



EUROPEAN PARLIAMENT

2009 - 2014

**THE ADVISORY COMMITTEE
ON THE CONDUCT OF MEMBERS
ANNUAL REPORT 2012**

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FOREWORD

Article 7(6) of the Code of Conduct for Members of the European Parliament with Respect to financial interests and conflicts of interest (Annex I to the Rules of Procedure of the European Parliament) provides that *"The Advisory Committee shall publish an annual report of its work"*.

This first annual report on the work of the Advisory Committee on the Conduct of Members covers the period 7 March 2012 (when the Committee was constituted) to 31 December 2012 and was adopted by the Committee on 19 February 2013.

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Executive summary

The task of the Advisory Committee is to assess alleged breaches referred to it by the President, and to give guidance to Members on the interpretation and implementation of the Code. Requests from Members are treated confidentially and Members are entitled to rely on the guidance, which is always given within 30 days.

In 2012, the Advisory Committee made one recommendation to the President on an alleged breach of the Code of Conduct and gave advice to MEPs on a total of 50 questions. The most frequently asked question concerned the mandatory Declaration of Financial Interests and clarifications on how to interpret the three-year period for which the MEPs have to give information on previous occupations and board memberships.

79 updated Declarations were submitted by 74 Members. These updated Declarations included a total of 98 changes, i.e. in some cases more than one change was made in a single update.

The guidance, referral and updates have highlighted some uncertainties and inconsistencies in the Code itself, as well as with its application. Since the Advisory Committee feels obliged to report any problems or potential problems that exist or could emerge, as well as to reflect on possible improvements, the Annual Report presents some suggestions on possible improvements to the Code of Conduct.

The Annual Report shows that the only way for openness and ethics is forward, but that Parliament has to get better at showing citizens what is done, for example by allowing for improved online publication of MEPs declarations.

1 BACKGROUND

1.1 Main principles of the Code of Conduct

1.1.1 Members' duties

The Code of Conduct entered into force on 1 January 2012. It sets out as its guiding principles that Members shall act solely in the public interest and conduct their work with disinterest, integrity, openness, diligence, honesty, accountability and respect for the European Parliament's reputation.

It replaces previous requirements set out in Annex I to the Rules of Procedure of the European Parliament ("*Transparency and Members' financial interests*"), while encompassing a larger scope and setting more ambitious targets in terms of transparency and ethics.

1.1.2 Conflicts of interests

A conflict of interests exists when the personal interest of a Member can improperly influence the performance of his/her duties as a Member.

During their mandate, some Members may face actual conflicts of interests (i.e. the proven interference between public and personal interests) and/or potential conflicts of interests (i.e. in the latter case, situations which might merely be perceived by a broader audience as liable to give rise to such a conflict).

The Code of Conduct enables each Member concerned to avoid any misconduct by providing them with a clear and simple line-to-take. Firstly, the Member shall endeavour to resolve this conflict. Should this turn out to be impossible, he/she shall report it in a fully transparent manner to the President of the Parliament or to the chair of any of Parliament's bodies during the corresponding parliamentary proceedings. By doing so, he/she safeguards both his/her own reputation and the Institution's image.

1.1.3 The Declaration of financial interests

Article 4(1) of the Code of Conduct states that "*For reasons of transparency, Members of the European Parliament shall be personally responsible for submitting a Declaration of financial interests to the President*".

The new Declaration of financial interests introduced by the Code of Conduct¹ had to - as an introductory/transitory measure - be submitted for the first time by Members on 30 March 2012 at the latest. Following that first exercise, Members will have to continuously update their Declarations within 30 days of any changes occurring. The former obligation to update the Declaration annually thus no longer applies.

¹ Annex I.

The Declarations of financial interests are published on Parliament's website, on each Member's individual webpage.

2 THE ADVISORY COMMITTEE ON THE CONDUCT OF MEMBERS

2.1 Composition and tasks

The Advisory Committee on the Conduct of Members was established by Article 7(1) of the Code of Conduct. According to Article 7(2) the Committee is *"composed of five members, appointed by the President at the beginning of his or her term of office from amongst the members of the bureaux and the coordinators of the Committee on Constitutional Affairs and the Committee on Legal Affairs, taking due account of the Members' experience and of political balance"*.

