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**COMMUNICATION FROM THE PRESIDENT TO THE COMMISSION**

**Guidelines on ethical standards for the participation of the Members of the European Commission in the election campaign to the European Parliament**

# COMMUNICATION FROM THE PRESIDENT TO THE COMMISSION

## Guidelines on ethical standards for the participation of the Members of the European Commission in the election campaign to the European Parliament

### 1. Introduction

Since 2018, Members of the Commission are allowed to actively participate in the election campaign to the European Parliament without having to temporarily withdraw from the Commission for the campaign period. This results from Article 10 of the new Code of Conduct for the Members of the European Commission adopted in 2018. This approach had received the support of the European Parliament. Indeed, active participation of the Members of the Commission in the campaign is one way to strengthen the democratic debate on the policies to be pursued in the general interest of the European Union.

Article 10 of the Treaty on European Union expressly recognises the importance of representative democracy for the functioning of the Union. It also recognises the role of political parties at European level in forming European political awareness and expressing the will of citizens of the Union.

In line with the agreement of the European Parliament and the Commission of 7 February 2018 to amend point 4 of the Framework Agreement on relations between the European Parliament and the European Commission <sup>(1)</sup>, the Code of Conduct for the Members of the Commission adopted in 2018 <sup>(2)</sup> (hereinafter 'the Code of Conduct') explicitly provides for such active participation in Article 10(2).

Against this background, on 6 February 2019, the European Commission issued Guidelines on ethical standards for the Members of the Commission who intended to campaign for the European Parliament elections in May 2019. <sup>(3)</sup>

Members of the Commission were henceforth authorised to be chosen by a European political party as (1) a lead candidate ('*Spitzenkandidat*') for the position of President of the Commission; (2) stand as a candidate for the European Parliament; and/or (3) support candidates, a party or a manifesto without having to temporarily withdraw from their duties as Members of the institution.

Unless specified otherwise, the Guidelines applied to all three types of situations. They sought to facilitate the combination of the Members' duties under the Treaties with their active participation in the European elections. It was understood that the application of the Guidelines and the combination of activities should be guided by the principles of proportionality, the rule of reason and common sense.

The scope of the Guidelines adopted in 2019 was limited to the specific election campaign in 2019. Consequently, the Guidelines have to be renewed. Unlike the previous version of the Guidelines, the scope of the present Guidelines is not limited in time and should cover both the 2024 and any future European election campaign until the Guidelines are revised.

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<sup>(1)</sup> OJ L 45, 17.2.2018, p. 46.

<sup>(2)</sup> Code of Conduct for the Members of the Commission (C (2018)700), OJ C 65, 21.2.2018, p. 7.

<sup>(3)</sup> The adoption followed a consultation of the Commission's Independent Ethical Committee on the draft guidelines. The Committee issued its opinion on 26 October 2018. The opinion has been published: [https://commission.europa.eu/system/files/2019-02/opinion\\_draft-guidelines\\_participation-of-members-in-the-campaign-ep-elections\\_en.pdf](https://commission.europa.eu/system/files/2019-02/opinion_draft-guidelines_participation-of-members-in-the-campaign-ep-elections_en.pdf).

## **2. Clear distinction between a Member's participation in the campaign and a Member's institutional activities**

The institutional activities and duties as Members of the Commission and the allowed participation in the campaign need to be combined in a reasonable manner during this period. In order to ensure the respect of the principles of independence, integrity and discretion provided for by Article 245 of the Treaty on the Functioning of the European Union and the Code of Conduct, both roles need to be distinguished 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 – have to be impartial and objective with regard to the campaign. The Commission provides information, promotes common European values as laid down in the Treaties, supports the Parliament's institutional campaign for making use of the right to vote in the European elections, defends current policies and explains future challenges. However, it cannot promote a specific political party or specific candidates, including Members who stand as a candidate.

### *Continuing obligations*

The obligations as Members of the Commission as they result notably from Article 17(3) of the Treaty on European Union and Articles 245 and 339 of the Treaty on the Functioning of the European Union continue to apply during this period in order to ensure the proper functioning of the Commission during the campaign and to guarantee institutional continuity.

For these reasons, it is important to establish guidance that aims at a coherent implementation of all provisions of the Code of Conduct during the election campaign and responds to the commitment made in the above-mentioned Framework Agreement to ensure the respect of the principles of independence, integrity and discretion.

