

# Follow up to the 2009 and 2014 Studies on the Code of Conduct for Commissioners - Improving Effectiveness and Efficiency

## Budgetary Affairs





**DIRECTORATE GENERAL FOR INTERNAL POLICIES**  
**POLICY DEPARTMENT D: BUDGETARY AFFAIRS**

# **Follow up to the 2009 and 2014 Studies on the Code of Conduct for Commissioners - Improving Effectiveness and Efficiency**

**IN-DEPTH ANALYSIS**

## **Abstract**

The European Parliament is very attentive to the issue of transparency and integrity within the EU institutions. In the past, the EP has commissioned two studies to verify the level of effectiveness and efficiency of the Code of Conduct for Commissioners of the European Commission. This in-depth analysis verifies whether the Code of Conduct of 2018 complies with the requests the EP has made in order to guarantee the best performance in terms of transparency and integrity by the EC Commissioners. Most of the EP requests have been satisfied. However, there is still some room for improvement in terms of transparency of the Independent Ethical Committee, the cooling off period for Commissioners and provisions related to the role of the European Ombudsman within the Code. Moreover, the Code of Conduct, being a soft law instrument, could be upgraded to a hard law instrument having a stronger binding force. Finally, the EP could reiterate the study recommendations concerning stricter provisions on the involvement of Commissioners in the national, regional or local politics.

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## 1. INTRODUCTION

The European Parliament has always been very attentive to the need for transparency and integrity within the European Institutions.

In 2009, at the request of the Budgetary Control Committee (CONT), a study<sup>1</sup> related to the need to improve the efficiency and the effectiveness of the Code of Conduct for Commissioners of 2004<sup>2</sup> was published. An update of this study<sup>3</sup> was published in 2014, taking into account the modification of the Code of Conduct intervened in 2011<sup>4</sup>.

In January 2018, the European Commission adopted a new Code of Conduct<sup>5</sup>.

This in-depth analysis intends to verify whether the recommendations formulated in the 2014 study have been followed by the European Commission (EC) when adopting the last version of the Code of Conduct (CoC).

The 2009 study on the 2004 Code of Conduct presents 28 recommendations aimed at making the Code of Conduct a more effective instrument in promoting ethical conduct and in increasing public trust in the EC's ethics regime.

The recommendations focus on:

- improving the Commissioners' declaration of interests,
- limiting the Commissioners' (national) political activity,
- strengthening post-office employment requirements,
- introducing additional transparency on Commissioners' travel,
- strengthening the policy on the acceptance of gifts,
- providing for a specific course of action in the case of conflicts of interest arising in office,
- introducing monitoring and evaluation, as well as ensuring oversight in relation to the President of the Commission,
- highlighting existing complaint procedures in front of the European Ombudsman, and
- providing for sanctions of minor Code of Conduct infringements.

After the EC adopted its new code of conduct in 2011, the CONT committee requested an update of the abovementioned study. The update of the previous study analysed the new CoC for EC Commissioners and was finalised in September 2014.

The main conclusions of the study are as follows:

*"The 2011 CoC introduced a series of improvements, that can be just considered incremental as the structure of the CoC and its approach was not altered significantly<sup>6</sup>.*

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<sup>1</sup> <http://www.europarl.europa.eu/document/activities/cont/200907/20090728ATT59122/20090728ATT59122EN.pdf>

<sup>2</sup> [https://corporateeurope.org/sites/default/files/old\\_coc\\_for\\_commissioners\\_04-09.pdf](https://corporateeurope.org/sites/default/files/old_coc_for_commissioners_04-09.pdf)

<sup>3</sup> [http://www.europarl.europa.eu/RegData/etudes/STUD/2014/490697/IPOL\\_STU\(2014\)490697\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/490697/IPOL_STU(2014)490697_EN.pdf)

<sup>4</sup> [https://ec.europa.eu/info/sites/info/files/code-of-conduct-for-commissioners\\_april2011\\_en.pdf](https://ec.europa.eu/info/sites/info/files/code-of-conduct-for-commissioners_april2011_en.pdf)

