

Opinion
of the
Independent Ethical Committee
established
by the European Commission
20 April 2022

Subject: Request for an opinion on the Draft Guidelines for the participation of Members of the European Commission in election campaigns at member state level

On request of the President of the European Commission, the Independent Ethical Committee, composed of Ms Dagmar Roth-Behrendt, Mr Allan Rosas and Mr Heinz Zourek, delivers the present opinion:

Procedure

1. On 10 February 2022, the Secretary-General of the Commission asked the Committee, on behalf of the President of the Commission, to deliver an opinion on the Draft Guidelines for the participation of Members of the European Commission in election campaigns at Member State level.

Legal context

2. Article 10 of the Treaty on European Union provides:
 1. *The functioning of the Union shall be founded on representative democracy.*
 2. *Citizens are directly represented at Union level in the European Parliament. Member States are represented in the European Council by their Heads of State or Government and in the Council by their governments, themselves democratically accountable either to their national Parliaments, or to their citizens.*
 3. *Every citizen shall have the right to participate in the democratic life of the Union. Decisions shall be taken as openly and as closely as possible to the citizen.*
 4. *Political parties at European level contribute to forming European political awareness and to expressing the will of citizens of the Union.*

3. Article 17(3), third paragraph of the Treaty on European Union provides:

In carrying out its responsibilities, the Commission shall be completely independent. Without prejudice to Article 18(2), the members of the Commission shall neither seek nor take instructions from any Government or other institution, body, office or entity. They shall refrain from any action incompatible with their duties or the performance of their tasks.

4. Article 245 of the Treaty on the Functioning of the European Union (TFEU) provides:

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.

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.

5. Article 339 of the Treaty on the Functioning of the European Union (TFEU) provides:

The members of the institutions of the Union, the members of committees, and the officials and other servants of the Union shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

6. Article 2(2), (4) and (5) of the Code of Conduct for the Members of the European Commission (hereafter the ‘Code of Conduct’) provides:

2. Members shall behave and perform their duties with complete independence, integrity, dignity, with loyalty and discretion, in compliance with the rules laid down in the Treaties and as spelled out in this Code of Conduct. They shall observe the highest standards of ethical conduct.

4. Members shall act collegially and assume collective responsibility for any decision taken by the Commission.

5. Members shall respect the dignity of their office and shall not act or express themselves, through whatever medium, in a manner which adversely affects the

public perception of their independence, their integrity or the dignity of their office.

7. Article 5 of the Code of Conduct provides:

1. Members shall comply with the duty of loyalty towards the Commission and discretion in discharging their duties. They shall act and express themselves with the restraint that their office requires.

2. Members shall refrain from disclosing what is said at meetings of the Commission.

3. Without prejudice to the disciplinary provisions applicable to officials and other agents, Members are responsible for the proper handling and any external transmission by members of their Cabinets of classified documents, of sensitive information or of confidential documents submitted to the College for adoption or information.

4. Members shall not make any comment that would call into question a decision taken by the Commission or which may harm the Commission's reputation.

8. Article 6(4) to (6) of the Code of Conduct provides:

4. Members shall not accept any gift with a value of more than EUR 150. 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. In case of doubt as to the value of a gift, an evaluation shall be undertaken under the authority of the Director of the Office of Infrastructure and Logistics in Brussels, whose decision on the matter shall be final. The Commission's Protocol Department shall keep a public register of the gifts handed over in accordance with this paragraph which shall identify the donor.

5. Members shall not accept hospitality, except in accordance with diplomatic and courtesy usage. Attendance upon invitation to any events where Members represent the Commission shall not be considered as hospitality.

6. Members shall notify the President of any decoration, prize or honour awarded to them. Should a prize include a sum of money or valuables, it should be donated to a charity of their choice; valuable objects can also be handed over to the Protocol Department.

9. Article 9 of the Code of Conduct provides:

1. Members may participate in national politics as members of national political parties or an organisation of the social partners (such as trade unions) or in a national election campaign, including regional or local elections, provided that this does not compromise their availability for service in the Commission and the priority given to their Commission duties over party commitment. Participation as members of national political parties or an organisation of the social partners

includes the holding of honorary or non-executive functions in bodies of the party structure, but excludes management responsibilities. Political contacts in the capacity as Member of the Commission remain unaffected.

2. Members shall inform the President of their intention to participate in a national, regional or local election campaign and the role they expect to play in the campaign. If they intend to stand for election or otherwise play an active role in the election campaign, they must withdraw from the work of the Commission for the entire period of active implication and at least for the duration of the campaign. In other instances, the President, taking into account the particular circumstances of the case, shall decide whether the envisaged participation in the election campaign is compatible with the performance of the Member's duties. Members so withdrawing from the work of the Commission shall be granted 'unpaid electoral leave' by the President and may not use the Commission's human or material resources during that period. The President shall duly inform the President of the European Parliament of the granting of this leave and of which Member will take over the relevant responsibilities during the period of leave.

3. Members shall abstain from making public statements or interventions on behalf of any political party or organisation of the social partners of which they are members, except when standing for election/participating in an election campaign in accordance with paragraph (2). This is without prejudice to the right of Members to express their personal opinions. Members so participating in electoral campaigns shall undertake to refrain from adopting a position in the course of the campaign that would not be in line with the duty of confidentiality or infringe the principle of collegiality.

Article 13(1), (2) and (3) of the Code of Conduct provides:

1. The President, assisted by the Independent Ethical Committee, shall ensure the proper application of this Code of Conduct.

