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**ANNUAL REPORT ON THE APPLICATION
OF THE CODE OF CONDUCT FOR THE MEMBERS OF THE EUROPEAN COMMISSION IN
2019**

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Introduction

The Code of Conduct for the Members of the Commission¹ was adopted by the Commission on 31 January 2018. It replaced the previous Code, reinforced the rules in several areas, such as the rules on the handling of conflicts of interest, and set rules in areas which were previously not included in the Code, like provisions on meetings with interest representatives or the publication of mission costs.

Article 13(4) of the Code provides that the Commission should publish annually a report on its application. This is the second annual report on the application of the new Code and covers the year 2019².

2019 was the year of elections to the European Parliament, the last year of the Commission which took office in 2014 under President Juncker and the year of the entry into office of a new Commission under President von der Leyen. The Code plays an important role in transitions, as it sets out rules and ethical standards in areas like the participation of Members of the Commission in the election campaign, the declarations of interest of new Members of the Commission and the assessment of post term of office activities envisaged by former Members of the Commission.

The report also covers the activities of the Commission's Independent Ethical Committee in 2019.

¹ Official Journal C 65 of 21.02.2018, page 7: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:C:2018:065:TOC>.

² The Commission took note of the First Annual Report on the application of the Code of Conduct for the Members of the Commission on 25 June 2019 (SEC(2019) 266).

1. IMPLEMENTATION OF THE CODE OF CONDUCT FOR THE MEMBERS OF THE COMMISSION – GENERAL ISSUES

1.1. Update of the declarations of interests of the Members of the Commission during the term of office of President Juncker

In accordance with Article 3(3) of the Code, the Members of the Commission re-submitted their declarations of interests in the beginning of 2019. As set out in Article 4(2) of the Code, the declarations were subsequently scrutinised by the Secretariat-General under the authority of the President in view of their completeness and in view of the compatibility of the declared information with the provisions of the Code. After the completion of this scrutiny, on 15 March 2019, the Secretariat-General published the declarations in an electronic format on the respective website of each Member and in a machine-readable format on the website dedicated to the Code of Conduct. This corresponds to the publication requirements set out in Article 3(5) of the Code. Due to changes in their situation, several Members updated their declarations in the course of the year in line with Article 3(3) of the Code. The same scrutiny and publication procedures applied.

1.2. Participation of the Members of the Commission in the European election campaign – Guidelines and participants

Article 10 of the Code states that the Members of the Commission may participate in campaigns for the elections to the European Parliament, including as candidates, and that they must inform the President of the Commission of the role they expect to play in the campaign. Article 10 does not require anymore the temporary withdrawal of Members of the Commission from the performance of their duties if they stand as candidate or play a similarly active role in the European election campaign.

Members of the Commission may be chosen by a European political party as a lead candidate (“Spitzenkandidat”) for the position of President of the Commission; stand as a candidate for the European Parliament; or support candidates, a party or a manifesto without having to temporarily withdraw from their duties as Members of the institution.

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

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. It also mirrors the fact that all Members of the Commission are empowered to actively take full political ownership and responsibility for the decisions of the Commission, by being politically active in the Member States through dialogues with citizens, by presenting and communicating the Commission agenda, by listening to ideas and by engaging with stakeholders.

At the same time, the primary obligations of Members of the Commission to perform their institutional duties and ensure institutional continuity continue to apply during the election campaign. Therefore, a clear distinction between a Member's participation in the campaign and a Member's institutional activities is necessary in order to ensure the respect of the institutional principles of independence, integrity and discretion provided for by Article 17(3) of the Treaty on the European Union, Article 245 of the Treaty on the Functioning of the European Union and the Code of Conduct.

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 – has to be impartial and objective with regard to a campaign. The Commission as an institution merely provides information, promotes common European values as laid down in the Treaties, supports the European Parliament's institutional campaign for making use of the right to vote in the elections, defends its current policies and explains future challenges. However, it cannot promote a specific political party or specific candidates, including Members who stand as a candidate.