<sup>5</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018D0221\(02\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32018D0221(02)&from=EN)

<sup>6</sup> "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

*Most European Parliament recommendations presented in the 2009 study (19) have not been followed, 5 have been partly addressed and 4 have been fully addressed.*

*Indeed, the follow up of the recommendations on the CoC's implementation arrangements (prevention, reporting, dissemination, complaints, sanctions, declarations of interest, handling of conflicts of interest) is limited. Looking at two key sensitive areas (political activity and post-office employment) progress has also been modest. Finally, with regard to Commissioners' 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 with checks and balances, transparency, and an overall balance between furthering public trust and the rights of the office holder."*

For these reasons, the 2014 study proposes once again the recommendations already elaborated in 2011. These recommendations are listed in the table below.

AREA	RECOMMENDATION
Prevention: check better	Establish a structure to oversee the application of the CoC, with members to be nominated in 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's function
Sanctions	For minor infringements: Introduce sanctions
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

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'."

AREA	RECOMMENDATION
	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)
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 Commissioners' 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

## 2. THE NEW CODE OF CONDUCT OF JANUARY 2018

The modifications to the 2011 Code of Conduct taken into account in the 2018 Code of Conduct are important. They show that the Commission responded in quite a complete way to the EP study recommendations.

### 2.1. PREVENTION /CHECK BETTER

Under this point, the study recommends to:

1. 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,
2. Entrust this structure with providing guidance on the CoC's requirements, regular monitoring and evaluation, and oversight in relation to the EC President and
3. Establish guidance materials (e.g. define the term 'conflict of interest') and disseminate information on ethics 'cases'.

Before the entry into force of the new CoC, both the 2004 and the 2011 Codes refer to the role of an "Ad hoc Ethical committee" established by the Commission in October 2003. Its primary task was to advise the Commission - at its request - on whether a Commissioner's intention to "engage, during the 18 months after" she/he "has ceased to hold office in the Commission, in an occupation related to the content of her/his former portfolio is compatible with art. 245<sup>7</sup> of TFUE". The Ad Hoc Ethical

<sup>7</sup> Art.245 TUE: "The Members of the Commission shall refrain from any action incompatible with their duties. Member States shall respect their independence and shall not seek to influence them in the performance of their tasks.

Committee might *“be requested by the President to deliver opinions on any general ethical question concerning the interpretation of the CoC.”* The Commission appointed its members on a proposal by its President.<sup>8</sup>

The new Code of Conduct replaces the Ad hoc Ethical Committee by a permanent Independent Ethical Committee whose members are selected according to well-defined criteria; it also provides the offer of secretarial support to the Committee in order to facilitate and strengthen its work.<sup>9</sup>

Moreover, the CoC follows the study recommendation concerning the creation of a dedicated link on the EC site, devoted to issues related to the Code application<sup>10</sup>.

The first Annual report on the application of the CoC states that: *“Following the establishment of the new Independent Ethical Committee, its members issued new declarations, certifying an absence of conflict of interests between their duties as members of the Independent Ethical Committee and their other personal interests including professional, family or financial interests. In these declarations, they also committed to informing the other members of the Committee and the Commission, in writing if, in the performance of their duties, they are asked to deal with a matter in which they have a personal interest such as to impair their independence.”*

During 2018, the Independent Ethical Committee held two meetings. The first, held on 22 March, was devoted to assessing the improvements and reinforcements brought about by the new Code of Conduct for the Members of the Commission and their workload implications. The second, held on 26 September, was devoted to preparing the Committee’s opinion on the draft Commission Guidelines for the participation of the Members of the EC in the European election campaign.

## **2.2. REPORTING**

The 2018 Code fully follows the recommendation concerning regular reporting about the CoC implementation. Article 13(4) of the Code states: *“The Commission shall publish annually a report on the application of this Code of Conduct including the work of the Independent Ethical Committee. The reports shall be published on a website dedicated to the application of this Code of Conduct.”*

The first report was published on 24 June 2019<sup>11</sup>.

