
- In Ireland, guidance is available in the form of the 'Cabinet Handbook'.⁵⁷ This accompanies Ireland's ethics system, comprising the 'Ethics in Public Office Act' (1995), the 'Standards in Public Office Act' (2001) and the 'Code of Conduct for Office Holders' (2003).
- In Australia additional guidance on the Standards of Ministerial Ethics is also available: 'Further information about the management of conflicts of interest in the context of Cabinet discussions is contained in the Cabinet Handbook'.⁵⁸

⁵² <http://ciec-ccie.parl.gc.ca/Pages/Splash.aspx>

⁵³ <http://ciec-ccie.parl.gc.ca/EN/PublicRegistries/Pages/Act-Public-Registry.aspx>

⁵⁴ Impartiality beyond any doubt: Ethics and integrity in the Cabinets'

⁵⁵ Accountable Government - A Guide for Ministers and Ministers of State, 2011, page iv

⁵⁶ Conflict of Interest Screens aim to prevent conflicts of interest from materialising: 'Conflict of Interest Screens. The Office helps public office holders make formal arrangements in advance in order to avoid dealing with files that pose a real or potential conflict of interest. If a conflict of interest screen is in place, files that pose a potential conflict of interest are not brought to the public office holder's attention and therefore no recusal is required.'

⁵⁷ The current version is dated 2007, however, a first version was issued in 1998.

⁵⁸ http://www.taoiseach.ie/eng/Publications/Publications_Archive/Publications_2007/Cabinet_Handbook.html

⁵⁸ Australian Government, Standards of Ministerial Ethics, September 2010, Section 2.8

Guidance also comprises consistent definitions of relevant ethics concepts, most notably with regard to what constitutes a 'conflict of interest'. The CoC fails to provide a definition. Examples for consistent definitions include the following:

- The Canadian Conflict of Interest Act defines conflicts of interests as follows: 'For the purposes of this Act, a public office holder is in a conflict of interest when he or she exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests',⁵⁹
- Similarly, the Ministerial Code of Conduct of Western Australia provides a comprehensive definition: 'Public duties must be carried out objectively and without consideration of personal or financial gain. Circumstances which could give rise to a serious conflict of interest are not necessarily restricted to those where an immediate advantage will be gained. They may instead take the form of a promise of future benefit, such as a promise of post-parliamentary employment. Any conflict between a Minister's private interest and their public duty which arises must be resolved promptly in favour of the public interest. The same is as true for a perceived conflict of interest as an actual conflict',⁶⁰
- The UK's Ministerial Code specifies: 'Ministers must ensure that no conflict arises, or appears to arise, between their public duties and their private interests'.⁶¹

2.2.1.2 Reporting and dissemination

The EC fails to report on the implementation of the CoC. This is contrary to best practice as illustrated by the following examples (already presented in detail above):

- The UK's Advisory Committee on Business Appointments (ACOPA) publishes annual reports including detail on the business appointments considered, minutes of its meetings, and a table with appointments taken up by former ministers;
- Similarly, the UK's Independent Adviser on Ministers' Interests (IAM) publishes annual reports on minister's interests. IAM investigations are published: 'having received my report, the then Prime Minister immediately decided to publish it in full (save only for such redactions as were necessary to protect personal information relating to witnesses to my inquiry). The public were thus able to see the basis on which I had reached my conclusion, including the relevant evidence. This too was an important step forward in terms of transparency'.⁶²
- Finally, Canada's Conflict of Interest and Ethics Commissioner (CIEC) publishes reports and other publications include the annual reports on the implementation of the Conflict of Interest Act, Investigation Reports (including detailed 'Examination Reports' on ministers' compliance with the Act), a listing of administrative monetary penalties imposed, and a listing of compliance orders.

All reports and publications are openly available on the websites of the organisations entrusted with the implementation of the ethics regimes.

⁵⁹ Conflict of Interest Act, version of 12 June 2014, Article 4

⁶⁰ Government of Western Australia, Ministerial Code of Conduct, April 2013, Article 5

⁶¹ UK Cabinet Office, Ministerial Code, May 2010, section 1.2f

⁶² Independent Adviser on Ministers' Interests, Annual Report 2010-2011, December 2011, Section 2.3

2.2.1.3 Complaints and sanctions

The CoC does not provide for complaints or for sanctions for infringements of CoC requirements with the exception for 'serious misconduct' (reference to articles 245 and 247 of the Treaty, Section 2.2).

- The Ombudsman case noted above in relation to the Ad Hoc Ethical Committee confirms the Ombudsman's competence to deal with complaints concerning the application of the Code of Conduct.⁶³ However, this is not elaborated in the Code of Conduct.
- Examples on how to sanction infringements are available from the Canadian Conflict of Interest Act. Indeed, the Canadian system provides for comprehensive sanctioning arrangements: 'Every public office holder who contravenes one of the following provisions commits a violation and is liable to an administrative monetary penalty not exceeding \$500'.⁶⁴ Inter alia, the following violations are sanctioned: late or incomplete declaration of interests; failure to report a change of situation; failure to notify gifts or employment offers; failure to issue a public declaration on recusal, assets, liabilities, acceptance of outside activities, gifts or travel; failure to confirm divestment. The violation is made public: 'If an administrative monetary penalty is imposed on a public office holder in respect of a violation, the Commissioner shall make public the nature of the violation, the name of the public office holder who committed it and the amount of the penalty imposed'.⁶⁵

2.2.1.4 Declarations of interest

EC practice

The following bullet points present the current situation with regard to the Commissioner's declarations of interest. Overall, the current declarations can be considered an improvement over the handling of declarations in 2008/2009. The completion of the declarations is largely consistent, and information is now updated on an annual basis. Remaining deficiencies mainly relate to failures to fully clarify the objectives of organisations that Commissioners are involved with, thus requiring additional research to determine the presence of a possible conflict of interest. In this context it is worth noting one best practice example, i.e. the declaration by Commissioner Oettinger is an example of efforts to clearly present the objectives of the organisations that this Commissioner is involved with.