Therefore, the Commission issued Guidelines on ethical standards for the Members of the Commission who campaigned for the European Parliament elections in May 2019³. The Members of the Commission discussed the Guidelines on 9 January 2019 and unanimously endorsed them on 6 February 2019⁴. The Commission made these Guidelines public on its website dedicated to the Code of Conduct⁵.

The Guidelines were based on an opinion of the Independent Ethical Committee issued on 26 October 2018 upon request of the President. The Commission made the Committee's opinion public⁶.

³ C(2019) 990.

⁴ <https://ec.europa.eu/transparency/regdoc/rep/10061/2019/EN/PV-2019-2282-F1-EN-MAIN-PART-1.PDF>.

⁵ https://ec.europa.eu/info/sites/info/files/guidelines_election_campaign_en.pdf.

⁶ https://ec.europa.eu/info/sites/info/files/opinion_draft-guidelines_participation-of-members-in-the-campaign-ep-elections_en.pdf.

The following Members of the Commission participated in the election campaign in 2019:

First Vice-President Timmermans, Vice-Presidents Ansip and Dombrovskis as well as Commissioners Crețu, Gabriel and Thyssen participated in the European election campaign as candidates. The First Vice-President was notably the lead candidate for the Party of European Socialists, his European political party.

Vice-Presidents Katainen and Šefčovič, Commissioners Arias Cañete, Avramopoulos, Bulc, Hogan, Malmström, Moedas, Oettinger, Stylianides, Vella and Vestager participated in the campaign not as candidates, but in support of their respective political parties, their candidates or manifesto.

1.3. Participation of the Members of the Commission in national election campaigns

Article 9 of the Code foresees that the Members of the Commission may also participate in a national, regional or local election campaign, yet noting that they must provisionally withdraw from the work of the Commission if they intend to stand for election or play otherwise an active role in the election campaign. Here, it has to be distinguished between being a candidate and playing an active campaign role, which is similar to being a candidate on the one hand and a less significant participation with only occasional involvement in the campaign on the other hand. The latter can be compatible with the performance of a Member's duties.

With regard to elections in a Member State in 2019, two participations should be highlighted:

Vice-President Šefčovič participated in both rounds of the presidential election in Slovakia and withdrew from the work of the Commission from 1 February to 31 March 2019. His responsibilities for 'Energy Union' were temporarily transferred by President Juncker to Commissioner Arias Cañete.

Commissioner Andriukaitis participated in the first round of the presidential election in Lithuania and withdrew from the work of the Commission from 1 April to 13 May 2019. His responsibilities for 'Health and Food Safety' were temporarily transferred by President Juncker to Vice-President Katainen.

1.4. Transparency of mission expenses

In order to enhance transparency regarding missions (i.e. official/business trips) conducted by Members of the Commission, Article 6(2) of the new Code states that 'the Commission will publish an overview of mission expenses per Member every two months, covering all missions undertaken unless publication of this information would undermine the protection of the public interest as regards public security, defence and military matters, international relations, or the financial, monetary or economic policy of the Union or a Member State'.

In 2019, the Commission published the costs for 1247 missions. The publication via the so-called ATMOS application provides transparency both on the costs and the purpose of the respective missions. A link towards the relevant information can be found on each Commissioner's respective website.

1.5. Transparency on meetings held with representatives of interests

Transparency is a core element of a democratic Union that has the trust and support of citizens. The commitment to openness has been a strong feature during the term of the former College 2014-2019 and is again a priority in the Political Guidelines of President von der Leyen for the period 2019-2024. Negotiations between the European Parliament, the Council and the Commission on a Proposal for an Interinstitutional Agreement on a mandatory Transparency Register covering the European Parliament, the European Commission and, for the first time, the Council of the EU continued in 2019.