The members of the Advisory Committee are:

- Mr Carlo CASINI (EPP, Italy);
- Ms Evelyn REGNER (S&D, Austria);
- Ms Cecilia WIKSTRÖM (ALDE, Sweden).
- Mr Gerald HÄFNER (Greens/EFA, Germany);
- Mr Sajjad KARIM (ECR, United Kingdom).

According to Article 7(3) of the Code of Conduct, *"The President shall also, at the beginning of his or her term of office, nominate reserve members for the Advisory Committee, one for each political group not represented in the Advisory Committee"*.

The reserve members of the Advisory Committee are:

- Mr Jiří MAŠTÁLKA (GUE, Czech Republic);
- Mr Francesco Enrico SPERONI (EFD, Italy).

The task of the Advisory Committee is to assess alleged breaches referred to it by the President, and to give guidance to Members on the interpretation and implementation of the Code. Requests from Members are treated confidentially and Members are entitled to rely on the guidance, which is always given within 30 days.

2.2 Chairmanship

As laid down in Article 7(2) of the Code of Conduct, *"each member of the Advisory Committee shall serve as chair for six months on a rotating basis"*. At its constitutive

meeting on 7 March, the Advisory Committee agreed this *"rotation shall, in principle, follow in descending order the size of the political group of the members composing the Advisory Committee"*².

Mr Carlo Casini (EPP) chaired the Advisory Committee from 7 April to 29 August and Ms Evelyn Regner (S&D) succeeded him on 30 August 2012, for a six-month term.

2.3 Rules of Procedure

At its constitutive meeting on 7 March 2012, the Advisory Committee adopted its own internal Rules of Procedure. In the framework of its continuous efforts to improve its efficiency, it subsequently adjusted those Rules at its meeting of 9 October 2012³. The amendments thus carried included linguistic clarifications regarding minority recommendations, a new rule on written procedure, a new rule on quorum, a clarification of the content of a recommendation to the President of the European Parliament following his referral in accordance with the second subparagraph Article 7(4) and Article 8 of the Code of Conduct, and a revision of the timing for the adoption of the present annual report.

The Advisory Committee meets in principle once a month and takes its decisions by consensus or, where this is not possible, by a majority of its members. It should be noted that for other decisions than a recommendation to the President on an alleged breach of the Code of Conduct, the Advisory Committee may decide by a simplified, written procedure.

Furthermore, the Advisory Committee has clarified that when assessing an alleged breach of the Code of Conduct, the Advisory Committee shall appoint a rapporteur, who shall not be from the same political group as the Member concerned. This rapporteur shall prepare a draft recommendation, presenting the facts of the case, the arguments put forward by the Member concerned, his/her evaluation of these facts and a conclusion. This conclusion shall lay down whether the Code of Conduct has been breached or not and shall include advice on possible action to be taken and a recommendation to the President on a possible decision.

2.4 Meetings 2012

The Advisory Committee met on ten occasions in 2012, after its constitutive meeting held on 7 March, thus abiding by the frequency of meetings foreseen by its Rules of Procedure and permitting that the 30-day deadline set by the first subparagraph of Article 7(4) of the Code of Conduct be systematically respected as far as responses to the Members' requests for guidance are concerned.

² Advisory Committee Rules of Procedure, Annex II; cf. section 2.3.

³ Annex II.

Calendar of Meetings of the Advisory Committee in 2012

Wednesday 7 March (constitutive meeting)
Tuesday 13 March - *in Strasbourg*
Wednesday 28 March
Wednesday 25 April
Wednesday 30 May
Tuesday 12 June - *in Strasbourg*
Wednesday 11 July
Tuesday 18 September⁴
Tuesday 9 October
Tuesday 27 November
Tuesday 18 December

At its meeting on 9 October, the Advisory Committee adopted its meeting calendar for 2013.

Calendar of Meetings of the Advisory Committee in 2013

Tuesday 22 January
Tuesday 19 February
Tuesday 19 March⁵
Tuesday 23 April
Tuesday 21 May - *in Strasbourg*
Tuesday 18 June
Wednesday 10 July
Tuesday 17 September⁶
Tuesday 15 October
Tuesday 12 November
Tuesday 17 December

2.5 Declarations of financial interests received

30 March 2012 was set up as the deadline for Members in office to submit their Declarations under the new format.

⁴ Chair rotation: based on current group size, Ms Evelyn Regner (S&D) took over from Mr Carlo Casini (EPP).