Previous activities

- For three Commissioners there are deficiencies with regard to the description of posts held over the last 10 years in foundations or similar bodies (purpose of the organisation not sufficiently clear to assess the existence of a possible conflict of interest);
- No issues with regard to posts held in educational institutions;
- No issues with regard to posts held in the private sector;
- One deficient declaration with regard to other professional activities;

⁶³ Case: 0297/2013/(RA)FOR, Opened on 12 Mar 2013, Decision on 19 Dec 2013

⁶⁴ Conflict of Interest Act, version of 12 June 2014, Article 52

⁶⁵ Conflict of Interest Act, version of 12 June 2014, Article 62

Outside activities

- No issues with regard to current posts;
- One deficient declaration with regard to additional relevant information;

Financial interests

- One deficient declaration with regard to shares;
- One deficient declaration with regard to other stock;

Assets

- 13 deficient declarations with regard to real estate (Commissioners declare real estate that are homes for the exclusive use of the owner despite this type of real estate being exempted from the declaration requirements);
- 3 deficient declarations with regard to other property;

Spouses / partners

- One deficient declaration.

Declaration of financial interests / divestment

Commissioners are not required to declare all their financial interests or assets, but only such interests or assets *'which might create a conflict of interests in the performance of their duties'* (CoC section 1.3). It is worth quoting Michelle Cini on this: *'This means that Commissioners are making this judgement on what might create a conflict of interest (and without a clear definition to guide them). Commissioners may not be the best judges of this. It assumes the individuals concerned are well socialised into the EC ethics system and how it should be interpreted'*.⁶⁶ There is no requirement to declare debts / liabilities. Comparing the CoC with other ethics systems, it is worth noting that the declaration of financial interests is general, i.e. all financial interests need to be disclosed (e.g. Canada's Conflict of Interest Act, Australia's Standards of Ministerial Ethics). Moreover, the CoC fails to provide for any divestment requirements, a standard in ethics regimes.

- The Ministerial Code of Western Australia requires the declaration to cover debts.⁶⁷
- Canada's Guide for Ministers and Ministers of State notes that Ministers, Ministers of State and Parliamentary Secretaries are held accountable for their adherence to the provisions of the Conflict of Interest Act which requires the provision of a confidential report to the Conflict of Interest and Ethics Commissioner on assets and liabilities, former and current activities and those of their spouse and dependent children.
- Concerning divestment, the Canadian Conflict of Interest Act comprises detailed rules: 'No reporting public office holder shall, unless otherwise provided in Part 2, hold controlled assets as defined in that Part'.⁶⁸ Controlled assets are defined as follows: 'controlled assets means assets whose value could be directly or indirectly affected by government decisions or policy'.⁶⁹ The act includes detailed provisions on the handling of the affected assets (sale / placement in a blind trust).⁷⁰

⁶⁶ Michelle Cini, peer review of this report.

⁶⁷ Government of Western Australia, Ministerial Code of Conduct, April 2013, Article 7

⁶⁸ Conflict of Interest Act, version of 12 June 2014, Article 17

⁶⁹ Conflict of Interest Act, version of 12 June 2014, Article 20

⁷⁰ Conflict of Interest Act, version of 12 June 2014, Article 27

- The Ministerial Code in Western Australia also provides for clear divestment requirements: 'Immediately after appointment and within 60 days, Ministers shall take action to divest themselves of shareholdings in any company and interests in partnerships and trusts, by virtue of which a conflict exists, or could reasonably be expected to exist, with their portfolio responsibilities'.⁷¹
- Finally the UK systems also covers provisions on divestment: 'Ministers must scrupulously avoid any danger of an actual or perceived conflict of interest between their Ministerial position and their private financial interests. They should be guided by the general principle that they should either dispose of the interest giving rise to the conflict or take alternative steps to prevent it. In reaching their decision they should be guided by the advice given to them by their Permanent Secretary and the independent adviser on Ministers' interests. Ministers' decisions should not be influenced by the hope or expectation of future employment with a particular firm or organisation'.⁷²

Timelines for declarations

The declaration of assets has to be completed and made available before the EP hearing of the Commissioner-designate and at least updated annually. Despite the CoC specifying a timeframe, it is recommendable to have a more concrete time set for submission prior to the hearing. This will avoid having insufficient time to scrutinise the declaration.

- For example, The Canadian Conflict of Interest Act requires a declaration within 60 days of appointment.⁷³
- On timelines with regard to changes in declared interests, the Australian Government requires: 'Ministers must also comply with any additional requirements for declarations of interests to the Prime Minister as may be determined by the Prime Minister, and notify the Prime Minister of any significant change in their private interests within twenty-eight days of its occurrence'.⁷⁴

In addition, making the document public is important and foreseen in the CoC. The format is arguably incompatible with open data requirements given that PDF format does not allow for easy usability, reusability, etc. It is recommendable to publish the declaration in open data format.

2.2.1.5 Handling conflicts of interest

The 2009 study recommended the establishment of a procedure for handling conflicts of interest identified in the course of a Commissioner's term. Indeed the 2004 Code failed to address the question as to the course of action in case of a conflict of interest affecting a Commissioner in office. However, Secretariat General feedback in the context of the 2009 study pointed to the existence of a procedure relating to the Competition Commissioner's portfolio: '*(...) an internal procedure was set up to identify the relevant cases, which are signaled by the Director General of DG Competition, as they come to DG Competition's table. For the cases identified, the President decides whether it is justified to reallocate responsibility. The President of the Parliament is informed about the reallocation decision (...) this procedure has been applied on 22 occasions (to Commissioner Kroes), with the President reallocating responsibilities in all cases*'.⁷⁵

⁷¹ Government of Western Australia, Ministerial Code of Conduct, April 2013, Article 7

⁷² UK Cabinet Office, Ministerial Code, May 2010, section 7.7

⁷³ Conflict of Interest Act, version of 12 June 2014, Appendix G, page 28

⁷⁴ Australian Government, Standards of Ministerial Ethics, September 2010, Section 2.2

⁷⁵ Blomeyer & Sanz on behalf of the European Parliament, The Code of Conduct for Commissioners - improving effectiveness and efficiency, 12 May 2009, page 76

The 2011 Code has integrated this practice into the CoC with section 1.6 *'Reallocation of files between members of the Commission in case of potential conflict of interest'*: *'A Commissioner shall not deal with matters within his/her portfolio in which, she/he has any personal interest, in particular a family or financial interest which could impair her/his independence. Any Commissioner confronted with such situation shall immediately inform the President. The President shall take any measure he considers appropriate, including the reallocation of the file to another Member of the Commission. Should the President of the Commission be confronted with such situation, the President will refer the file to a Vice-President. The President of the Commission shall inform the President of the Parliament in due time of his decision to reallocate any file to another member of the Commission'*.