## **2.3. DISSEMINATION**

The study recommends to establish a dedicated website on the CoC application. The new Code follows this recommendation as the Commission website includes a link dedicated to the Code of Conduct within the EC website (see footnote 10).

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The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising therefrom and 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. In the event of any breach of these obligations, the Court of Justice may, on application by the Council acting by a simple majority or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 247 or deprived of his right to a pension or other benefits in its stead.”

<sup>8</sup> Commission Decision C(2003)3750 of 21 October 2003 and following decisions [https://ec.europa.eu/info/publications/appointments-ad-hoc-ethical-committee\\_en](https://ec.europa.eu/info/publications/appointments-ad-hoc-ethical-committee_en)

<sup>9</sup> See art.12 of CoC.

<sup>10</sup> [https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/codes-conduct/ethics-and-integrity-eu-commissioners/code-conduct-members-european-commission\\_en](https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/codes-conduct/ethics-and-integrity-eu-commissioners/code-conduct-members-european-commission_en)

<sup>11</sup> SEC(2019)266 final of 24 June 2019

## 2.4. COMPLAINTS

This recommendation about introducing a specific reference to the European Ombudsman in the CoC has not been followed.

## 2.5. SANCTIONS: INTRODUCE SANCTIONS FOR MINOR INFRINGEMENTS

The new CoC follows this recommendation under art.13 (3). The sanctions consist of “reprimands”, though their publicity is not immediate: “(...), the Commission may decide, taking into account the opinion of the Independent Ethical Committee and on proposal of the President, to express a reprimand and, where appropriate, make it public.”

## 2.6. DECLARATION OF INTERESTS

Under this point, the study recommends that action is taken with reference to:

1. a declaration of all financial interests (assets and liabilities) over a certain value (e.g. €10,000),
2. the obligation that dependent family members must disclose the same information as spouses / partners,
3. the introduction of an electronic format.

The new Code follows these recommendations in article 3 and in annex I, that sets the detailed practical implications<sup>12</sup>. Moreover, art. 3 refers not only to interests of Commissioners’ and

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<sup>12</sup>Article 3 – Declaration of interests

(1) Members shall declare any financial or other interests or assets which might create a conflict of interest in the performance of their duties or are otherwise relevant for the performance of the duties. For the purposes of this Article, a Member's interests can include the interests of spouses, partners and minor children. Each Member shall do so by submitting the completed declaration form set out in Annex 1, which sets out all the information that Members are required to declare under this Code, and shall assume responsibility for its content.

(2) The requirements in paragraph (1) shall also apply to the person proposed as candidate for President of the Commission and to Commissioners-Designate who shall submit the declaration to the European Parliament in due time in order to allow the Parliament to examine the declarations.

(3) Declarations shall be re-submitted on an annual basis on 1 January, and in case of a change in the information to be declared during a Member's term of office, a new declaration shall be submitted at the earliest opportunity and at the latest within two months of the change in question.

(4) The declaration shall identify:

(a) financial interests, including assets and liabilities, that might be considered to be capable of giving rise to a conflict of interest, and in any case where the value of an investment exceeds EUR 10,000. These financial interests may be in the form of a specific financial holding in an entity's capital, in particular, shares, or any other form of financial interest, such as bonds or investment certificates. This obligation applies to financial interests of spouses, partners and minor children where those might be considered to be capable of giving rise to a conflict of interest;

(b) all activities, professional or otherwise, distinguishing between activities engaged in over the last ten years which ended before the Member took up office, such as company board member, advisor or consultant, member of a foundation or similar body or of an educational institution, and those functions of an honorary nature and/or attributed for life or functions which are formally suspended by direct effect of the law during the Member's mandate, which are maintained while respecting Article 8(2);

(c) every entity in which the Member has an interest or in which or for which he or she exercised an activity as specified in sub-paragraphs (a) and (b) above, except entities in which the Member owns holdings which are managed on an independent basis by a third party, unless they are linked to specific industries like sector or thematic funds. In the case of a foundation or similar body, the purpose of the entity shall be stated;

(d) membership of associations, political parties, trade unions, non-governmental organisations or other bodies, if their activities, in public or private, are intended to influence the exercise of public functions;

spouses/partners' but, under certain conditions, also the to the interests of a Commissioners' minor children.