## **3. The election process**

### *Applicability of the Guidelines*

The present Guidelines apply to the entire European election campaign up to and including the last day of the elections. Their applicability does not depend on any other national or European rule establishing official campaign periods.

Unless specified otherwise, the Guidelines apply to all three types of participation in the campaign (lead candidate; candidate; support of candidates, a party or a manifesto).

### *National and European legislation on the rules for the election campaign*

National and European legislation on campaign rules for the elections to the European Parliament apply. Members participating in the campaign are advised to make the necessary arrangements with their parties or campaign organisations in order to abide by these rules.

## **4. Ethical standards for the participation of Members in the campaign**

### **a) Participation of Members in the campaign**

Members can participate in the campaign as

- candidate for the European Parliament,
- lead candidate for the position of President of the Commission or
- as representative of a political party without being a candidate (Article 10(2) of the Code of Conduct).

They can also support a political party, a manifesto or a candidate.

These activities must be clearly distinguished from their institutional activities as Members of the Commission.

#### **b) Information of the President**

Members shall inform the President in writing of their intention to participate in the European election campaign and of the role they expect to play in the campaign (Article 10(3) of the Code of Conduct). They shall do so as soon as the role they can reasonably expect to play in the campaign has been clarified. They shall not engage in any campaign activity before the President has been informed.

In addition, once Members have been formally nominated as candidate or lead candidate by their party, they must inform the President immediately. Any change of that role in the course of the campaign shall also be communicated to the President.

This can require information of the President at several stages of the pre-election process.

If the President has the intention to participate in the election campaign, the President informs the College.

#### **c) Declaration of interests**

Members who have been formally nominated as candidate for the European Parliament or lead candidate (*'Spitzenkandidat'*) for the position of President of the Commission shall immediately update Section V of their Declaration of interests (Article 3 of the Code of Conduct).

#### **d) Availability for the performance of duties**

Members participating in the campaign must ensure institutional continuity and make arrangements for the continued performance of their duties. This concerns in particular the participation in the decision-making process of the Commission, notably regular attendance of the weekly meeting of the College, the attendance of the plenary sessions and relevant committee meetings of the European Parliament, meetings of the Council formations, the exercise of portfolio duties such as participation in *trilogue* meetings or the exercise of empowerments and regular meetings with the Directorates-General reporting to the Member and the external representation of the Commission whenever necessary.

#### **e) Use of Commission resources**

Members participating in the campaign may not use the Commission's human or material resources for activities linked to the campaign (Article 10(5) of the Code of Conduct). This means in particular:

##### *Staff*

Members cannot rely upon staff of the Commission services or their Cabinets for any activities linked to the campaign, notably for drafting speeches or documents, or helping with the organisation of travel or appearances. This is without prejudice to the possibility to revert to staff at any moment in time for the exercise of a Member's institutional duties. The present Guidelines do also not affect the security arrangements required for the protection of a Member.

The staff of the Cabinet of the Commissioner should be reminded of these rules in timely manner.

##### *Travel*

Travel of a Member of the Commission in relation to a participation in a campaign activity, including in particular public campaign events or other dedicated public appearances as a candidate cannot be considered as a mission and cannot be reimbursed by the Commission. The related costs do not need to be published under Article 6(2) of the Code of Conduct.

Members cannot rely on a Commission Representation or EU Delegation for organising travel for the purpose of the campaign or to support campaign activities.

Expenses incurred for campaign travel may be covered by third parties (usually the national or European political party of the Member) in line with the applicable legislation on campaign rules in the Member State concerned and Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations <sup>(4)</sup>.

#### **f) Public statements and interventions in the campaign**

As participants in the campaign, Members can make public statements or interventions on behalf of any political party of which they are members (Article 10(6) of the Code of Conduct).

However, it must be clear that such statements made by Members are personal opinions and not statements in their institutional capacity. Members should not use, in their appearances, the title of Member of the Commission or the Commission's visual identity in a way which could create a perception of institutional support by the Commission or one of its Members to the election campaign.

Members should ensure that a distinction can be made between their public statements and interventions as participants in the campaign and those made in an institutional capacity.

While participating in the campaign, Members shall bear in mind their obligations of independence, integrity, dignity, loyalty and discretion as Members of the Commission (Articles 2(2) and 2(5) of the Code of Conduct).