The provision can be considered deficient with regard to several aspects:

- There is no detailed definition of what constitutes a conflict of interest;
- The provision is limited to matters within the concerned Commissioner's portfolio, thus ignoring that Commissioners decide/vote as a College on all matters;
- There are no criteria for the President to decide on reallocations;
- There is no binding timeframe for informing the EP;
- No procedure is in place for situations of a Commissioner failing to inform of a conflict of interest.

EC Secretariat General feedback indicates that this provision was not used since the introduction of the 2011 Code.⁷⁶

A comparison with the Canadian Conflict of Interest Act points to a more far-reaching approach: *'A public office holder shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest'*.⁷⁷

Looking beyond the specific scenario of handling conflicts of interest in office, it is also worth noting the absence of detailed procedures for assessing conflicts of interest with regard to post-office employment. The Decision on the Ad Hoc Ethical Committee also fails to provide for a procedure for assessing conflicts of interest.⁷⁸

A review of the EC's handling of post-office employment cases confirms the weaknesses. Commenting on the Ad Hoc Committee's review of post-office employment of former Commissioner Verheugen, it is noted: *'The four other positions have now been cleared by the ad-hoc ethical committee after a superficial inquiry which appeared to be entirely based on Verheugen's own assessment of the nature of his new positions without any checks with the employers, and which concluded that the jobs "do not entail any risk of conflict of interests". Verheugen's claims that the jobs do not involve lobbying were also taken for granted by the Committee without any further clarifications or definitions being sought'*.⁷⁹

Similar insights are available with regard to former Commissioner McCreevy's post-office employment: *'When McCreevy was appointed by Ryanair, the Committee didn't contact Ryanair at any*

⁷⁶ EC, Secretariat General (Directorate B, Unit 3), interview on 4 September 2014

⁷⁷ Conflict of Interest Act, version of 12 June 2014, Article 21

⁷⁸ EC, C(2003)3750, 14 October 2003

⁷⁹ Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), Revolving door provides privileged access, February 2011, page 7

point to inquire about McCreevy's role with the airline. Instead the Committee relied on McCreevy's assertion that nothing would entail a conflict of interests. Another example is the committee's decision to approve Günter Verheugen's four new jobs based purely on information provided by Verheugen. Even though many of the activities that he described in fact boil down to lobbying or lobbying advice, the committee still took Verheugen's assurances at face value'.⁸⁰

In the framework of the UK ministerial ethics system a detailed procedure for '*investigation of alleged breaches of the Code*' was established in 2009.⁸¹

⁸⁰ Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), Revolving door provides privileged access, February 2011, page 12

⁸¹ Independent Adviser on Ministers' Interests, Annual Report 2010-2011, December 2011, page 8

Box 1 - Procedure for investigating infringements in the UK

Procedure for Investigation of alleged Breaches of the Code by the Independent Adviser on Ministers' Interests

6. *When an allegation is referred to the Independent Adviser by the Prime Minister, the Adviser will write immediately to the Minister concerned setting out the nature of the allegation and the provision(s) of the Ministerial Code which appear relevant to its determination, along with any other relevant material available to the Adviser.*
7. *The Adviser will, if necessary, question the person who has made the allegation to ensure that its precise nature and the evidence on which it is based are clear to all concerned.*
8. *The Adviser will then ask the Minister to respond in detail to the allegation either in writing or orally. What is asked of the Minister at this stage is a full and open account of the matters in question.*
9. *It may be that the information provided by the person making the allegation and the Minister will enable the Adviser to report to the Prime Minister at this point.*
10. *However, the Adviser may judge that further inquiries are required. These may involve other Ministers, officials, or people or organisations outside Government. Those approached or interviewed by the Adviser will be expected to cooperate fully and to observe the confidentiality of their dealings with the Adviser, although they should give their evidence on the assumption that it is likely to be made public in the context of the Adviser's Report. The Adviser will share with anyone interviewed a draft record of the interview so that the accuracy of the record can be confirmed.*
11. *Any person interviewed by the Adviser may be accompanied, at their own expense, by a friend or legal adviser, if they so wish. However, they will be expected to answer for themselves (and not through their adviser) any questions put to them.*
12. *If in the course of his inquiries, the Adviser comes across evidence which suggests that a criminal offence may have been committed which may more appropriately be investigated by the police or another investigatory agency, he will report this to the Cabinet Secretary.*
13. *Once he has assembled the facts relating to the allegation(s), the Adviser will put to the Minister concerned any material evidence which is at variance with the Minister's account of events.*
14. *Before concluding his investigation, the Adviser will also share with the Minister the draft of those parts of his report which deal with issues of fact, so that the Minister has an opportunity to comment on them. It will be helpful if any comments are made in writing so that the Adviser can give a precise account of the Minister's response in his report.*
15. *The Adviser will then finalise his report. In doing so, he will include his assessment as to whether or not the allegation(s) against the Minister are supported by the evidence and whether any breach of the Ministerial Code has occurred.*
16. *The Adviser will form his assessment on the basis of the balance of probabilities, although in cases where the alleged breach of the Code is more serious, a higher standard of proof may be appropriate.*
17. *Having completed his report, the Adviser will submit his report to the Prime Minister through the Cabinet Secretary. He will also copy it to the Minister concerned.*
18. *Taking into account any representations by the Minister, it will then be for the Prime Minister, advised by the Cabinet Secretary, to decide whether he accepts the Adviser's findings and, if so, what action to take. In order to help him reach a decision, the Prime Minister may ask the Adviser to conduct any further inquiries he considers relevant.*

2.2.2. Key areas: political activity and post-office employment

The section on key areas covers political activity (2.2.2.1), and post-office employment (2.2.2.2).