Besides broadening the scope of the declarations of interests, Article 3(5) of the Code states that the '*declarations shall be made public in an electronic and machine-readable format*'.

On 31 January 2018, the first set of the new declarations of interests of all Members of the Commission was published both in the new machine-readable and in PDF formats on the respective websites of each Member and on a page of the Europa website.

Due to changes of their situation, several Members updated their declarations in the course of the year in line with Article 3(3) of the Code.

## **2.7. POLITICAL ACTIVITY**

Under this point, the study recommends that action is taken with reference to:

1. limit national political activity to passive party membership,
2. define 'availability for service' and provide criteria for assessing availability,
3. publish assessments of availability for service, and
4. 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).

In this respect, the new Code introduces the possibility for EC Members to stand as candidates in the elections to the European Parliament without having to take an unpaid electoral leave from the Commission.

The Framework Agreement on relations between the European Parliament and the European Commission and its amendment of 17 February 2018 prescribes the same provision<sup>13 14</sup>.

The first annual report<sup>15</sup> on the application of the Code of Conduct for the Members of the European Commission, states: "*active participation of the Members of the Commission in the European election campaign is one way to strengthen the democratic debate on the policies to be pursued in the general interest of the European Union and can therefore be part of the political role of a Member of the Commission.*"<sup>16</sup>

On 26 October 2018, the Independent Ethical Committee adopted its opinion<sup>17</sup> on the "Commission draft guidelines on ethical standards for the participation of the members of the European

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(e) any property owned either directly or through a real estate company, with the exception of homes reserved for their exclusive use and that of their family;

(f) the ongoing professional activities of spouses or partners, setting out the nature of the activity, the title of the position held, and if applicable the name of the employer.

(5) Declarations shall be made public in an electronic and machine-readable format.

<sup>13</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2018:045:FULL&from=EN>

<sup>14</sup> The EP adopted its decision on the Revision of the Framework Agreement on relations between the European Parliament and the European Commission on 7 February 2018 - [http://www.europarl.europa.eu/doceo/document/TA-8-2018-0030\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2018-0030_EN.html)

<sup>15</sup> See footnote 11

<sup>16</sup> The rule is different for Members participating in national, regional or local election campaigns due to the different character of such elections, which are governed by national law and do not concern an institution of the Union.

<sup>17</sup> [https://ec.europa.eu/info/sites/info/files/opinion\\_draft-guidelines\\_participation-of-members-in-the-campaign-ep-elections\\_en.pdf](https://ec.europa.eu/info/sites/info/files/opinion_draft-guidelines_participation-of-members-in-the-campaign-ep-elections_en.pdf)

Commission in the election campaign". The Commission adopted these Guidelines on 6 February 2019<sup>18</sup>.

The guidelines foresee ethical standards concerning the participation of Members in the European elections with reference to:

- the obligation and modality of informing the President of the Commission,
- the declaration of interests,
- the availability for the performance of duties,
- the use of Commission resources (staff and travel expenses),
- public statements and interventions in the campaign and
- the use of social media and websites.

As far as the recommendations related to national elections, not all recommendations have been followed.

As for the limitation to passive party membership, art. 9 of CoC foresees that during the term of office, Commissioners can take part in national elections *"provided that this does not compromise their availability for service in the Commission"*.

Moreover, as for the "availability for service" the CoC sets limits to the role that Commissioners can play in the national, regional or local politics: *"their participation as members of national political parties (...) includes the holding of honorary or non-executive functions in bodies of the party structure, but excludes management responsibilities (...)"*, but does not provide a specific definition.