In particular, they 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 10(6), last sentence, of the Code of Conduct). They shall notably not criticise or dissociate themselves from decisions or positions taken by the Commission.

#### **g) Social media and websites**

##### *Social media*

In general, Members can speak on behalf of the Commission on social media. When they do so, they can use the Commission's visual identity for their respective social media accounts, and their accounts are usually managed, or co-managed, by Commission staff.

They also have a right to express their personal opinions on social media, a right which is explicitly recognised in the Code of Conduct (Article 10(6), second sentence).

Normally, Members cannot speak on behalf of a political party. However, this is different when they stand for election or participate otherwise in an election campaign. In this case, the Code of Conduct allows them to make public statements or interventions on behalf of a party (Article 10(6), first sentence). During the campaign, the above-mentioned distinction between institutional activities of a Member and the participation in the campaign as well as the prohibition to use human or material resources of the Commission for the campaign, also apply to Members' use of social media.

In order to ensure this clear distinction and despite the personal link between the account and the Member as a person, Members who stand as candidates or participate otherwise in a campaign and wish to use social media for their campaign participation shall create a separate account for the purpose of the campaign and for any statement or intervention on behalf of a party or a candidate. Commission resources cannot be involved in the management of the campaign-related account or campaign-related messages.

For reasons of clarity and transparency, Members can clarify in the title, introduction, biography, description or profile of their account, or via a dedicated message, that the account is used for

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<sup>(4)</sup> OJ L 317, 4.11.2014, p.1.

communications as Member of the Commission and that there is a separate account for their participation in the campaign. This allows users to follow or unfollow the account they wish.

This shall apply as soon as Members actually use their account for the campaign.

### *Websites*

Members cannot use their Commission website for the purposes of the campaign. The same principles as for social media accounts apply.

### **h) Meetings with interest representatives**

In line with the distinction to be made between Members' campaign and institutional activities and the prohibition to use Commission resources, campaign meetings cannot take place in the Commission premises.

While meetings of Members as lead candidate, as candidate or as representative of a party in the framework of the campaign do formally not fall under the obligations of Article 7 of the Code of Conduct, this must not lead to a circumvention of these obligations.

Therefore, Members should apply Article 7 of the Code of Conduct whenever a meeting has the 'objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions' in relation to their current mandate.

If a meeting combines both campaign and institutional issues, or in case of doubt about the character of a meeting, Members shall only meet organisations and self-employed individuals which are registered, inasmuch as they fall under the scope of the Transparency Register and publish such meetings on the Member's website.

In general, the Commission encourages Members participating in the campaign as candidates to apply similar transparency standards for their campaign-related meetings with organisations and self-employed individuals.

### **i) Gifts**

Members cannot accept any gift with a value of more than EUR 150 either in their campaign or in their institutional activities.

When they receive gifts worth more than this amount in relation to their campaign activities, they shall:

- either hand it over to their party or campaign organisation in line with the applicable legislation on campaign rules in the Member State concerned and Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations <sup>(5)</sup>;
- or hand them over to the Commission's Protocol Department in line with Article 6(4) of the Code of Conduct.

In case of doubt as to the value of the gift, they shall ask for an evaluation in line with Article 6(4) of the Code of Conduct.

These Guidelines are without prejudice to any more specific provisions in legislation on campaign rules in the Member State concerned.

If the acceptance of a gift by a Member or its handing over to the party or campaign organisation could lead to a conflict of interest under Article 2(6) of the Code of Conduct, the procedure for conflicts of interest foreseen in Article 4 of the Code must be followed (recusal from a file; information of the President).

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<sup>(5)</sup> OJ L 317, 4.11.2014, p.1.

## **j) Hospitality**

Members cannot accept hospitality, except in accordance with diplomatic or courtesy usage (Article 6(5) of the Code of Conduct). Attendance upon invitation to any events where they represent their party shall not be considered as hospitality.

This applies without prejudice to the applicable legislation on campaign rules in the Member State concerned and Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations <sup>(6)</sup>.

If the acceptance of hospitality including attendance upon invitation to an event where they represent their party, could lead to a conflict of interest under Article 2(6) of the Code of Conduct, the procedure for conflicts of interest foreseen in Article 4 of the Code of Conduct must be followed (recusal from a file; information of the President).

## **k) Financial or material support to the campaign of a Member by third parties**

Any offer of financial or material support to the campaign must be referred to the party or campaign organisation.