2. Members or former Members shall inform the President in a timely manner if they have doubts with regard to the application of this Code before acting on the matter relating to which the doubts arise.

3. In case of an infringement of this Code of Conduct which does not warrant a referral to the Court of Justice in accordance with Article 245 or 247 of the Treaty on the Functioning of the European Union, 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.

Opinion

10. The Committee welcomes the Commission's initiative to provide practical guidance for the participation of Members of the European Commission in national, regional or local elections in Member States of the European Union.
11. The Committee notes that guidelines are important to ensure that the principles of independence, integrity and discretion provided by for Article 245 of the Treaty on the Functioning of the European Union are respected also during election campaigns at Member State level.
12. The Committee advises the following:

General remarks

13. The Committee stresses that political parties, both at European and national level, play an important role in the political and democratic life of the European Union. In this respect, mention should be made of Article 10 of the Treaty on European Union, which expressly recognises the importance of representative democracy, and thus of electoral campaigns, for the functioning of both the Union and the Member States, as well as the role of political parties at European level, which have national parties among their members.
14. The Committee's opinion is based on the Code of Conduct for Members of the European Commission. Article 9(1) of the Code provides that Members may participate in national politics as members of national political parties or in a national election campaign regardless of the Member State in which this participation takes place. However, this participation must not compromise their availability for service in the Commission and the priority given to their Commission duties over party commitment.
15. According to Article 9(2), second sentence, of the Code, Members must temporarily withdraw from the work of the Commission if they stand for election or play otherwise an active role in the campaign. In other instances, the President shall decide whether the envisaged participation in the election campaign is compatible with the performance of a Member's duties.
16. According to Article 9(3) of the Code, the obligation to abstain from making public statements or interventions on behalf of any political party does not apply when Members participate in a campaign, independently of the form of participation.
17. The Committee notes that the Code of Conduct sets thereby the conditions that are applicable when Members of the Commission want to participate in a national election campaign.
18. The Committee stresses that it is important to distinguish between institutional activities as Members of the Commission in the general interest, which cannot serve a specific political party, and political activities in a campaign in support of specific parties, candidates or a manifesto.

19. Therefore, the institutional activities as Members of the Commission and the participation in a campaign need to be separated from each other as clearly as possible. Whereas Members participating in the campaign can support and speak on behalf of a political party, the Commission as an institution – and consequently its Members acting in their institutional capacity – must be impartial and objective with regard to the campaign.
20. The Committee notes that this distinction and its detailed practical consequences, notably with regard to the use of Commission resources, was explicitly clarified for the participation of Members of the Commission in the European election campaign in 2019. The Commission approved ‘Guidelines on Ethical Standards for the Participation of the Members of the European Commission in the Election Campaign’¹ that were based on an opinion of this Committee². These Guidelines gave the necessary guidance to the Members of the Commission in a transparent and consistent manner.

Remarks on specific provisions of the Draft Guidelines

21. In section 2, the chapeau preceding the three bullet points characterises them as criteria for determining whether the Commissioner's participation constitutes an active role or not. These bullet points are formulated more as requirements for a non-active role. The chapeau could be modified as follows: ‘In order to qualify as other, non-active forms of participation, the Member's participation in the election campaign should fulfil the following conditions:’
22. In point 2, at the end of the first bullet point, a new sentence should be added ‘Any absence in any of the above listed commitments is in principle not acceptable’.
23. In point 2, third bullet point, the last sentence should be completed with ‘[... are personal opinions] and the Member should not in his or her appearances use the title of Member of the Commission nor should he or she be introduced in that capacity’.
24. In point 3, third paragraph, a new sentence should be added ‘Any activity of the Member of the Commission relating to the election campaign must be covered by an authorisation of the President. This is a condition for starting any campaign activity’.
25. In point 4, under 'Hospitality', first paragraph, second sentence, the Committee considers that Commissioners on leave due to their active role in the campaign cannot 'represent the Commission' at events. The sentence, which is a quote of Article 6(5) of the Code, can be misunderstood in this context and should therefore be deleted.
26. Under point 4, c) the Committee proposes the insertion of a separate subpoint concerning the staff (or alternatively combine this with the item entitled ‘Use of

¹ https://ec.europa.eu/info/sites/info/files/guidelines_election_campaign_en.pdf.

² https://ec.europa.eu/info/sites/info/files/opinion_draft-guidelines_participation-of-members-in-the-campaign-ep-elections_en.pdf.

Commission's resources.' The addition might read: 'No Commission staff should in any way be involved or contribute to the Member's participation in the election campaign, including by drafting speeches or documents or helping with the organisation of travel or appearances.' When staff of the Cabinet of the Commissioner concerned is informed about the unpaid leave of the Commissioner, they should be explicitly informed about this obligation.

27. In point 4, c), although the Committee understands that the chapeau is a list of examples of Articles from the Treaty on European Union, the Treaty on the Functioning of the European Union and the Code of Conduct, it suggests adding the other relevant Articles of the Code of Conduct, such as Article 13(1) and (3).
28. In point 5, c), the following sentence should be added at the end of the paragraph; 'Any violation of these obligations will entail the transfer of the Member from the procedure in case of a non-active role to that of an active role.'
29. In point 5, d), the first sentence relating to staff should be reworded and strengthened in line with the point 26 of this opinion.
30. In point 5, e), in the first paragraph, the Committee considers that it should be clarified that the Member campaigning for a political party or a candidate should not be primarily presented as Member of the European Commission, but as a private person, most likely in relation to his previous political functions before becoming a Member of the Commission.

Dagmar Roth-Behrendt

Allan Rosas

Heinz Zourek