⁵ Chair rotation: based on current group size, Ms Cecilia Wikström (ALDE) takes over from Ms Evelyn Regner (S&D).

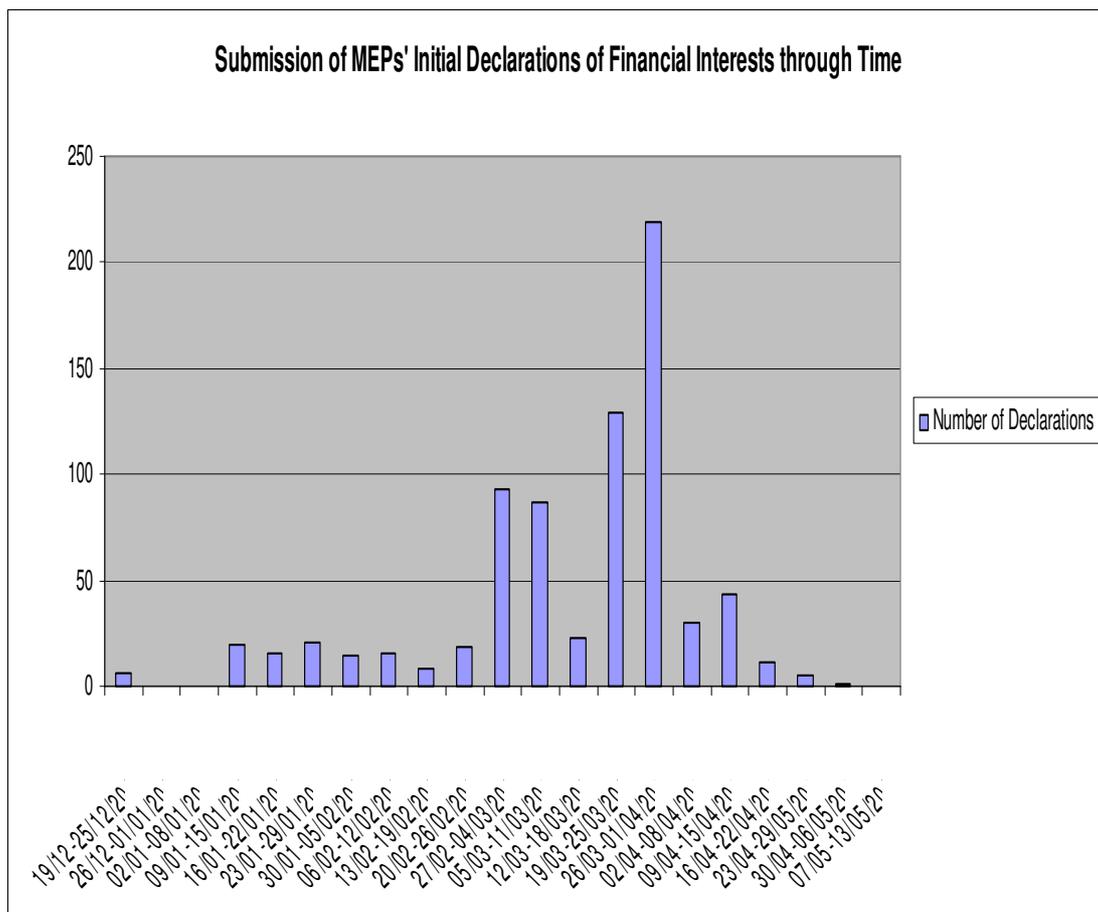
⁶ Chair rotation: based on current group size, Mr Gerald Häfner (Greens/EFA) takes over from Ms Cecilia Wikström (ALDE).

By that time, 664 Members out of 754 (i.e. a ratio of 88%) had submitted their Declarations. By the very end of April, all the remaining Members had submitted their forms.

An overwhelming proportion of forms were registered during the two weeks preceding the deadline for submission, i.e. the weeks of 19 March (17% of the forms) and 26 March (29%). 72% of the forms were received during the month of March.

90 Members (12%) failed to abide by the official deadline. However, 73 of the missing Declarations were received during the first half of April, while the remaining 17 were submitted in the following fortnight. A number of these cases of late submission of Declarations are explained by Members leaving or taking up office around the 30 March deadline.

