



TEXTS ADOPTED

P8_TA(2016)0477

Commissioners' declarations of interests – Guidelines

European Parliament resolution of 1 December 2016 on Commissioners' declarations of interests – guidelines (2016/2080(INI))

The European Parliament,

- having regard to the Treaty on European Union (TEU), and in particular Article 17(3) thereof,
- having regard to the Treaty on the Functioning of the European Union (TFEU), and in particular Article 245 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 (interpretation of paragraph 1(a) of Annex XVI to its Rules of Procedure)¹,
- having regard to the Framework Agreement on relations between the European Parliament and the European Commission², in particular the points corresponding to Section II – Political Responsibility,
- 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 Commissioners of 20 April 2011⁴, and in particular points 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 (A8-0315/2016),

¹ OJ C 346, 21.9.2016, p. 110.

² OJ L 304, 20.11.2010, p. 47.

³ Texts adopted, P8_TA(2015)0287.

⁴ C(2011)2904.

- 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 under Section II (Political Responsibility) 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 under the Treaties; whereas this information shall be disclosed in line with procedures designed to ensure an open, fair and consistent assessment of the entire Commission-designate;
- C. whereas, in accordance with its above-mentioned Decision of 28 April 2015, 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 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, particularly in the light of the special role of guarantor of the Union interest assigned to the European Commission in the Treaties;
- 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 indispensable precondition for the commissioner hearings, particularly given that the Commission's political mandate was strengthened in the Treaty of Lisbon;
- 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, while calling on the Commission to revise its rules relating to Commissioners' declarations of interests;
- G. whereas, pursuant to point 1.3 of the Code of Conduct for Commissioners on selflessness, integrity, transparency, honesty, responsibility and respect for the dignity of Parliament, Commissioners 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 – as defined by the rules in force¹ – 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;

¹ Stable non-marital partner, as defined in Regulation (Euratom, ECSC, EEC) No 2278/69 (OJ L 289, 17.11.1969, p. 1) and in Article 1(2)(c) of Annex VII to the Staff Regulations.

- 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 limited and inadequate, does not include a detailed definition of what constitutes a conflict of interests and therefore does not enable Parliament to properly evaluate fairly and consistently 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 any matter that involves her/his portfolio when 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 accurately provide 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;
- O. 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;
- P. 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;
- Q. 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;

General observations

1. Notes that the aim of scrutinising Commissioners' declarations of financial interests is to ensure that the Commissioners-designate are able to fulfil their mandates completely independently and to ensure maximum transparency and accountability on the part of the Commission, in accordance with Article 17(3) TEU, with Article 245 TFEU and with the Code of Conduct for Commissioners; notes, accordingly, that this should not be restricted to the appointment of the new Commission, but should also take place in the event of a vacancy resulting from the resignation, compulsory retirement or death of a Commissioner, the accession of a new Member State or substantial modification of a Commissioner's portfolio or financial interests;
2. Takes the view that evaluating a possible conflict of interests must be based on conclusive, objective and relevant factors and take into account the portfolio of the Commissioner-designate;
3. Points out that a conflict of interests is defined as 'any interference situation between a public interest and public and private interests that is likely to affect or that appears likely to affect the independent, impartial and objective exercise of a duty';
4. Confirms that the Committee on Legal Affairs is competent and responsible for carrying 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 and conforms to the criteria and principles laid down in the Treaties and the code of conduct, or whether a conflict of interests may be inferred, and that it must be able to propose to the President of the Commission the replacement of that Commissioner; calls, therefore, on the Commission to provide all factual tools and information to enable the Committee on Legal Affairs to perform a complete and objective analysis;
5. Considers it essential that the Committee on Legal Affairs has enough time to ensure that this detailed assessment is effective;
6. 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 also ensures, in accordance with the principle of transparency, that its conclusions are published as soon as they are available;
7. Considers that beyond the time allocated for questions that the Committee on Legal Affairs wishes to put to the Commissioner-designate, should it note a possible conflict of interests, it should be granted the right to continue with the hearing and obtain the required clarifications;

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

8. Considers that confirmation by the Committee on Legal Affairs of the absence of any conflict of interests, based on a substantive analysis of the declaration of financial interests, is an essential precondition for the holding of the hearing by the committee

responsible¹;