2.2.2.1 Political activity

The EP's 2009 study includes a comprehensive list of arguments against Commissioner political activity (pages 43-52). In summary, the study found:

- The CoC fails to define 'availability for service' (Section 1.1, paragraph 6 allows political activity, 'provided that this does not compromise their availability for service in the Commission or their independence in their functions');
- The CoC does not provide for any criteria for the President's decision on the compatibility of political activity with a Commissioner's duties (Section 1.1, paragraph 8 entitles the President to decide on compatibility 'taking into account the particular circumstances of the case');
- There is no definition of an 'active role' (Section 1.1, paragraph 8 requires Commissioners to withdraw from the work of the Commission if they intend to play an active role in an election campaign);
- Finally, there is no provision for the scenario of the President engaging in political activity.

In the first Barroso Commission, criticism over political activity has affected several members of the Commission (e.g. Michel, Wallström, Barroso). In this context the study also noted problems with regard to the Commissioner's independence, a Treaty requirement. Indeed, it is worth repeating here a passage from the 2009 study: *'On the basis of Article 213(1) 'independence beyond doubt', Walter van Gerven argues for a prohibition of a Commissioner's active party membership / participation in election campaigns: 'being an active member of a political party, a fortiori campaigning for that party, implies in my view that the person concerned accepts to adhere to the party line, and therefore to follow and take instructions from that party – and/or is perceived to do so'.*⁸² Thus, the study concluded that Commissioner political activity seriously undermines the work of the Commission by negatively affecting Member State and public trust in Commissioners, constraining the Commissioners' independence, disrupting the work of the Commissioners (replacement Commissioners) etc.

In addition, there is an important budget implication. The EP 2009 study already noted that Commissioner resignations place additional costs on the EU budget.

The arguments maintain their validity with regard to the 2011 CoC. A few additional comments can be made:

- The requirement for unpaid electoral leave (and the ban on using EC human or material resources during this time) in the case of a Commissioner participating in the European Parliament elections and the related detailed notice period ('as of the end of the last part session of the European Parliament before the elections', Section 1.1, paragraph 9) can be considered a best practice approach, and could be extended to cover similar positions in other EU institutions, e.g. the president of the European Parliament.

⁸² Blomeyer & Sanz on behalf of the European Parliament, The Code of Conduct for Commissioners - improving effectiveness and efficiency, 12 May 2009, page 50

- As noted above, the EP 2009 study already noted the cost implications of Commissioner political activity. This argument acquires further strength when considering the compensations for 'interim' Commissioners. In the context of the 2014 EP elections, Commissioners Rehn, Tajani, Reding and Lewandowski left the Commission and were replaced by interim Commissioners (Katainen, Nelli Ferrocì, Reicherts, Dominik). Despite the fact that the interim Commissioners might only remain in office for four months, they are entitled to compensation and pension payments, summing up to some €0.5 million per Commissioner.⁸³
- A review of Commission weekly meeting minutes for the years 2011-2014 suggests that incidences of political activity were largely limited to the 2014 EP elections; The meeting minutes of the Commission meeting on 2 April 2014 refer to the President of the Commission briefing the Commission members on relevant CoC requirements; Commissioners Reding, Tajani, Šef ovi , Rehn, Lewandowski, Mimica are reported to take unpaid electoral leave; Commissioner De Gucht is reported as engaging in political activity compatible with continued performance as a Commissioner.⁸⁴
- In 2012, a parliamentary question was raised concerning Commissioner De Gucht's participation in local elections in Belgium.⁸⁵ The parliamentary question notes that De Gucht would be a candidate in the elections. However, De Gucht indicated his intention not to participate actively in the campaign, and was not required to withdraw from the Commission. Whilst this case can be considered in line with CoC requirements, it raises the question as to the feasibility and / or appropriateness of being a candidate without participating actively in a campaign / not intending to be elected. A follow-up question by the EP also notes the missing definition of the term 'active participation': 'How does the Commission define 'active participation' in an election campaign? Does speaking about the campaign on national radio or taking part in television broadcasts fall under this heading? Does standing for election in a position on a party list which is likely to result in the candidate's being elected (e.g. in second place, as in the case of Mr De Gucht) fall under this heading?'.⁸⁶ The EC's answer limits itself to noting the President of the Commission's discretion in deciding on the compatibility between the political activity and the Commissioner's duties. The current approach can be considered problematic, in particular when considering that the President could be affected by conflicts of interest related to the political affinity of the Commissioner in question.
- Commissioner Kroes was also subject of Parliamentary questions in relation to political activity. A first question alleged political activity in the Netherlands: 'Commissioner Kroes has expressed her views regarding the current election campaign in the Netherlands and has made a negative statement about the Party for Freedom, in a video broadcast by the NOS channel. Her statements and actions may have influenced public opinion, thereby constituting an interference in the election campaign'.⁸⁷ The EC considered Kroes' statement not to constitute political activity but rather factual information on a European Union issue. An EP follow up question alleges 'political statements': 'On several occasions she emphasised the unsuitability of the PVV as a coalition partner (on 1 September 2012 on Zafira-net and in the Algemeen Dagblad)', however, the EC limits itself to confirming its answer to the first question, and also notes that the statements referred to by the first question 'can not be considered as a participation in the recent Dutch election campaign'. The EC does not consider the question of whether the other statements constitute participation in an election campaign (according to the CoC, Commissioners should refrain from making public statements on behalf of a political part unless they stand for election).⁸⁸ Finally, questions

⁸³ Calculations in line with Regulation No 422/67/EEC of 25 July 1967 determining the emoluments of the President and members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice

⁸⁴ EC, Minutes of the 2081st meeting of the Commission, PV(2014)2081 final, 9 April 2014

⁸⁵ EP, Parliamentary question P-005565/2012, dated 1 June 2012 and EC answer dated 22 June 2012

⁸⁶ EP, Parliamentary question P-006728/2012, dated 5 July 2012 and EC answer dated 8 August 2012

⁸⁷ EP, Parliamentary question E-007890/2012, dated 6 September 2012 and EC answer dated 3 October 2012