For statistical purposes of this Annual Report it was noted that 88 Declarations (12%) did not contain any other information than the name of the Member and the date of submission. This could leave room for questions, but the Code of Conduct currently does not give the Advisory Committee possibilities to make any further analysis of, or follow-up to these 88 Declarations. The Advisory Committee would welcome if the eventual introduction of monitoring procedures in 2013 provided for such possibilities.



As regards the total number of Declarations submitted by Members, it should be noted that it slightly exceeds the total number of Members of the Parliament. This is explained by the fact that some new Members took office during the spring 2012, while some Members first submitted a Declaration and later resigned. As laid down in Article 4(1) of the Code of Conduct, Members who took up office in the course of the parliamentary term were required to submit their Declarations within 30 days.

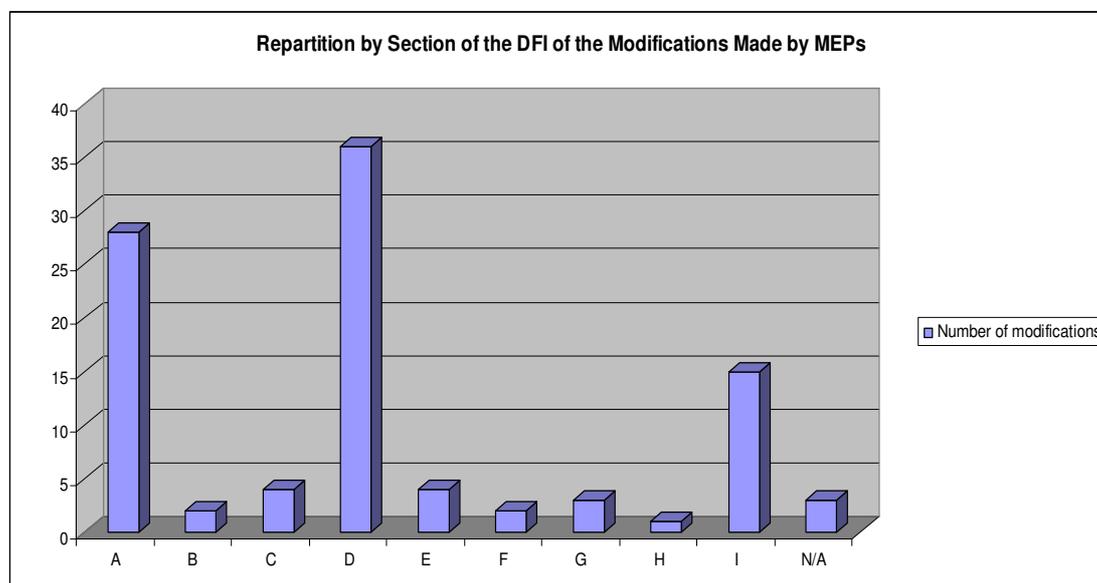
According to Article 4(1) of the Code of Conduct, Members *"shall notify the President of any changes that have an influence on their Declaration within 30 days of each change occurring"*.

Throughout the year, 79 updated Declarations were submitted to the President by 74 Members. The difference in figures is explained by the fact that 70 members submitted one amended Declaration each, while three Members updated their respective Declarations twice and one Member updated the Declaration on three different occasions.

These updated Declarations included a total of 98 changes, i.e. in some cases more than one change was made in a single update.

On the substance, Sections (A), (D) and (I) were the most frequently amended Sections, with 28, 36 and 15 modifications respectively.

The graph below illustrates the distribution, Section by Section, of all the modifications made throughout the year⁷.

