



2016/2080(INI)

28.9.2016

OPINION

of the Committee on Budgetary Control

for the Committee on Legal Affairs

on Commissioners' declarations of interests - Guidelines
(2016/2080(INI))

Rapporteur: Ingeborg Gräßle

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SUGGESTIONS

The Committee on Budgetary Control calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

- having regard to the Treaty on the Functioning of the European Union, and in particular Article 245 thereof;
- A. whereas overall the current Commission Members' declarations of financial interests can be considered an improvement on the handling of declarations in 2008-2009, but whereas there has been no shortage of episodes which have necessitated a subsequent clarification of certain declarations of interests;
- B. whereas it is to be deplored that the Code of Conduct for Commissioners adopted in 2011 fails to address sufficiently several of Parliament's recommendations for improvements, in particular as regards the declarations of financial interests of Members of the Commission, the post-office employment restrictions and the strengthening of the Ad Hoc Ethical Committee responsible for the assessment of conflicts of interest; whereas in this context the positions adopted by Parliament regarding the changes and improvements to the procedure for hearing Commissioners-designate should also be borne in mind;
- C. whereas one of the pillars of European governance is the strengthening of ethics and transparency within the EU institutions in order to improve European citizens' trust in them, particularly in the light of the more ample political mandate entrusted to the Commission since the Lisbon Treaty;

Improvements under the 2011 code of conduct

1. Notes that the Code of Conduct for Commissioners adopted on 20 April 2011 (C(2011)2904) regarding impartiality, integrity, transparency, diligence, probity, responsibility and discretion presents improvements over the preceding code adopted in 2004 as regards the declaration of financial interests in that disclosure requirements are extended to Commissioners' partners and the declaration of interests has to be revised when information changes or, at the least, every year;

Follow-up to CONT recommendations

2. Denounces the fact that the 2011 code of conduct failed to address all the recommendations issued by Parliament's Committee on Budgetary Control on 2 March 2011¹, and points out, in particular, that Commissioners should be required to declare all their financial interests or assets and not only those interests or assets 'which might create a conflict of interest in the performance of their duties', that there is no requirement to declare debts and liabilities and that dependent children are not required to produce the same information as spouses;

¹ Letter from Mr De Magistris, chair of the Committee on Budgetary Control, to Mr Lehne, Chair of the Conference of Committee Chairs.

3. Stresses in particular that Commissioners are expected to make their own judgement as to what might create a conflict of interest in the absence of a clear definition or regulatory framework to guide them, particularly in the light of the Commission's role as Guardian of the Treaties;

European Commission implementation

4. Expresses concern regarding the updated study on 'The Code of conduct for Commissioners – Improving effectiveness and efficiency' (IP/D/CONT/IC/2014-053), which detected a number of deficiencies in the declarations of interests of the current Members of the Commission, mainly:
 - (a) with regard to the description of posts held over the last ten years in foundations or similar bodies, as the purpose of the organisation is not sufficiently clear for an assessment to be made of the existence of a possible conflict of interest;
 - (b) with regard to the description of the nature of 'other professional activities';
 - (c) with regard to the declaration of possession of company shares, stock or other property or rights representing assets and other intangible assets;
 - (d) with regard to real estate, given that Commissioners declare items of real estate that are homes for the exclusive use of the owner despite this type of real estate being exempted from the declaration requirement;

Stresses that no hasty conclusions should be drawn that cannot be substantiated by facts based on a comprehensive analysis of the data sets gathered to date;

5. Regrets that the code of conduct fails to codify adequately the requirement under Article 245 TFEU that 'both during and after their term of office, Commissioners will respect the obligations...in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits';
6. Deplores the failure of the code of conduct to lay down any divestment requirements, despite the fact that such requirements must be standard in any ethics regime; regards it as a priority to regulate this aspect with the utmost despatch;
7. Notes that the code of conduct does not stipulate any concrete time frame for submission of the declaration prior to Parliament's hearing of the Commissioners-designate; regards this requirement as a fundamental aspect of the revision of the procedure for hearing Commissioners-designate;
8. Regrets that the declaration is only published in PDF format, which is difficult to put into an electronic database;
9. Regrets that the Commission does not report regularly on the implementation of the Code of Conduct for Commissioners, in particular as regards their declarations of interests, and considers that the code of conduct should be amended so as to provide for complaints or sanctions with regard to infringements, with the exception of serious

misconduct as referred to in Articles 245 and 247 of the Treaty on the Functioning of the European Union;

10. Regrets, in particular, the negative response by the President of the Commission to the request of the European Ombudsman to proactively publish its decisions on the authorisation of post-term-of-office activities of former Commissioners, as well as the opinions of the Ad Hoc Ethical Committee; emphasises that the mere publishing of the minutes of Commission meetings is insufficient to offer the Parliament and civil society an insight into the interpretation in practice of 'potential conflicts of interest' and the integrity policies developed in this connection by the Ad Hoc Ethical Committee;
11. Points out that all ex-Commissioners are banned for 18 months from lobbying 'members of the European Commission and their staff for his/her business, client, or employer on matters for which they have been responsible' but are entitled to a very generous transitional allowance after they leave the Commission of between 40 and 65 per cent of their final basic salary for three years;
12. Welcomes the fact that the code of conduct has introduced a provision concerning the reallocation of files between Members of the Commission in the event of potential conflicts of interest, but regrets that:
 - (a) there is no detailed definition of what constitutes a conflict of interest;
 - (b) the provision is limited to matters within the relevant Commissioner's portfolio and thus ignores the Commissioner's duties as a member of a college;
 - (c) there are no criteria for the President to decide on reallocation, nor any binding framework for informing Parliament nor any procedure in place in the event of a Commissioner failing to notify a conflict of interest or engaging in any activity incompatible with the nature of his or her duties;

