DRAFT REPORT

on Commissioners’ declarations of interests - guidelines (2016/2080(INI))

Committee on Legal Affairs

Rapporteur: Pascal Durand
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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on Commissioners’ declarations of interests - guidelines
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The European Parliament,

having regard to the Treaty on European Union, and in particular Article 17(3) thereof,

– having regard to Annex XVI of its Rules of Procedure (Guidelines for the approval of the Commission), and in particular paragraph 1(a), third sub-paragraph thereof,

– having regard to its decision of 28 April 2015 concerning the scrutiny of the declarations of financial interests of Commissioners-designate and the interpretation of paragraph 1(a) of Annex XVI to its Rules of Procedure¹,

– having regard to the Framework Agreement on relations between the European Parliament and the European Commission², and in particular points 3, 5 and 8 thereof,

– having regard to its resolution of 8 September 2015 on procedures and practices regarding Commissioner hearings, lessons to be taken from the 2014 process³,

– having regard to the code of conduct for European Commissioners⁴, and in particular Articles 1.3, 1.4, 1.5 and 1.6 thereof,

– having regard to Rule 52 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinion of the Committee on Budgetary Control (A8-0000/2016),

A. whereas, pursuant to paragraph 1(a) of Annex XVI to its Rules of Procedure (Guidelines for the approval of the Commission), Parliament may express its opinion on the allocation of portfolios by the President-elect of the Commission and seek any information relevant to its reaching a decision on the aptitude of the Commissioners-designate; whereas Parliament expects to be sent all information relating to the financial interests of the Commissioners-designate and their declarations of interests to be sent for scrutiny to the committee responsible for legal affairs;

B. whereas, pursuant to point 3 of the Framework Agreement on relations between the European Parliament and the European Commission, the designated Members of the Commission shall ensure full disclosure of all relevant information, in conformity with the obligation of independence to which they are subject;

C. whereas scrutiny of the declaration of financial interests of a Commissioner-designate by the committee responsible for legal affairs consists not only of verifying that the

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⁴ C(2011) 2904 final.
declaration has been duly completed but also of assessing whether the content of the declaration is accurate and if a conflict of interests may be inferred;

D. whereas, pursuant to paragraph 1(a) of Annex XVI to its Rules of Procedure, Parliament shall evaluate Commissioners-designate on the basis of their personal independence, among other things;

E. whereas, in its above-mentioned resolution of 8 September 2015, Parliament stated that confirmation by the Committee on Legal Affairs of the absence of any conflict of interests is an essential precondition for the commissioner hearings;

F. whereas, in its above-mentioned resolution of 8 September 2015, Parliament deemed it important for the Committee on Legal Affairs to issue guidelines in the form of recommendations or an own-initiative report, with a view to facilitating reform of the procedures relating to Commissioners’ declarations of interests;

G. whereas, pursuant to point 1.3 of the code of conduct for Commissioners, the latter must declare any financial interest or asset which might create a conflict of interests in the performance of their duties, and whereas this also applies to any holdings of the Commissioner’s spouse or partner which might result in a conflict of interests;

H. whereas the financial interests for which a declaration is required include any kind of specific financial participation in the capital of a company;

I. whereas, pursuant to point 1.4 of the code of conduct for Commissioners, to obviate any risk of a conflict of interests, Commissioners are required to declare the professional activities of their spouses or partners, and whereas this declaration must state the nature of the activity, the title of the position held and, where applicable, the name of the employer;

J. whereas, pursuant to point 1.5 of the code of conduct for Commissioners, the declaration of financial interests must be made using a form attached to the code of conduct, and whereas the form must be completed and made available before the hearing of the Commissioner-designate by Parliament and revised during his or her term of office if the information changes, and at least once a year;

K. whereas the information on the form is in part inadequate and does not enable Parliament to correctly evaluate either the existence of actual or potential conflicts of interests on the part of Commissioners-designate or their ability to carry out their mandate in line with the code of conduct for Commissioners;

L. whereas, pursuant to point 1.6 of the code of conduct for Commissioners, a Commissioner shall not deal with matters within her/his portfolio in which, she/he has any personal interest, in particular a family or financial interest which could impair her/his independence;

M. whereas the Commission is ultimately responsible for the nature and scope of the information to be included in the declarations of interests of its members; whereas the Commission must therefore ensure the degree of transparency necessary for the proper functioning of the procedure to appoint Commissioners-designate;
N. whereas, pursuant to point 5 of the Framework Agreement on relations between the European Parliament and the European Commission, Parliament may ask the President of the Commission to withdraw confidence in an individual Member of the Commission; whereas, pursuant to point 7 of the same, the President of the Commission must inform Parliament if she/he intends to reshuffle the allocation of responsibilities amongst the Members of the Commission so as to enable parliamentary consultation on the matter;