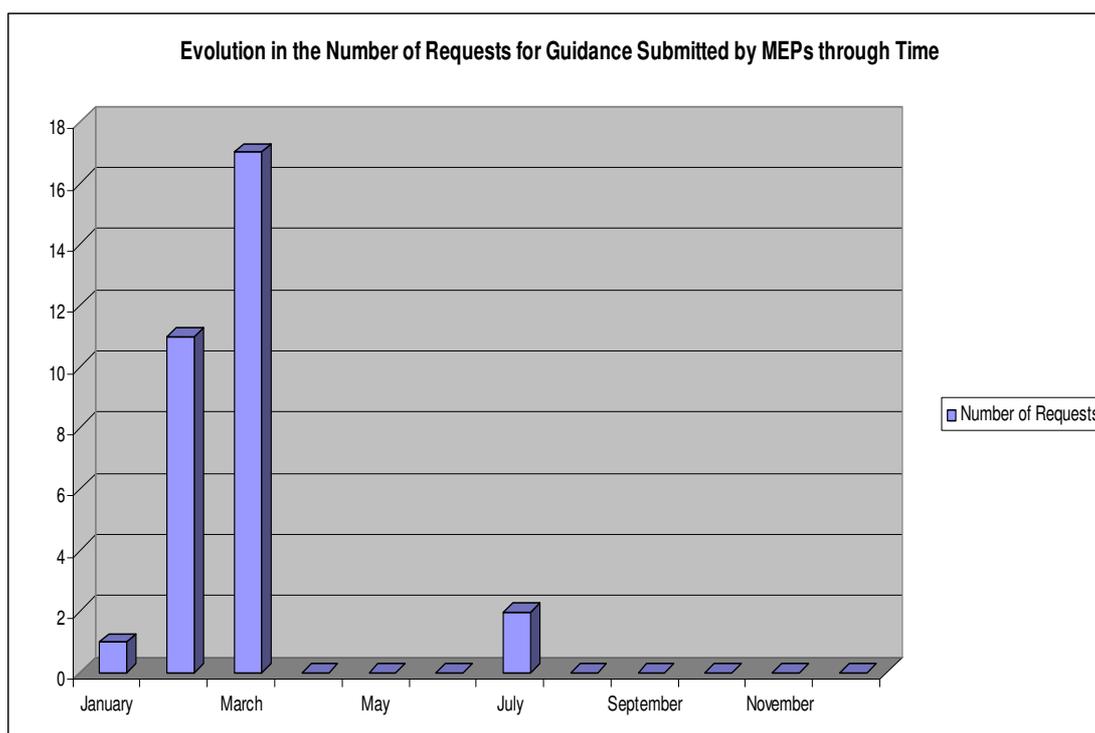


2.6 Requests for guidance

⁷ During the year, three Members handed over an initial Declaration in their native tongue, followed by a subsequent version in English; therefore, the corresponding modifications have been reported as "N/A" in the graph.

In accordance with Article 7(4) of the Code of Conduct, the Advisory Committee received and replied to a total of 50 questions, contained in a total of 32 requests for guidance from Members. The difference in numbers is explained by the fact that some requests for guidance included more than one question.

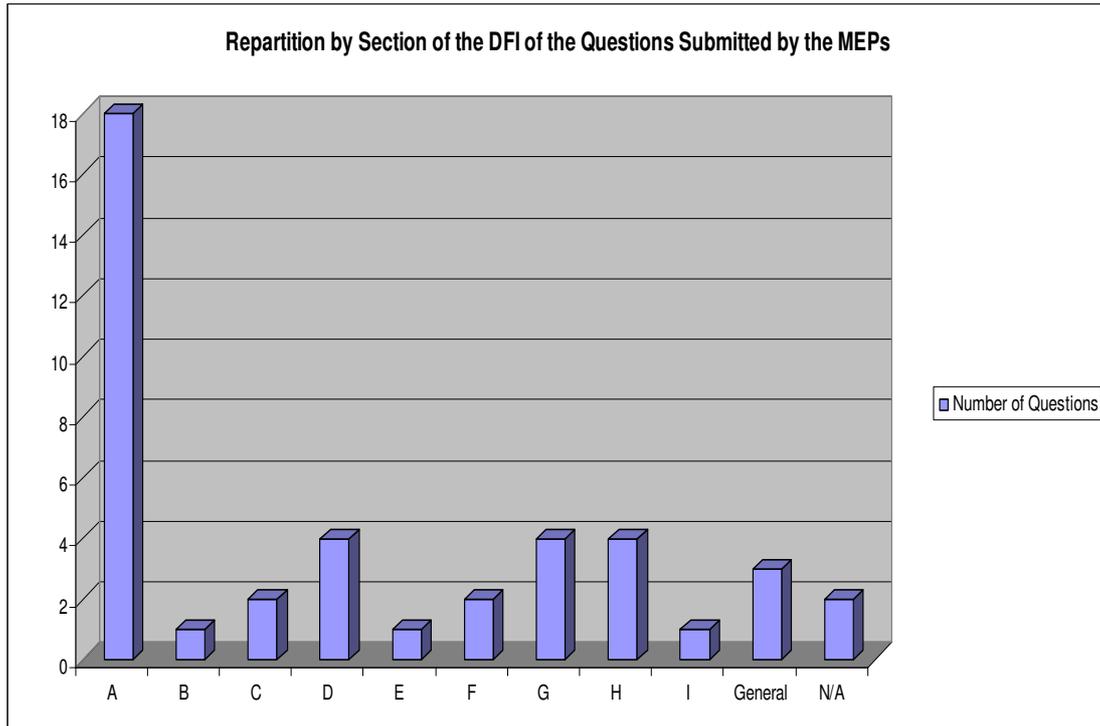
Most of the questions/requests were submitted in February (11 questions/requests) and March (17 questions/requests), i.e. in connection with the deadline for submission of the first Declaration of financial interests of 30 March.