The Code does not mention anything about the assessment of availability for service, nor about the timelines for notifying political activity. As for withdrawal from the position of Commissioner, the Code of Conduct foresees that that will last for *"the entire period of active implication and at least for the duration of the campaign. (...)"*.

During the campaign, EC Members must *"refrain from adopting a position (...) that would not be in line with the duty of confidentiality or infringe the principle of collegiality"*.

## **2.8. POST-OFFICE EMPLOYMENT**

Under this point, the study recommends that action is taken with reference to:

1. providing criteria for assessing the compatibility of post-office employment (see art.11 (2)),
2. publishing assessments of compatibility (see art.11 (3)),
3. extending the post-office employment restriction to two years (see art.11 (4)), and
4. introducing timelines for notifying post-office employment (see art. 11(2)).

The new CoC provisions largely follow the study recommendations<sup>19</sup>.

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<sup>18</sup> C(2019) 990 final of 6.02.2019

<sup>19</sup> Article 11 – Post term of office activities

(1) After ceasing to hold office, former Members shall continue to be bound by their duty of integrity and discretion pursuant to Article 245 of the Treaty on the Functioning of the European Union. They shall continue to be bound by the duties of collegiality and discretion, as laid down in Article 5, with respect to the Commission's decisions and activities during their term of office.

(2) Former Members shall inform the Commission with a minimum of two months' notice of their intention to engage in a professional activity during a period of two years after they have ceased to hold office. For the purposes of the present Code, "professional activity" means any professional activity, whether gainful or not, other than any unpaid activity which

The Code extends the obligatory notification period for post term of office activities of former Members of the Commission, which is also the period during which former Members shall not lobby Members or their staff on behalf of their own business, that of their employer or client, on matters for which they were responsible within their portfolio.

This period is extended from 18 months to 2 years for Members<sup>20</sup>, which corresponds to the maximum period fixed by the Council for the perception of a transitional allowance under Council Regulation (EU) 2016/300 of 29 February 2016 determining the emoluments of EU high-level public office holders. For a former President, this period is extended to three years due to the particular role played during her/his mandate.<sup>21</sup>

## 2.9. TRAVEL

The study recommends that the CoC should be modified to foresee the publicity of information related to Commissioners' 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.

The new CoC fully responds to the study request in art.6 (2). Practicalities are set out in annex II.

The CoC goes even further than the recommendation as far as the publicity of travelling activities. Article 6(2) of the new Code states that: "(...) *The Commission will publish an overview of mission expenses per Member every two months, covering all missions undertaken*". This obligation is only

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has no link with the activities of the European Union and which does not give rise to lobbying or advocacy vis-à-vis the Commission and its services such as:

- (a) charitable or humanitarian activities;
- (b) activities deriving from political, trade unionist and/or philosophical or religious convictions;
- (c) cultural activities;
- (d) the mere management of assets or holdings or personal or family fortune, in a private capacity;
- (e) or comparable activities.

(3) The Commission shall examine the information provided in order to determine whether the nature of the planned activity is compatible with Article 245 of the Treaty on the Functioning of the European Union, and if the planned activity is related to the portfolio of the former Member, it shall decide only after having consulted the Independent Ethical Committee.

Without prejudice to the possibility for the President to seek its opinion in cases of doubt, the Independent Ethical Committee does not need to be consulted where former Members intend to:

- (a) continue to serve the European interest in an Institution or Body of the European Union;
- (b) take up functions in the national civil service of a Member State (at national, regional or local level)
- (c) engage with international organisations or other international bodies dealing with public interests and in which either the EU or one or several of its Member States are represented;
- (d) engage in academic activities;
- (e) engage in one-off activities for a short duration (1 or 2 working days);
- (f) accept honorary appointments.

(4) Former Members shall not lobby<sup>17</sup> Members or their staff on behalf of their own business, that of their employer or client, on matters for which they were responsible within their portfolio for a period of two years after ceasing to hold office.

(5) In the case of a former President, the periods set out in paragraphs (2) and (4) shall be three years.