⁸⁸ EP, Parliamentary question E-009405/2012, dated 16 October 2012 and EC answer dated 13 November 2012

were also raised in relation to Commissioner Kroes' alleged 'intervention' in the Italian elections.⁸⁹ It is worth reproducing the question: '(...) Even though the Commission is not familiar with the interview, it states that Vice-President Kroes was expressing her personal opinion. However, Ms Kroes was introduced in the programme as European Commissioner Neelie Kroes, and while making her comments about Mr Berlusconi, she did not disassociate herself in any way [from her position as European Commissioner] by explaining or conveying the fact that she was speaking in a personal capacity. She also said in the interview that she had attended a meeting where Mr Berlusconi made a speech. She sat during that meeting next to the (Italian) Minister of Finance. This comment suggests that she was there as a European Commissioner and not as a private individual. Also in her description of that meeting, she expressed contempt for Mr Berlusconi. 1.What is the basis for the Commission's view that Commissioner Kroes gave the interview in a personal capacity? 2.How can a listener distinguish when hearing a public statement by a European Commissioner whether he/she speaks in a personal or an official capacity? 3.If there is no clear and unambiguous distinction between a commissioner's personal and official remarks what value should then be attached to his/her statements? 4.If there is no clear and unambiguous distinction between a commissioner's personal and official remarks, what is the value of the code of conduct for Commissioners — C(2011)2904?'. The EC answers the first two points: 'Given that the participation of Mr Berlusconi in the Italian elections is not an issue of Commission competence, the E-004051/2013 opinions expressed by Ms Kroes on that subject can only be considered as made in her personal capacity'. This answer can be considered in line with the CoC, however, the EC's answer raises doubts over the *raison d'être* of any limitation of political activity, as a Commissioner can always allege that a statement was made in a personal capacity, since no election no matter where and at what level is 'an issue of Commission competence'.

2.2.2.2 Post-office employment

On post-office employment / lobbying, the 2011 CoC raised the 'cooling-off' period from one year to 18 months. However, several aspects of post-office employment remain problematic: The Commission only seeks the opinion of the Ad Hoc Ethical Committee if the planned occupation is **related to the content of the portfolio** of the Commissioner, and it is up to the Commission to decide on whether to follow the Ad Hoc Ethical Committee's advice (section 1.2, paragraph 2).

A recent comprehensive analysis of Commissioners' post-office employment found for a sample of 92 former Commissioners serving from 1981 to 2009: *'We find that 36 (39%) became private interest representatives after leaving the Commission — 14 with registered institutions, 22 with non-registered institutions. Our probit analysis shows that an ex commissioner is significantly more likely to turn lobbyist if he or she is still young and has been in charge of competition, the internal market, industry or taxation. At the 10% level of significance, the probability is lower if the commissioner has been proposed by a left wing government, has stepped down after the introduction of the code of conduct (1999) or has retired from the Delors I Commission, and the probability is higher for commissioners from central Europe. The descriptive statistics reveal in addition that the share of private interest representatives in all ex-commissioners is largest for Portuguese, Austrian, Bulgarian and Maltese commissioners and zero for Scandinavians. With regard to the commissioners' training, 48% of the lawyers but only 35% of the economists have become lobbyists. Commissioners who have turned private interest representatives have on average stayed somewhat longer (6.3years) with the Commission than the others (5.5years). Registered lobbying is significantly more likely than non-registered lobbying if the ex-commissioner is a lawyer, has been in charge of competition, the internal market, industry or taxation and — at the 10% level — has*

⁸⁹ EP, Parliamentary question E-004051/2013, dated 11 April 2013 and EC answer dated 27 June 2013

been proposed by a left wing government'.⁹⁰ The study concludes: 'As each commissioner has one vote in all decisions of the Commission, a cooling-off period that is confined to the ex-commissioner's former policy field does not seem to be sufficient to avoid biased decisions. Nor should the rules be set by those who will have to keep them — the commissioners. The Code of Conduct for commissioners ought to be legislated by the European Council and Parliament or be incorporated in the treaties'.⁹¹ Both arguments were already developed by the EP's 2009 study, however, with no EC reaction.

Moreover, the EC is not bound to follow the advice by the Ad Hoc Ethical Committee. A review of the handling of former Commissioner Kuneva's post-office employment found that the Ad Hoc Ethical Committee established a condition in relation to the post-office employment. However, the EC did not take this into account: *'Remarkably, the Commission did not include this or any other condition in its approval letter to Kuneva. She was left entirely free to advise and otherwise assist BNP Paribas with lobbying. Reservations expressed by the ad-hoc ethical committee were ignored by the Commission'.⁹²*

Looking at the outgoing Commission in 2009 (the term of the first Barroso Commission ended on 31 October 2009) indicates that post-office employment continues to be problematic. Out of the 27 Commissioners, 14 continued in the Commission, five took up a political or public sector activity in their home country, and three joined academia / think tanks. However, five Commissioners took up private sector engagements (Verheugen,⁹³ Ferrero-Waldner,⁹⁴ McCreevy,⁹⁵ Kuneva,⁹⁶ Borg⁹⁷) with subsequent allegations over conflicts of interest. Former Commissioner McCreevy was forced to resign from a private sector activity after the Ad Hoc Ethical Committee found a conflict of interests between the new activity and the former Commission duties.

Examples from the UK and Canadian ethics systems illustrate how the CoC could be improved:

- Looking first at the UK: 'On leaving office, Ministers will be prohibited from lobbying Government for two years. They must also seek advice from the independent Advisory Committee on Business Appointments about any appointments or employment they wish to take up within two years of leaving office. Former Ministers must abide by the advice of the Committee'.⁹⁸ The Committee's meeting minutes are published on the government's website.⁹⁹ It is worth emphasising that UK ministers must seek advice no matter if the nature of the appointment / employment is related to their portfolio, and must abide by the Committee's advice.
- Similarly, more demanding requirements are in place in Canada: 'Ministers, Ministers of State and Parliamentary Secretaries (as well as other members of the House of Commons and Senate and senior public servants) are prohibited under the Lobbying Act from engaging in paid lobbying of the federal government for five years after they leave office. These

⁹⁰ Roland Vaubel, Bernhard Klingen, David Müller, There is life after the Commission: An empirical analysis of private interest representation by former EU-Commissioners, 1981-2009, 27 July 2011, Abstract

⁹¹ Roland Vaubel, Bernhard Klingen, David Müller, There is life after the Commission: An empirical analysis of private interest representation by former EU-Commissioners, 1981-2009, 27 July 2011, page 74

⁹² Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), Revolving door provides privileged access, February 2011, page 10