**General observations**

1. Notes that the aim of scrutinising Commissioners' financial declarations is to ensure that the Commissioners-designate are able to fulfil their mandates completely independently, in accordance with Article 17(3) of the Treaty on European Union and with the code of conduct for Commissioners; considers, accordingly, that this should not be restricted to the appointment of the new Commission;

2. Takes the view that evaluating a possible conflict of interests must be based on objective factors and take into account the portfolio of the Commissioner-designate;

3. Confirms that the Committee on Legal Affairs must carry out a substantive analysis of the declarations of financial interests by means of an in-depth examination aimed at assessing whether the content of the declaration made by a Commissioner-designate is accurate or whether a conflict of interests may be inferred;

4. Notes that the Committee on Legal Affairs observes the strictest confidentiality when examining questions relating to the declarations of interests of the Commissioners-designate but ensures that its conclusions are published as soon as they are available;

**Procedure for scrutinising declarations of financial interests before the hearings of the Commissioners-designate**

5. Considers that confirmation by the Committee on Legal Affairs of the absence of any conflict of interests is an essential precondition for the holding of the hearing by the committee responsible¹;

6. Takes the view, therefore, that in the absence of such confirmation or if the Committee on Legal Affairs identifies a conflict of interests, the procedure for appointing the Commissioner-designate shall be suspended;

7. Considers that the following guidelines should be applied when the declarations of financial interests are scrutinised by the Committee on Legal Affairs:

   (a) if, when scrutinising a declaration of financial interests, the Committee on Legal Affairs deems the declaration to be accurate and to contain nothing indicating an actual or potential conflict of interests in connection with the portfolio of the

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¹ See the European Parliament resolution of 8 September 2015 on procedures and practices regarding Commissioner hearings, lessons to be taken from the 2014 process.
Commissioner-designate, its Chair shall send a letter confirming this fact to the committees responsible for the hearing or to the committees involved in the event of a procedure taking place during a Commissioner's term of office;

(b) if the Committee on Legal Affairs deems the declaration of interests of a Commissioner-designate to contain information which is incomplete or contradictory, or if there is a need for further information, it shall request this information from the Commissioner-designate and shall consider this before making its decision;

(c) if the Committee on Legal Affairs identifies a conflict of interests based on the declaration of financial interests or the supplementary information supplied by the Commissioner-designate, it shall draw up recommendations aimed at resolving the conflict of interests; the recommendations may include renouncing the financial interests in question and/or changes being made to the portfolio of the Commissioner-designate by the President of the Commission;

Procedure for scrutinising declarations of financial interests during a Commissioner's term of office

8. Underlines the obligation for all Members of the Commission to ensure that their declarations of interests are regularly updated, and calls on the Commission to inform Parliament immediately of any substantial changes;

9. Considers that any substantial change in the financial interests of a Commissioner during her/his term of office or any reshuffling of the allocation of responsibilities between Members of the Commission constitutes a new situation in terms of the possible existence of a conflict of interests; believes, therefore, that this situation should be subjected to scrutiny by Parliament in accordance with paragraph 7 of this resolution;

10. Notes that, pursuant to the second sub-paragraph of Article 246 of the Treaty on Functioning of the European Union, Parliament shall be consulted in the event of a Commissioner being replaced during her/his term of office; considers that this must include verification of the absence of a conflict of interests, among other things, in line with paragraph 7 of this resolution;

11. Considers that, in the event of a conflict of interests being identified during a Commissioner's term of office and of the Commission not following Parliament's recommendations for resolving the conflict of interests as set out in paragraph 7 of this resolution, the Committee on Legal Affairs may make recommendations aimed at asking the President of the Commission to withdraw confidence in the Commissioner in question;
12. Considers that the current scope of the Commissioners’ declarations of interests is too limited and calls on the Commission to revise its rules on this as soon as possible¹;

13. Considers that the family interests referred to in point 1.6 of the code of conduct for Commissioners should be included in the declarations of financial interests in the same way as are the financial interests of their partners or spouses;

14. Considers that, pursuant to point 1.4 of the code of conduct for Commissioners, point V of the declarations of financial interests should include all the interests and activities of the spouse or partner and should on no account be limited to those 'likely to constitute a conflict of interests';

15. Calls on the Commission to begin negotiations with Parliament aimed at making any necessary changes to the Framework Agreement on relations between the European Parliament and the European Commission;

16. Calls on the Committee on Constitutional Affairs to make any necessary changes to Parliament's Rules of Procedure, and in particular Annex XVI thereof, in order to implement this resolution;

17. Instructs its President to forward this resolution to the Council and the Commission.

¹ See paragraph 13 of the European Parliament’s resolution of 8 September 2015 referred to above.
EXPLANATORY STATEMENT

Background

Annex XVI to the European Parliament's Rules of Procedure on guidelines for the approval of the Commission states that 'Parliament may seek any information relevant to its reaching a decision on the aptitude of the Commissioners-designate. It shall expect full disclosure of information relating to their financial interests. The declarations of interests of the Commissioners-designate shall be sent for scrutiny to the committee responsible for legal affairs'.