(6) The duties set out in paragraphs (2) and (4) shall not apply where the former Member is engaging in public office.

(7) Decisions taken under paragraph (3) determining compatibility with Article 245 of the Treaty on the Functioning of the European Union and related opinions of the Independent Ethical Committee shall be made public with due consideration to the protection of personal data.

<sup>20</sup> In its Decision on the Revision of the Framework Agreement on relations between the European Parliament and the European Commission of 7 February 2018, the EP request a three year 'cooling-off period' applicable to former Members of the Commission after ceasing to hold office.

<sup>21</sup> See footnote 11

limited by reasons related to: "(...) *the protection of the public interest as regards public security, defence and military matters, international relations, or the financial, monetary or economic policy of the Union or a Member State*".

The Commission created a new software application enabling the Members of the Commission to publish the required information related to their missions. The publication started on 28 February 2018 covering the missions undertaken during the period January-February 2018 and is going on a rolling two-monthly basis, as set out in the Code of Conduct. A link towards the relevant information can be found on the Commissioners' respective websites.<sup>22</sup>

## 2.10. REGISTER OF GIFTS

In this respect, the study recommends that EC members should not accept any gift from EU Member States' donors and that the identity of donors from a non-member state should be disclosed.

The new CoC, art. 6(4) does not follow this recommendation as such. However, it states: "Members shall not accept any gift with a value of more than EUR 150", independently from the fact that the donor being from the EU or not. "*When, in accordance with diplomatic and courtesy usage they receive gifts worth more than this amount, they shall hand them over to the Commission's Protocol Department. (...)*".

The Commission's Protocol Department keeps a public register of the gifts of more than €150 value and identifies the donors.

## 2.11. HANDLING CONFLICTS OF INTEREST

Under this point, the study recommends establishing a procedure for dealing with conflicts of interest and to introduce divestment of financial interests above a certain value.

The new Code provides a definition of a conflict of interest as a situation "*where a personal interest may influence the independent performance of their duties.*" Moreover, the CoC foresees that personal interests "*(...) include, but are not limited to, any potential benefit or advantage to Members themselves, their spouses, partners or direct family members*"<sup>23</sup>.

Article 4 of the CoC sets the procedure related to handling conflict of interests. The article fully responds to the study recommendations. In particular, it foresees that EC Members shall recuse themselves from any decision or instruction of a file, discussion, debate or vote where a conflict of interest could arise. They have an obligation to inform the President about any situation of conflict of interest, as soon as they become aware of it.

The EC President takes any measure he considers appropriate, if necessary after consulting the Independent Ethical Committee. These measures concern (1) the reallocation of a file to another Member, with the obligation for the EC President to inform the President of the EP in this respect; and (2) the sale or the placing in a blind trust of the financial interests<sup>24</sup>, where these financial interests give rise to a conflict of interest in the area of the Member's portfolio responsibilities.

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<sup>22</sup> See footnotes 11 and 13

<sup>23</sup> Art. 2(6) CoC

<sup>24</sup> See art. 3(4)(a)

### 3. CONCLUSIONS

As the institution that best and most represents the European citizens, the EP has always been very attentive and vigilant to the issue of transparency and integrity within the EU institutions. Besides the commissioning of studies on the need to improve effectiveness and efficiency of the Code of Conduct, the EP reiterated its engagement in the promotion of transparency by adopting various resolutions in this field.<sup>25</sup>

Moreover, during the last years, several debates took place concerning the revolving doors issue, i.e. the activities of ex high-level European political personalities, including Commissioners, after the cessation of their Institutional role.<sup>26</sup> Mrs Ingeborg Grässle, CONT Chairperson during the whole 8th parliamentary term, took several initiatives in this respect<sup>27</sup>.

The new Code of Conduct for the EC Commissioners largely takes into consideration the recommendations formulated in the EP Study of 2014.