Recommendations

13. Points out that the absence of any conflict of interest must be an essential precondition to be met before the Commissioners' hearings, and that the financial interest declaration forms must therefore be completed and made available before a Commissioner is heard by the relevant European Parliament committee, and that they should be reviewed at least once a year and each time there is a change to the information concerned;
14. Calls on the Commission, as it is ultimately responsible for ensuring the degree of transparency necessary for the proper functioning of the procedure to appoint Commissioners, to make substantial improvements to the Commissioners' financial interest declaration forms so as to enable Parliament to make an accurate assessment, firstly, of whether or not Commissioners have actual or potential conflicts of interest and, secondly, of the Commissioners' ability to carry out their mandate;
15. Calls on the Commission to revise the 2011 Code of Conduct for Commissioners as a matter of urgency to take account of the recommendations made by Parliament in its recent resolutions and of the development of the general ethics and transparency standards that apply to all EU institutions; recommends that the Commission modify its

Code of Conduct for Commissioners with a view to ensuring:

- (a) that Commissioners declare all their financial interests, including assets and liabilities over EUR 10 000;
- (b) that Commissioners declare all their interests (as shareholders, company board members, advisors and consultants, members of associated foundations, etc.) as regards all the companies in which they have been involved, including close family interests, as well as the changes that took place at the time their candidacy was made known;
- (c) that Commissioners' dependent and/or direct family members disclose the same information as spouses or partners;
- (d) that Commissioners clarify fully the objectives of organisations with which they and/or their spouse and/or their dependent children are involved, in order to establish whether any conflict of interest exists;
- (e) that Commissioners disclose their membership of any non-governmental organisations, secret societies or associations which conceal their existence that carry out activities intended to interfere with the exercise of the functions of public bodies, and any donations to NGOs of more than EUR 500;
- (f) that Commissioners and their dependent family members disclose their membership of any non-governmental organisations and any donations to NGOs of more than EUR 500;
- (g) that the Code of Conduct be amended, in line with Article 245 TFEU, to extend Commissioners' post-office employment restriction to two years;
- (h) that the code of conduct include specific divestment requirements;
- (i) that Commissioners-designate submit their declarations within a specific time frame and sufficiently well in advance, so that the Ad Hoc Ethical Committee can submit to Parliament its views on potential conflicts of interests well in time for the hearings in Parliament;
- (j) that Commissioners meet only representatives of lobby groups that are included in the Transparency Register, which contains information on persons seeking to influence policymaking at the EU institutions;
- (k) that Commissioners submit, when nominated, a signed declaration confirming that they will appear before any of Parliament's committees in relation to the activities involved in their mandate;
- (l) that the declaration is published in a format which is compatible with open data so that it can be easily processed via databases;
- (m) that the Commission revises section 1.3 of the code of conduct, which stipulates that Commissioners must declare any financial interest or asset that might create a conflict of interest in the performance of their duties, and in particular the definition

of conflicts of interest in order to make sure that all financial interests and related rules are clearly defined and to guide both Commissioners-designate and Commissioners in office on how to implement section 1.3 of the code of conduct fully and comprehensively;

- (n) that the procedure for reallocating files in the event of a conflict of interest is improved in terms of taking into account the Commissioner's duties as a member of the College, of introducing criteria regarding integrity and discretion for the President as regards the decision to reallocate files, of implementing a binding procedure and sanctions for cases in which a Commissioner fails to provide information about a possible conflict of interest and of introducing a binding procedure for informing Parliament about the aforementioned cases;
- (o) that the Commission reports on an annual basis on the implementation of the Code of Conduct for Commissioners and provides for complaint procedures and sanctions in the event not only of serious misconduct but also of infringements of requirements, especially as regards the declaration of financial interests;
- (p) that criteria are defined for compliance with Article 245 TFEU, which imposes on Commissioners a 'duty to behave with honesty and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits';
- (q) that decisions on the authorisation of post-term-of-office activities of former Commissioners, as well as the opinions of the Ad Hoc Ethical Committee, are proactively published;
- (r) that the Ad Hoc Ethical Committee is composed of independent experts who have not themselves held the position of Commissioner;
- (s) that the Ad Hoc Ethical Committee draws up and publishes an annual report on its activities, which may include any recommendations on the improvement of the Code of Conduct or of its implementation as the ad hoc committee sees fit.

RESULT OF FINAL VOTE IN COMMITTEE ASKED FOR OPINION

Date adopted	26.9.2016
Result of final vote	+ : 23 - : 0 0 : 0
Members present for the final vote	Nedzhmi Ali, Inés Ayala Sender, Ryszard Czarnecki, Dennis de Jong, Martina Dlabajová, Luke Ming Flanagan, Jens Geier, Ingeborg Gräßle, Verónica Lope Fontagné, Georgi Pirinski, Petri Sarvamaa, Claudia Schmidt, Bart Staes, Marco Valli, Derek Vaughan, Tomáš Zdechovský, Joachim Zeller
Substitutes present for the final vote	Cătălin Sorin Ivan, Andrej Novakov, Julia Pitera, Richard Sulík
Substitutes under Rule 200(2) present for the final vote	John Stuart Agnew, Edouard Ferrand