⁹³ Non Executive Managing Director, European Experience Company

⁹⁴ Supervisory board of the insurance company Munich Re as of 2010

⁹⁵ Board of the banking firm NBNK Investments, Sports Direct International plc since 31 March 2011, director of RyanAir

⁹⁶ Non executive member of the board BNP Paribas

⁹⁷ Borg's post-office employment was also considered by the Ad Hoc Ethical Committee, and the Committee's decision was considered controversial. Roland Vaubel, Bernhard Klingen, David Müller, There is life after the Commission: An empirical analysis of private interest representation by former EU-Commissioners, 1981-2009, 27 July 2011, page 65

⁹⁸ UK Cabinet Office, Ministerial Code, May 2010, section 7.25

⁹⁹ For an example of a meeting dealing with a minister's post-office employment see Advisory Committee on Business Appointments, Minutes of the meeting held on Wednesday 24 April 2014

provisions, as well as the Act's registration requirements for lobbyists, are administered by the Commissioner of Lobbying'.¹⁰⁰

2.2.3. Commissioner travel and gifts

This section covers Commissioner travel (2.2.3.1), and the register of gifts (2.2.3.2).

2.2.3.1 Travel

The EC does not publish information on Commissioner travel. As discussed in the EP 2009 study,¹⁰¹ the EC argued that detail of Commission travel is not published because of resource constraints and security/diplomatic reasons.¹⁰² The EC maintains this argument in 2013. Two EP questions to the EC focused on Commissioner travel,¹⁰³ with the EC answers *inter alia* confirming that its IT systems do not allow the identification of members of Commissioner delegations and that the EC does not have the resources to conduct the research to answer the EPs' questions.¹⁰⁴

Examples from the UK, Canada, Australia and Belgium demonstrate that more transparency is feasible:

- The UK's Ministerial Code provides for the ex-post publication of travel details: 'Departments will publish, at least quarterly, details of all travel overseas by Ministers'.¹⁰⁵
- Similarly, Canada has requirements for transparency concerning ministerial travel: 'Ministers are required to post on their respective departmental websites all travel expenses incurred on program-related business. All travel expenses must include the following information: the period covered by the trip and the places visited; transportation expenses; and other expenses (such as accommodation and meals). All parliamentary secretaries and exempt staff of ministers are also required to post all travel expenses on their respective departmental websites. [...] All such are to be publicly disclosed under the normal requirements of proactive disclosure'.¹⁰⁶ All ministers' 'Travel and Hospitality Expenses Reports' are published on the government's website.¹⁰⁷
- Western Australia's Ministerial Code of Conduct requires ministers to submit detailed reports on any overseas travel. The following information should be included: Dates of travel; Destinations; Details of all members of the official party; Costs incurred and the source of funding; Statement on the purpose and benefits derived from the trip.¹⁰⁸
- Travel by Belgium's prime minister is published on the prime minister's webpage¹⁰⁹

Finally, it is worth noting that the CoC refers to four documents outlining the rules for missions: Guide to missions (not publicly available and has to be requested through the Register of Commission Documents), Financial Regulation, Internal rules on the implementation of the general budget of the EU, Annex 2 in the Code of Conduct. First conclusions drawn from this is that rules for missions are dispersed across multiple regulations, which could complicate control and increase chances of abuse

¹⁰⁰ Accountable Government - A Guide for Ministers and Ministers of State, 2011, page 16

¹⁰¹ Blomeyer & Sanz on behalf of the European Parliament, The Code of Conduct for Commissioners - improving effectiveness and efficiency, 12 May 2009, page 63

¹⁰² EC answer of 16 April 2008 to EP question E1584/2008

¹⁰³ EP question E-005341, 14 May 2013; and EP question E-009882-1, 4 September 2013

¹⁰⁴ EC answers of 25 June 2013 and 17 October 2013 to EP question E-005341

¹⁰⁵ UK Cabinet Office, Ministerial Code, May 2010, section 10.3

¹⁰⁶ Canada Guide for Ministers and Ministers of State

¹⁰⁷ http://www.pco-bcp.gc.ca/di/departement_list.asp?id=34&cat=1&lang=eng

¹⁰⁸ Government of western Australia, Ministerial Code of Conduct, April 2013

¹⁰⁹ <http://www.premier.be/deplacements>

or misunderstanding. It is possible that abuse of the entertainment allowance will cause limited financial damage. However, the popular perception could be negatively affected.

2.2.3.2 Gifts

The 2011 CoC fails to introduce any improvements with regard to the register of gifts. The EC's 'public register of gifts' is a pdf document listing gifts of a value of more than €150.¹¹⁰ The following information is provided: the date of reception, description, origin (country), category of origin (diplomat, government enterprise etc.) and receiving Commissioner. However, the list fails to reveal the name of the organisation / individual presenting the gift (with one exception).¹¹¹ A parliamentary question on the donors of gifts in 2002 was answered: *'To publish a list of gifts containing the names of the donors would cause embarrassment to those visitors who, acting on advice, did not present any gift'*,¹¹² and in the context of an interview with the EC's Secretariat General in 2009, the non-disclosure was explained with considerations of diplomacy.¹¹³

The points made by the EP's study in 2009 maintain their validity: *'The EC stance can be questioned as it gives more importance to avoiding a visitor's embarrassment than protecting a Commissioner from a conflict of interest. It is also questionable whether an 'enlightened' visitor who understands the CoC requirements, and therefore abstains from presenting a gift, is likely to be embarrassed by a different visitor who does not act in accordance with the CoC requirements. Moreover, Member State experience shows that the origin of gifts can be made public without negative diplomatic consequences, e.g. by indicating the name of the visitor's institution instead of the actual visitor's name. Finally, it is not clear why diplomatic considerations should apply to private sector gifts'*.

The current list covers the period 11 January 2012 to 17 February 2014; out of a total of 74 items, the origin of 9 items (12%) is registered as 'enterprise'; 4 enterprises are located in Azerbaijan, 2 in Italy, and one each in Germany, Bulgaria and Spain.¹¹⁴ The 2009 study recommended a zero-gift policy, at least for the EU.