During the review procedure of the 2011 CoC<sup>28</sup>, the CONT committee encouraged the appointment of members coming from of the Court of Justice, the Court of Auditors, or the European Parliament, the Ombudsman or highly reputed academics for the “Independent Ethical Committee”. CONT recommended that the Commission should guarantee the independence of the “Independent Ethical committee” by avoiding appointing any Commissioner or senior Commission officials as a member. At present, the three members of the Independent Ethical Committee are Mr Christiaan Timmermans, Mrs Dagmar Roth-Behrendt and Mr Heinz Zourek.

Mr Timmermans<sup>29</sup> has been a Judge of the Court of Justice of the European Union and has now an academic activity.

Mrs Roth-Behrendt<sup>30</sup> is a former EP member and is at present a special adviser to European Health and Food Safety Commissioner Vytenis Andriukaitis.

Mr Zourek<sup>31</sup> has served the EC as Director General from 2005 until 2015 (DG ENTR and DG TAXUD).

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<sup>25</sup> Amongst others : European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions - [http://www.europarl.europa.eu/doceo/document/TA-8-2017-0358\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2017-0358_EN.html)

<sup>26</sup> European Parliament resolution of 13 December 2018 on the annual report on the activities of the European Ombudsman in 2017 - [http://www.europarl.europa.eu/doceo/document/TA-8-2018-0531\\_EN.html?redirect](http://www.europarl.europa.eu/doceo/document/TA-8-2018-0531_EN.html?redirect)

<sup>27</sup> The following information about the initiatives taken by CONT Chairperson in the field of revolving doors is not exhaustive.

2014 - <https://corporateeurope.org/en/blog/curious-incident-tobacco-lobbyist-commissions-ethics-committee>

2016 - <https://www.theparliamentmagazine.eu/articles/news/revolving-doors-campaigners-file-complaint-eu-commission>

Also see Mrs Grässle’s letter to Commissioner Oettinger of 26.04.2018 on “Entitlement for former Commissioners” and Mrs Grässle’s letter to Commissioner Oettinger of 27.06.2018 on “Former EU Commissioner Jonathan Hill (former European Commissioner for Financial Stability, Financial Services and Capital Markets Union) joining UBS bank as an adviser”.

<sup>28</sup> On 13 September 2017, President Juncker sent the draft EC decision to President Tajani, in conformity with point II.8 of the Framework Agreement on relations between the European Parliament and the European Commission. The Conference of Presidents (COP) submitted the draft to the Conference of the Committee Chairs (CCC) for a recommendation. The final EP position on the matter was endorsed by the Conference of Presidents on its 2018-01-11 meeting on and then sent to EC.

<sup>29</sup> [https://ec.europa.eu/info/sites/info/files/christiaan-timmermanns-cv\\_en\\_2.pdf](https://ec.europa.eu/info/sites/info/files/christiaan-timmermanns-cv_en_2.pdf)

<sup>30</sup> [https://ec.europa.eu/info/sites/info/files/cv-roth-behrendt\\_en\\_2.pdf](https://ec.europa.eu/info/sites/info/files/cv-roth-behrendt_en_2.pdf)

<sup>31</sup> [https://ec.europa.eu/info/sites/info/files/cv-zourek\\_en\\_1.pdf](https://ec.europa.eu/info/sites/info/files/cv-zourek_en_1.pdf)

Some other EP requests - such as extending the three-year 'cooling off' period to all Commissioners and upgrading the legal status of the Code of Conduct - were not followed in the final draft of the CoC.

The Parliament position also found support in the recent special report adopted by the European Court of Auditors (CoA)<sup>32</sup> on the improvement of the ethical frameworks of the EP, the EC and the Council. Besides the CoA comments and recommendations related to Members and staff of the European Parliament and the Council of the European Union and the European Council (Council), the special report refers to the ethical framework of the European Commission (see annex II).

The EP can consider the entry into force of the new Code of Conduct as a quite satisfactory result of the political role it played in making the EU institutions more transparent. However, the Parliament should remain vigilant to ensure that all the above-mentioned requests for improvement of the Code of Conduct are fully taken into consideration in the future.