The most frequently asked question (18 times) concerned clarifications regarding the three year period mentioned under Section (A) of the Declaration. Some requests were general and therefore cannot be attached to a specific Section of the Declaration; e.g. the fact that long-term treasury bonds and collective investment vehicles which do not allow for the identification of assets need not be declared.

Since Members' questions/requests to the Advisory Committee are asked in confidence, it is not possible to give further details of their specific content in this annual report.

Two requests concerned the possible incompatibility of another function with the mandate of Member of the European Parliament. Since this matter is the competence of Parliament's Legal Service and not the Advisory Committee's, these two questions are labelled N/A in the table below.



2.7 Alleged breach assessment

During the year, one case of an alleged breach of the Code was referred to the Advisory Committee by the President, in accordance with Article 8(1) of the Code of Conduct. The referral, made on 24 May, concerned a Member who had failed to mention, in his Declaration of financial interests, stock options he had received as remuneration when he was a member of the board of directors of a company.

The Advisory Committee appointed Mr Sajjad KARIM (ECR) rapporteur. After examining the facts of the case and hearing the Member, the Advisory Committee decided, on 11 July, to recommend that the President took no further action pursuant to Article 8(3) of the Code, but nevertheless recommended that the President invited the Member to submit a revised Declaration of financial interests.

The Advisory Committee had considered that the Code of Conduct has been in force for only a limited period of time and that a lack of experience may be conducive to differences in the way it is interpreted and applied by Members. It also found that there are discrepancies between the different language versions of Article 4 of the Code of Conduct, particularly with regard to point (f) of Article 4(2), which can impede uniform application of its provisions.

The Advisory Committee noted that the Member's membership of a board of directors, and the remuneration associated with that membership, had been correctly declared in the Member's Declaration of financial interests.

The Advisory Committee also found that the scope of point (f) of Article 4(2) of the Code of Conduct as currently worded cannot be considered to cover the stock option scheme from which the Member benefitted as a member of the board of directors. Nevertheless, the Advisory Committee considered that point (h) of Article 4(2) of the Code of Conduct does not exclude private assets from the scope of the term "financial interests" so long as they are financial interests which might influence the performance of the Member's duties, and that, consequently, stock options are a financial interest which might influence a Member in the performance of his or her duties.

This led the Advisory Committee to the conclusion that the Member concerned, in light of the transparency principles underpinning the Code of Conduct, should consider declaring his remaining stock options under Section (H) in the Declaration of financial interests.

The Advisory Committee also noted that stock options granted as a part or form of remuneration must be considered and declared as a Member's income, the value of which depends on the share price on the day the options are transferred to the recipient. This means that the category of income under Section (A) in a Declaration of financial interests should correspond to the remuneration received, regardless of what form the remuneration takes, including stock options or other deferred rights, whether converted into cash or not.

The President decided according to the Advisory Committee's recommendation and a revised Declaration was submitted by the Member to the President on 3 October (within 30 days of receiving the President's decision, discounting the Parliament's recess in August).

2.8 Users' Guide

One of the main tasks of the Advisory Committee is to advise and inform Members on how to use the Code of Conduct to increase transparency, credibility and efficiency. In this work, the Advisory Committee has throughout the year progressively built up a thorough set of practical guidelines based:

- on the substance of the guidance which has been provided to the Members in accordance with Article 7(4) of the Code of Conduct;
- on an alleged breach of the Code of Conduct which has been referred to it by the President;
- on the Advisory Committee's own practice and analysis.

These guidelines have been compiled into a Users' Guide aimed at facilitating the correct interpretation and implementation of the Code of Conduct and the filling in of the Declaration of financial interests.