- In Canada, CIEC operates an online database (Public Registry under the Conflict of Interest Act) allowing searches related to 'public declarations relating to gifts'.¹¹⁵ A search conducted on 22 August shows that there is full disclosure of the donors of gifts (including names of individual foreign diplomatic staff, foreign government members, the private sector etc.).
- Similarly, the UK government publishes lists of gifts received and gifts given by ministers with full disclosure of the donor's identity.¹¹⁶

¹¹⁰ http://ec.europa.eu/commission_2010-2014/pdf/cadeaux_recus_par_le_college3_en.pdf

¹¹¹ Out of a total of 74 items on the list, the organisation / individual presenting the gift is identified for only one item, (entry 74 of 17 February 2014)

¹¹² Answer by Commission President Prodi to EP Question E-1920/02, 23 September 2002

¹¹³ Blomeyer & Sanz on behalf of the European Parliament, The Code of Conduct for Commissioners - improving effectiveness and efficiency, 12 May 2009, page 65

¹¹⁴ Blomeyer & Sanz on behalf of the European Parliament, The Code of Conduct for Commissioners - improving effectiveness and efficiency, 12 May 2009, page 69

¹¹⁵ <http://ciec-ccie.parl.gc.ca/EN/PublicRegistries/Pages/Act-Public-Registry.aspx>

¹¹⁶ <https://www.gov.uk/government/publications/co-ministerial-gifts-hospitality-travel-and-meetings-october-to-december-2013>

3. CONCLUSIONS AND RECOMMENDATIONS

This section presents the update's overall conclusions (3.1) and recommendations (3.2).

3.1. CONCLUSIONS

The EC commented with regard to the 2011 CoC: *'The revision of the Code of Conduct reflects best practice in Europe and in the world. Due account has been taken of the comments made by the European Parliament and other stakeholders during its preparation'*.¹¹⁷

This update's comparative review of ethics systems shows that the 2011 CoC is still far from best practice. Considering that the 2011 CoC fails to address about two thirds of the Parliament's recommendations it is not clear why the EC considers that it has taken the European Parliament comments into account.

Indeed, the approach to the CoC's revision can be considered incremental. In the words of Michelle Cini: *'the Commissioners' ethics regime has evolved through a process identified by Mahoney and Thelen (2010) as 'layering'. This is the form that institutional change has taken since the late 1990s. Revisions to the ethics regime in 2004 and 2011 were not transformative, but rather layered change upon change in two ways; first, by detailing aspects of the regime already referred to explicitly in the Treaty and /or Code; and second, by introducing new elements into the Code in response to salient issues that had been criticised'*.¹¹⁸

Overall, the CoC is characterised by its poor checks and balances, the absence of a coherent implementation system, and opacity surrounding its operation (e.g. with regard to the Ad Hoc Ethical Committee). Whilst other ethics systems contribute to enhance public trust in government, the EC's system appears tilted towards the Commissioners' political and career interests.

3.2. RECOMMENDATIONS

We recommend a more *'transformative'* review of the Commissioners' ethics system with a focus on introducing genuine checks and balances, a sound implementation system and increased proactive transparency. The many examples from other ethics systems presented in this report can provide inspiration. In this context it is important to stress the *'sui generis'* nature of the College of Commissioners. The example from other ethics systems generally relate to the executive level of national governments, i.e. (prime) ministers. Obviously, some adaptation of the national practices are required to fit the Commission.

The EC should establish a working group to consider these reforms, involving the European Parliament and relevant civil society actors, and inviting experts knowledgeable about other ethics systems.

Codes of conduct per se do not exclude the potential for unethical conduct of public officials. No matter how comprehensive, a code cannot specify rules for all possible situations. It is therefore

¹¹⁷ EC letter to ALTER-EU of 9 June 2011

¹¹⁸ Michelle Cini, Institutional Change and Ethics Management in the EU's College of Commissioners, British Journal of Politics and International Relations, 2013, page 10

recommendable to include a code of conduct in a wider package of tools aiming to promote integrity and transparency, as well as, to strengthen accountability. Following OECD guidance,¹¹⁹ such an 'integrity package' should address the following functions:

- Determining and defining integrity;
- Guiding towards integrity;
- Monitoring integrity;
- Enforcing integrity.¹²⁰

Andreea Nastase explains the four functions as follows: *'The first function refers to defining what standards of behaviour public servants are expected to follow, as well as to analysing and responding to systemic risks in the organization (e.g.: identifying sensitive processes such as procurement, inspections, or staff positions, and securing against vulnerabilities). The second function denotes the need to guide and coach organizational members on the application of values and norms in daily practice. Monitoring integrity implies the establishment of channels to report wrongdoing, but also regular checks for integrity violations in the organization. Finally, the enforcement function refers to providing effective and proportional sanctions for transgressions'*.¹²¹

Indeed, the code of conduct should include detailed, comprehensive and prescriptive regulations and sanctioning systems in case of violation. At the same time, such a code should define more broadly the principles and values based upon which the subjects should exercise their role and ensure ethical behaviour. Enforcing codes can either be managed by an authority or alternatively through peer review mechanisms. However, as mentioned above, a code of conduct per se does not exclude unethical behaviour. Whether decisions are based on ethical behaviour is subject to individual (or group) judgements by responsible officials to a particular situation. It is therefore important that officials are trained and supported when taking decisions.

It is therefore recommendable to provide a manual to the existing Code of Conduct including possible scenarios for conflict. This could be drafted based on input from the officials (Commissioners) when requesting advice from the Ad Hoc Ethical Committee, experience from the Ad Hoc Ethical Committee, and input from external experts.

The following detailed recommendations, already made with regard to the 2004 Code, maintain their validity for the 2011 Code, and aim at a departure from the 'layering' to a 'transformative' approach, finally establishing the CoC in the family of international best practice:

¹¹⁹ OECD, Towards a Sound Integrity Framework: Instruments, Processes, Structures, and Conditions for Implementation, 2009

¹²⁰ Andreea Nastase, Public ethics reforms at the European Commission: between continuity and innovation, 2011

¹²¹ Andreea Nastase, Public ethics reforms at the European Commission: between continuity and innovation, 2011, page 7