The Parliament could therefore ask the Commission to amend the present Code of Conduct in order to integrate in it the EP requests that were not taken into account until now. These modifications could concern the upgrade of the Code of Conduct into hard law, a stronger independence of the Independent Ethical Committee, a longer cooling off period, the reference to the role of the Ombudsman in the Code and new rules concerning the involvement of Commissioners in national, regional or local politics.

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<sup>32</sup> [https://www.eca.europa.eu/Lists/ECADocuments/SR19\\_13/SR\\_ethical\\_frameworks\\_EN.pdf](https://www.eca.europa.eu/Lists/ECADocuments/SR19_13/SR_ethical_frameworks_EN.pdf)

## **ANNEXES**

### **Annex I: List of legal provisions applicable to Members of the EU Commission**

#### **Legal requirements**

- Article 17 of the Treaty of the European Union (TEU): Obligation of total independence for Commissioners (note: the report concerns ethical behaviour of persons, not of the institutions as such)
- Article 245 of the TFEU: independence; obligations arising from the function; obligations continuing after the end of mandate
- Article 339 of the TFEU on the duty not to disclose information of the kind covered by the obligation of professional secrecy
- Commission Decision of 31 January 2018 on a Code of conduct for the Members of the European Commission (C(2018)700)

#### **Tools and proceedings**

- Article 247 of the TFEU: Misconduct of Commissioners; EC Decision establishing the ad hoc ethical committee
- Article 12 of the code of conduct: the Independent Ethical Committee
- Article 13 of the code of conduct: measures on the application of the Code of Conduct

## Annex II: July 2019 Court of Auditors Special Report - The ethical frameworks of the audited EU institutions: scope for improvement<sup>33</sup>

Special Report comments on 2018 Code of Conduct

### **Independent Ethical committee**

The Commission's Independent Ethical Committee is composed of three persons selected for their competence, experience, independence and professional qualities. The composition of such committee may have an impact on the perceived objectivity and independence. Special attention should be therefore devoted to this selection.

Moreover, the Special Report expresses some other criticisms on the new Code of Conduct.

### **Limited scrutiny of Members' declarations**

*"The Members of the Commission are required by their code of conduct to submit declarations on matters such as previous activities, current outside activities, their financial interests, and their spouse or partner's professional activity. The declarations are subject to the scrutiny under the authority of the President. There is, again, no standard written procedure for checking the accuracy, reliability or completeness of the information. (...)*

*The lack of written standard procedure for checks on Members' declarations creates a risk of obligations being interpreted inconsistently, and means that the institution is less likely to identify inaccuracies and other issues before they attract public attention, potentially jeopardising public trust."*

On this issue, the special report recommends "establishing written standard procedures on checks on accuracy and completeness of information".

### **Incomplete and unclear policies on gifts and entertainment**

The special report recognizes that the EC Code of Conduct for Commissioners includes provisions on gifts and other benefits, though it stresses that the Code does not provide any definition of gifts and hospitality applicable to Members.

On this issue the Special report recommends "increasing the clarity and coverage of the gifts and entertainment policies".

<sup>33</sup> <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=50742>





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The European Parliament is very attentive to the issue of transparency and integrity within the EU institutions. In the past, the EP has commissioned two studies to verify the level of effectiveness and efficiency of the Code of Conduct for Commissioners of the European Commission. This in-depth analysis verifies whether the Code of Conduct of 2018 complies with the requests the EP has made in order to guarantee the best performance in terms of transparency and integrity by the EC Commissioners. Most of the EP requests have been satisfied. However, there is still some room for improvement in terms of transparency of the Independent Ethical Committee, the cooling off period for Commissioners and provisions related to the role of the European Ombudsman within the Code. Moreover, the Code of Conduct, being a soft law instrument, could be upgraded to a hard law instrument having a stronger binding force. Finally, the EP could reiterate the study recommendations concerning stricter provisions on the involvement of Commissioners in the national, regional or local politics.

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