The User's Guide provides clarifications on several provisions of the Code of Conduct and of the Declaration of financial interests.

The Users' Guide is published on the Europarl website⁸ and published in printed form in all official languages.

3 IMPLEMENTING MEASURES

3.1 The Bureau Working Group on the Code of Conduct for Members

Pursuant to Article 9 of the Code of Conduct, the Bureau shall lay down implementing measures for the Code of Conduct.

On 13 July the President asked Vice-President Wieland (EPP, Germany), as Vice-President responsible for transparency, to submit - together with Vice Presidents Podimata (S&D, Greece), Durant (Greens/EFA, Belgium), Alvaro (ALDE, Germany) and Vlasák (ECR, Czech Republic); Quaestor Maštálka (GUE/NGL, Czech Republic) representing the College of Quaestors - a proposal for a comprehensive set of implementing rules, for the approval of the Bureau.

The Bureau Working Group thus established is considering implementing measures for Article 5(2) and 5(3) and Article 9 of the Code of Conduct, as well as editorial adjustments to the form for the Declaration of financial interests. The Bureau Working Group is expected to have concluded its work in February 2013.

4 LOOKING FORWARD

4.1 Digital Declarations of financial interests

Members currently have to fill in their Declarations of financial interests on paper. The administrative procedures will be improved following the technical development of necessary IT tools. As a first step, Members will only have to fill in the part(s) of the form to be updated. Further technical development is needed for granting Members the possibility to fill in, sign and submit their Declarations entirely electronically. Such technical development is expected to be in place in good time before the European elections in 2014.

4.2 Suggestions on possible improvements to the Code of Conduct

Since the Code of Conduct entered into force on 1 January 2012, the Advisory Committee has gained some experience in the practical application of the Code. Fifty questions from MEPs, a recommendation to the President after his referral and in-depth analysis by the Advisory Committee have highlighted some uncertainties and inconsistencies in the Code itself, as well as with its application.

⁸http://www.europarl.europa.eu/pdf/meps/CoC%20User's%20Guide%20draft4web_EN_def.doc

The Advisory Committee feels obliged to report any problems or potential problems that exist or could emerge, as well as to reflect on possible improvements.

For example, the provisions in **Article 3 on conflicts of interest** states that Members who are unable to resolve such a conflict are obliged to report this in writing to the President. The Advisory Committee needs to be privy to such information, but there is currently no formal mechanism ensuring that such information reaches the Advisory Committee.

Furthermore, Members who have an actual or potential conflict of interest in relation to a matter under consideration, which is not evident from their Declaration of financial interests, are obliged to disclose it in writing or orally to the chair during the parliamentary proceedings in question, before speaking or voting in plenary or in one of Parliament's bodies, or if proposed as a rapporteur. The Advisory Committee needs to be privy to such information, but there is currently no formal mechanism ensuring that such information reaches the Advisory Committee.

The Members' **Declaration of financial interests** in **Article 4** is another area where the Advisory Committee has noted uncertainties and room for improvement.

In particular, **point (b) of Article 4.2** states that Members are obliged to declare any salary they receive for the exercise of a mandate in another parliament. This wording highlights the salary rather than the mandate, the latter of which can however in itself pose an actual or potential conflict of interest, i.e. the detail to declare should firsthand be the mandate rather than the salary as such. Furthermore, a conflict of interest stemming from a mandate could be equally actual or potential if the mandate is held in, for example, a city council, a regional assembly or an appointed upper chamber; some of which may be unremunerated. It is currently not clear to Members who hold such mandates how and where to declare them.

As for the obligation in point (d) of Article **4.2** for Members to declare, inter alia, "*any other relevant outside activity*", it should be noted that not all linguistic versions of the Code include a translation of the word "*relevant*".

Point (e) of Article 4.2 foresees a yearly threshold of EUR 5 000 for the declaration of occasional remunerated activities. This does not correspond with the general principle of regular updates to the Declaration. Furthermore, this threshold should preferably be in line with the threshold laid down in point (a) of Article 4.2 for the declaration of regular occupations or memberships (i.e. EUR 500 a month), as well as with the principles for declaring them. This would lead to an increase of the yearly total to EUR 6 000 and a corresponding introduction of a threshold per occasion of EUR 500. This would be a welcome clarification for the Members concerned.