Area	Recommendation
Prevention	Establish a structure to oversee the application of the CoC (Advisory Group on Standards in Public Life or 'widened' Ad Hoc Ethical Committee), with members to be nominated in agreement between the EC and EP, and supported by a Secretariat (e.g. 1 staff within the EC SG)
	Entrust this structure with providing guidance on the CoC's requirements, regular monitoring and evaluation, and oversight in relation to the EC President
	Establish guidance materials (e.g. define the term 'conflict of interest') and disseminate information on ethics 'cases'
Reporting	Publish annual reports on the CoC's application
Dissemination	Establish a dedicated website on the CoC's application
Complaints	Introduce a reference to the European Ombudsman function
Sanctions	For minor infringements: Introduce sanctions (e.g. reporting of infringements)
Declaration of interests	Declare all financial interests (assets and liabilities) over a certain value (e.g. €10,000)
	Dependent family members to disclose the same information as spouses / partners
	Introduce electronic format
Political activity	Limit national political activity to passive party membership
	Alternative: define 'availability for service' and provide criteria for assessing availability
	Publish assessments of availability for service
	Introduce timelines for notifying political activity (e.g. two months before engaging in political activity) and withdrawals (e.g. maximum withdrawal time of one month)
Post-office employment	Provide criteria for assessing the compatibility of post-office employment
	Publish assessments of compatibility
	Extend the post-office employment restriction to two years
	Introduce timelines for notifying post-office employment
Travel	Publish Commissioner travel on an annual basis, indicating the date of travel, the destination, the purpose of travel, the type of transport used, the number of persons accompanying the Commissioner, total travel costs and whether the Commissioner was accompanied by his spouse / partner
Register of gifts	No gifts to be accepted from donors from a EU Member State
	Disclose the identity of donors from outside the EU
Handling conflicts of interest	Establish a procedure for dealing with conflicts of interest
	Introduce divestment of financial interests above a certain value

ANNEX 1 - STAKEHOLDER CONSULTATIONS

The preparation of this update involved consultations with:

- Member of the European Parliament Dr. Ingeborg Gräßle, 23 July 2014;
- EC Secretariat General (Directorate B, Unit 3) on 27 August and 4 September 2014;
- Transparency International EU Office, 3 September 2014.

ANNEX 2 – BACKGROUND DOCUMENTATION

The preparation of this update involved the review of the following documentation:

European Parliament

- EP, Parliamentary question E-005341, 14 May 2013; and EP question E-009882-1, 4 September 2013
- EP, Parliamentary question E-004051/2013, dated 11 April 2013 and EC answer dated 27 June 2013
- EP, Parliamentary question E-009405/2012, dated 16 October 2012 and EC answer dated 13 November 2012
- EP, Parliamentary question E-007890/2012, dated 6 September 2012 and EC answer dated 3 October 2012
- EP, Parliamentary question P-006728/2012, dated 5 July 2012 and EC answer dated 8 August 2012
- EP, Parliamentary question P-005565/2012, dated 1 June 2012 and EC answer dated 22 June 2012
- EP, Committee on Budgetary Control, letter to the Chairman of the Conference of Committee Chairs, IPOL-COM-CONT D (2011)10572
- EP, The Code of Conduct for Commissioners - improving effectiveness and efficiency, 12 May 2009

European Commission

- EC, Minutes of the 2081st meeting of the Commission, PV(2014)2081 final, 9 April 2014
- EC, Minutes of the 2076th meeting of the Commission, PV(2014)2076 final, 5 March 2014
- EC, Minutes of the 2070th meeting of the Commission, PV(2013)2070 final, 14 January 2014
- EC, Special Eurobarometer 397, 2014
- EC, Secretariat General, Annual Activity Report for 2013, 2014
- EC, Answers of 25 June 2013 and 17 October 2013 to EP question E-005341
- EC, Minutes of the 2027th meeting of the Commission, PV(2012)2027 final, 9 January 2013
- EC, Answer of 4 January 2013 to parliamentary question E010037/2012 dated 6 November 2012
- EC, Letter to ALTER-EU of 9 June 2011
- EC, Code of conduct for Commissioners C(2011)2904
- EC, Impartiality beyond any doubt: Ethics and integrity in the Cabinets, 2010
- EC, Answer of 16 April 2008 to EP question E1584/2008
- EC, Communication from Vice-President Kallas to the Commission on enhancing the environment for professional ethics in the Commission, SEC(2008) 301, 2008
- EC, C(2003)3750, 14 October 2003
- EC, Answer by Commission President Prodi to EP Question E-1920/02, 23 September 2002
- EC, Regulation No 422/67/EEC of 25 July 1967 determining the emoluments of the President and members of the Commission and of the President, Judges, Advocates-General and Registrar of the Court of Justice

European Ombudsman

- European Ombudsman, Case: 0297/2013/(RA)FOR, Opened on 12 Mar 2013, Decision on 19 Dec 2013

Best practice examples – EU Member States and third countries

- Australia, Government of Western Australia, Ministerial Code of Conduct, April 2013
- Australia, Australian Government, Standards of Ministerial Ethics, September 2010
- Privy Council Office Canada, Accountable Government: a guide for ministers and ministers of state, 2011
- Canada, Conflict of Interest Act, version of 12 June 2014
- Canada, Office of the Conflict of Interest and Ethics Commissioner, Code of Values and Standards of Conduct for Employees of the Office of the Conflict of Interest and Ethics Commissioner, 1 April 2012
- UK, Advisory Committee on Business Appointments, Minutes of the meeting held on Wednesday 24 April 2014
- UK, Independent Adviser on Ministers' Interests, Annual Report 2010-2011, December 2011
- UK, Cabinet Office, Ministerial Code, May 2010

Other

- Alliance for Lobbying Transparency and Ethics Regulation in the EU, Letter to the President of the European Commission, 10 May 2011
- Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), Revolving door provides privileged access, February 2011
- Michelle Cini, Institutional Change and Ethics Management in the EU's College of Commissioners, British Journal of Politics and International Relations, 2013, page 10
- European Public Health Alliance, news item, dated 15 May 2011,
- European Voice, 20 January 2011
- Andreea Nastase, Public ethics reforms at the European Commission: between continuity and innovation, 2011, page 7
- OECD, Towards a Sound Integrity Framework: Instruments, Processes, Structures, and Conditions for Implementation, 2009
- OECD, Recommendation of the Council on guidelines for managing conflict of interest in the public service, June 2003, page 4
- Roland Vaubel, Bernhard Kligen, David Müller, There is life after the Commission: An empirical analysis of private interest representation by former EU-Commissioners, 1981-2009, 27 July 2011

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