This provision does not, however, dwell on the precise scope of the scrutiny by the Committee on Legal Affairs and particularly on whether this should be restricted to a formal analysis of the information supplied or, conversely, should constitute a substantive analysis. As a result of the practical difficulties caused by such a poorly-detailed provision – which were considerable during the procedure for appointing the last Commission – the coordinators in the Committee on Legal Affairs decided to request clarification from the Committee on Constitutional Affairs, which is the committee responsible, among other things, for interpreting Parliament's Rules of Procedure;

The interpretation recommended by the Committee on Constitutional Affairs was adopted in plenary on 28 April 2015. It reads as follows:

'Scrutiny of the declaration of financial interests of a Commissioner-designate by the committee responsible for legal affairs consists not only in verifying that the declaration has been duly completed but also in assessing whether a conflict of interests may be inferred from the content of the declaration. It is then for the committee responsible for the hearing to decide whether or not it requires further information from the Commissioner-designate.'

This interpretation confirms that the analysis must be substantive but places the burden of asking additional questions on the committee responsible for the hearing.

However, in its resolution of 8 September 2015 on procedures and practices regarding Commissioner hearings, lessons to be taken from the 2014 process, Parliament emphasises the role of the Committee on Legal Affairs in so far as it 'Considers that checks on declarations of the financial interests of Commissioners designated by the Committee on Legal Affairs should be improved; [...] considers that confirmation by the Committee on Legal Affairs of the absence of any conflict of interests, based on a substantive analysis of the declarations of financial interests, constitutes an essential precondition for the holding of the hearing by the committee responsible' (paragraph 4).

Parliament therefore 'considers it important [...] that the Committee on Legal Affairs should, in the coming months, issue guidelines in the form of a recommendation or own-initiative report, with a view to facilitating reform of the procedures relating to Commissioners’ declarations of interests; ' (paragraph 13).

In response to this invitation from plenary, the Committee on Legal Affairs asked to be able
to adopt an own-initiative report on this matter.

**The rapporteur’s position**

The rapporteur proposes defining the scope of the scrutiny of the declarations of financial interests by the Committee on Legal Affairs. This would involve firstly tackling Parliament's internal procedures for the appointment of the new Commission and during its term of office and the transparency obligations incumbent on the Members of the Commission.

In general the rapporteur confirms Parliament's view that verifying the absence of a conflict of interests cannot be placed on the same level as evaluating a candidate's abilities and that it must therefore be an indispensable prerequisite for the hearing. He also believes that the concept of 'conflict of interests' must be strictly limited to factors which are objective and verifiable and can only be considered in relation to a given portfolio.

He therefore concludes that the role of the Committee on Legal Affairs is both to evaluate the existence of a possible conflict of interests and, where necessary, draw up recommendations for its resolution. These might include renouncing certain financial interests or changing the portfolio. For the scrutiny to be effective, he believes that the Committee on Legal Affairs should request further information in the event of a declaration which is dubious, incomplete or contradictory.

He also believes that monitoring the declarations of financial interests and, more generally, possible conflicts of interests on the part of the Members of the Commission should extend beyond the procedure to appoint the Commission. He therefore believes that any substantial change in the financial interests of a Commissioner during her/his term of office and any reshuffling of the allocation of responsibilities between Members of the Commission constitutes a new situation in terms of the possible existence of a conflict of interests and should therefore be scrutinised by Parliament.

The reporter also addresses the Commission. The Commission is ultimately responsible for selecting the information to be included in the declarations of interests of its members. The rapporteur therefore proposes a number of changes to the Commission's code of conduct and to the declarations of interests with the aim of ensuring that the declarations contain sufficient information to enable Commissioners' financial interests to be evaluated and that Parliament is informed of all changes made.

He also believes that the Committee on Constitutional Affairs should be asked to make any necessary changes to Parliament's Rules of Procedure, and in particular Annex XVI thereof, in order to implement the guidelines which appear in the report.