9. 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;
10. 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 of Legal Affairs deems, on the basis of the documents presented, the declaration to be accurate, complete and to contain nothing indicating an actual or potential conflict of interests in connection with the portfolio of the 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, pursuant to the Rules of Procedure² and the Framework Agreement on relations between the European Parliament and the Commission³, the Commissioner-designate to provide this information without undue delay and shall consider and properly analyse this before making its decision; the Committee responsible for Legal Affairs can decide, where appropriate, to invite the Commissioner-designate for a hearing;
 - (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, changes being made to the portfolio of the Commissioner-designate by the President of the Commission; in more serious cases, if no other recommendation is able to provide for a solution to the conflict of interests, as the last resort, the committee responsible for legal affairs can conclude on the inability of Commissioner-designate to exercise his/her function according to the Treaty and to the Code of Conduct; the President of Parliament shall ask the President of the Commission what further steps the latter intends to take;

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

11. Underlines the obligation for all Members of the Commission to ensure that their declarations of interests are immediately updated whenever there is a change in their financial interests, and calls on the Commission to inform Parliament immediately of any

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.

² See paragraph 1(a) of Annex XVI to the Rules of Procedure.

³ See Section (II)(3) of the Framework Agreement on relations between the European Parliament and the Commission.

changes or of anything causing a conflict of interests or a potential conflict of interests to arise;

12. Considers, therefore, that the declaration of financial interests must include present or past interests or activities from the last two years that are of a property, professional, personal or family nature in line with the offered portfolio; it must also take account of the fact that the interest may pertain to an advantage for the person involved or for a third party, and that it may also be of a moral, material or financial nature;
13. Considers that any 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 subject to scrutiny by Parliament in accordance with paragraph 10 of this resolution and with paragraph 2 of Annex XVI (Guidelines for the approval of the Commission) to the Rules of Procedure of the European Parliament;
14. Notes that, pursuant to the second sub-paragraph of Article 246 TFEU, 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 10 of this resolution, and with the provisions set out in Annex XVI (Guidelines for the approval of the Commission) to its Rules of Procedure¹ regarding the competences of the European Parliament in the event of a change in composition of the College of Commissioners or a substantial portfolio change during its terms of office;
15. Considers that, in the event of a conflict of interests being identified during a Commissioner's term of office and of the President of the Commission not following Parliament's recommendations for resolving the conflict of interests as set out in paragraph 10 of this resolution, the Committee on Legal Affairs may recommend that Parliament ask the President of the Commission to withdraw confidence in that Commissioner, in accordance with Article 17(6) TEU and, where appropriate, that Parliament calls on the President of the Commission to act in accordance with the second subparagraph of Article 245 TFEU with a view to depriving the Commissioner in question of his right to a pension or other benefits in its stead;

Code of conduct for Commissioners

16. Notes that the Code of Conduct for Commissioners adopted on 20 April 2011 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;
17. Points out that the credibility of the declaration of financial interests depends on the accuracy of the form presented to the Commissioner-designate; considers that the current scope of Commissioners' declarations of interests is too limited and their explanatory content ambiguous; calls, therefore, on the Commission to revise the code of conduct as

¹ See paragraph 2 of Annex XVI to the Rules of Procedure of the European Parliament.

soon as possible in order to ensure that the declarations of interests provide the Committee on Legal Affairs with accurate information with which it can substantiate its decision unequivocally;

18. Considers that, in order to gain a more complete picture of the financial situation of the declaring Commissioner, the declarations of financial interests referred to in points 1.3 to 1.5 of the Code of Conduct for Commissioners should include all financial interests and activities of the Commissioner-designate and his/her spouse/partner, and should on no account be limited to those 'likely to constitute a conflict of interest';
19. 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; calls, in this regard, on the Commission to establish a fair means of identifying family interests that are liable to create a conflict of interest;
20. Takes the view that, in order to extend and improve the rules on conflicts of interest, the declarations of interests should also include the details of any contractual relation of the Commissioners-designate which might create a conflict of interests in the performance of their duties;
21. Deplores the fact 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';
22. 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;
23. 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;
24. Deplores the fact 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 TFEU;
25. Deplores, 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;
26. 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;

27. 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 deplores the fact 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;
28. Calls on the Commission to revise, as a matter of urgency, the 2011 Code of Conduct for Commissioners 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;
 - (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 a period of at least three years and not shorter than the length of time during which former Commissioners are eligible for a transitional allowance as defined in Regulation No 422/67/EEC;

- (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 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;
- (n) 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;
- (o) 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';
- (p) 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;
- (q) that the Ad Hoc Ethical Committee is composed of independent experts who have not themselves held the position of Commissioner;
- (r) 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;

29. 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;

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

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