Recent case practice has shown that the meaning of the word "*holding*" in point (f) of Article **4.2** may not be obvious. This is also highlighted by the varying translations of this word in different linguistic versions of the Code. A more exhaustive definition of the variations this word is meant to represent might therefore be considered.

Also, remuneration for occupations, activities or memberships otherwise declared, can sometimes be in the form of financial instruments. Some of them, particularly those including deferred rights (for example stock options or pension agreements), are not evidently covered either by the word "*holding*", or by a more exhaustive definition. An additional definition would be needed to cover remuneration through such financial instruments.

It could also be considered to remove the two criteria "*potential public policy implications*" and "*significant influence*". A neutral statement of legal and financial facts would give the same information, and facilitate for Members, giving them more clarity and legal certainty.

The current wording of **point (h) of Article 4.2**, according to which Members are obliged to declare any other financial interests which might influence the performance of their duties, excludes all interests that are not financial, but might still influence the performance of the Member's duties, i.e. which could be conflicting according to Article 3 of the Code. It could therefore be considered to bring the wording more in line with the scope of Article 3.

Such an adjusted wording of point (h) of Article 4.2 would make **Section (I)** of the Declaration of financial interests redundant, since the relevant "*any additional information*" Members can give in that Section would already be covered.

The interdiction, foreseen under **Article 4(4)**, for Members to be elected or appointed to official functions within Parliament if they have not submitted their Declarations of financial interests, does not sufficiently take into account situations where Members have submitted a Declaration, but failed in their obligation to make necessary updates within the set deadlines; nor does it take into account situations where Members have submitted incomplete or faulty Declarations of financial interests.

As far as **Article 5(1)** on gifts and similar benefits is concerned, the current wording "*shall refrain from*" might wrongly be perceived as leaving a certain margin of appreciation, rather than being the intended strict prohibition against accepting gifts or similar benefits over EUR 150.

Given that the Advisory Committee was established by the implementation of the Code, the provision of **Article 7(1)** laying down that the Advisory Committee "*is hereby established*" is obsolete. A definition of the tasks and responsibilities of the Advisory Committee might now be considered more purposeful.

As far as guidance on the interpretation and implementation of the provisions of the Code of Conduct is concerned, the current deadline of 30 calendar days laid down in **Article 7(4)** is not in line with the provisions of Article 4(1), which merely foresee a deadline of 30 days - not "*calendar days*" - for the submission and updates of the Declaration of financial interests. A coherent use of the expression - also giving the possibility to take parliamentary recess time into account for the Advisory Committee in the same way as for the Members - might be considered an improvement.

As far as the annual report is concerned, **Article 7(6)** merely states that such a report should be published, without giving any specified addressee. Also, in order to ensure

that the annual report properly reflects the Advisory Committee's work on its tasks and responsibilities pursuant to Article 7(1), these same tasks and responsibilities could be mentioned here.

Regarding the procedure to be followed for the assessment of an alleged breach of the Code of Conduct by a Member, it is unclear, given the current wording of **Article 8(2)**, whether the principle of due process is intended to be upheld. Procedural fairness should be guaranteed and notice and the right to a fair hearing should be accorded to all Members concerned by an alleged breach of the Code. The current formulation does not clearly ensure this. Also, in consequence with the second subparagraph of Article 7(4), it could be considered whether the Advisory Committee should be accorded the opportunity to advise the President on possible action to be taken, other than the recommendation as such.

Lastly, it should be noted that the Code currently does not take into account situations where the President's financial interests or conflicts of interests are concerned. It could be considered to mention an alternative instance in relevant articles referring to the President, in order to avoid situations of actual or potential prejudice by a President.

5 ADMINISTRATION

5.1 Dedicated Website

All information relating to the Code of Conduct and the activities of the Advisory Committee are currently to be found on the Europarl website, on its general page devoted to Members⁹.

At the time of adoption of this report, the Advisory Committee's Secretariat is elaborating a roadmap which could eventually allow for an improvement of the substance, placing, visibility and traceability of transparency-related information on the Europarl website.

5.2 Advisory Committee Secretariat

The Members' Administration Unit (based in Brussels and Luxembourg) in DG Presidency acts as Secretariat to the Advisory Committee.

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⁹ <http://www.europarl.europa.eu/aboutparliament/en/0081ddfaa4/MEPs.html>