The financial or material support for the campaign and the personal, notably financial, interests of a Member who participates in the campaign must be strictly separated.

This applies without prejudice to the applicable legislation on campaign rules in the Member State concerned and Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations <sup>(7)</sup>.

If the acceptance of financial or material support to the campaign by the Member's party or campaign organisation could lead to a conflict of interest of the Member under Article 2(6) of the Code of Conduct, the procedure for conflicts of interest foreseen in Article 4 of the Code of Conduct must be followed (recusal from a file; information of the President).

## **l) Conflicts of interest related to campaign activities**

The participation in a campaign to seek election or re-election from the citizens is an intrinsic part of the institutional cycle in a democracy. Neither the participation in a campaign nor the expression of a political view as such results in a conflict of interest.

However, there might be situations where the involvement of a Member in a specific file may give rise to a conflict of interest or might be reasonably perceived as a conflict of interest in the meaning of Article 2(6) of the Code of Conduct. This might notably be the case in formal administrative procedures which require full impartiality or in particularly sensitive dealings of the Commission with third parties where a Member who stands at the same time as candidate could be perceived as privileging the pursuit of personal interests as a candidate over the general interest of the Union.

In particular, Members participating in the campaign as candidates must carefully consider to which extent their participation in the campaign could be reasonably perceived as leading to a situation where their personal interest as candidate may influence the independent performance of their duties.

In such cases, Articles 4 and 13(2) of the Code of Conduct apply. Members shall inform the President of any such situation or in case of doubt. The President shall take any measure he or she considers appropriate.

## **m) Information of the President in case of doubts and infringements**

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<sup>(6)</sup> OJ L 317, 4.11.2014, p.1.

<sup>(7)</sup> OJ L 317, 4.11.2014, p.1.

Members shall inform the President and ask for his or her guidance if they have doubts with regard to the application of the Code of Conduct and these Guidelines before acting on the matter. (Article 13(2) of the Code of Conduct).

Articles 245 and 247 of the Treaty on the Functioning of the European Union, and Article 13(3) of the Code of Conduct apply in case of infringements of a Member's obligations under the Treaties and the Code of Conduct.

## **5. Commission's institutional activities in relation to the European elections**

Section 4 does not apply to any form of activities of Members as representatives of the Commission. Such activities are part of the institutional function as Member of the Commission and are defined by European Union law.

Accordingly, Members can engage, as part of their official duties, in activities designed to inform and raise awareness of European issues, encourage citizens to use their right to vote, and to present a positive and active defence of the Commission's record and that of the other institutions over the last Parliamentary term. The Members of the Commission can also challenge the programmes of political groups if they undermine the work of the Commission or the other institutions. <sup>(8)</sup>

### *Impartiality*

Institutional activities as Members of the Commission require impartiality with regard to specific candidates, parties and their programmes, and must not promote an individual candidate or a party.

### *Citizens' dialogues and other events organised by the Commission*

Members may continue to participate in Citizens' dialogues and other events organised by or on behalf of the Commission in their institutional function to discuss general EU issues or portfolio related subjects. They should however evaluate the circumstances of each event and take into account the context in the Member State, e.g. if such participation could be reasonably perceived as inappropriate during the official campaign period in a given Member State, notably if the Member participates actively in the campaign. Members must pay attention to respect the institutional character of such events which must not constitute a campaign event.

When events are specifically organised by or on behalf of the Commission in order to provide a public platform to candidates and parties in the election campaign, they must not privilege a Member who stands as a candidate compared to other candidates (e.g. by ensuring a representative composition of panels of parties or candidates).

## **6. Information of the European Parliament**

The President shall inform the European Parliament in due time whether one or more Members will stand as candidates in electoral campaigns for elections to the European Parliament, as well as of the measures taken to ensure the respect of the principles of independence, integrity and discretion provided by Article 245 of the Treaty on the Functioning of the European Union and this Code of Conduct (Article 10(4) of the Code of Conduct and Point 4 of the Framework Agreement on relations between the European Parliament and the European Commission).

## **7. Contact**

In case of questions related to these Guidelines, Members and their Cabinets can turn to the President or the Secretary-General.

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<sup>(8)</sup> See Communication from the President to the Commission of 2 April 2014 on Commission participation and participation by Members of the Commission in the forthcoming European elections, SEC(2014)193.