Article 7(1) of the Code provides that Members and their members of Cabinet shall meet only those organisations or self-employed individuals, which are registered in the Transparency Register established pursuant to the current Interinstitutional Agreement on this matter between the European Parliament and the Commission inasmuch as they fall under its scope. In line with Article 7(2) of the Code, the Commission continued to publish on the Europa website information on the meetings of Commissioners and members of their Cabinets (as well as Directors-General) with interest representatives that are registered on the Transparency Register. The information is accessible via the respective websites of the Members of the Commission.

1.6. Update of the website

In 2019, the European Commission's webpages related to 'Commissioners and Ethics'⁷ were updated and made more easily accessible via a new portal on 'Ethics and Good Administration'⁸.

It contains three sections: 'Code of Conduct for the Members of the European Commission'; 'The Independent Ethical Committee' and 'Former European Commissioners' authorised occupations'. In the last section, all Commission decisions on post term of office activities of former Members were published, alongside the corresponding opinions of the Independent Ethical Committee, in accordance with Article 11(7) of the Code.

2. OUTGOING COMMISSION UNDER PRESIDENT JUNCKER

2.1. Early end of the term of office of two Members

Two Members of the Commission left the Commission to take up a seat in the European Parliament after the elections in 2019, Vice-President Ansip and Commissioner Crețu. In accordance with Article 246, second paragraph, of the Treaty on the Functioning of the European Union, the Council consulted the European Parliament on its intention to appoint two successors, by common accord with the President of the Commission, as Members of the European Commission. Both Commissioners-designate prepared declarations of interests, which were sent to the European Parliament in view of its consultation. In the end, the two Members who had left the Commission were not replaced.

2.2. Information on ethical obligations after the end of the mandate

The Secretariat-General provided individual information to the Members of the Commission on their ethical obligations, which continue to apply after the end of their term of office.

This information covered notably the obligations in relation to new professional activities after the term of office and the importance to treat any contacts with regard to possible future activities while still in office with utmost caution and restraint in order to avoid any perception of conflict of interest.

Moreover, the Commission issued an Ethics Guide in 2019, which contained all the rules and legal texts applicable to Members and Commission staff.

⁷ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration/commissioners-and-ethics_en.

⁸ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration_en.

2.3. Post term of office activities of Members of the Commission and corresponding Commission decisions

Article 11 of the Code provides that former Members' envisaged post term of office activities must be notified to the Commission so that the Commission can take a decision on their compatibility with Article 245(2) of the Treaty on the Functioning of the European Union. Members can seek advice from the Secretariat-General on the application of the Code to possible activities on which they reflect. In 2019, the Commission adopted ten decisions on post term of office activities. The decisions concerned the position of President of the Finnish Innovation Fund – SITRA (Former Vice-President Katainen), a position in the Board of Trustees of the Gulbenkian Foundation (Former Commissioner Moedas), one in an Advisory Board within UNESCO (Former Commissioner Moedas) and one in the Board of Directors of 'Notre Europe/Institut Jacques Delors' (Former Commissioner Moedas). The remaining activities approved were academic activities (Former High Representative/Vice-President Mogherini as well as Former Commissioners Moscovici, Stylianides, Navracsics and Moedas).

All decisions and the related opinions of the Independent Ethical Committee, where such opinions were necessary or sought by the President, were published as set out in Article 11(7) of the Code⁹.

3. INCOMING COMMISSION UNDER PRESIDENT VON DER LEYEN

3.1. Ethics as core principle of the new Commission

President von der Leyen stressed already in her 'Political Guidelines for the next European Commission 2019 – 2024' that the institutions should be open and beyond reproach on ethics, transparency and integrity¹⁰. The President also expressed her explicit support for the creation of an independent ethics body common to all EU institutions and her commitment to engage and work closely with the other institutions to make this happen.

In her Mission letters to the Members of the Commission, the President stated: 'A stronger relationship with citizens starts with building trust and confidence. I will insist on the highest levels of transparency and ethics for the College as a whole.'

⁹ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration/commissioners-and-ethics/former-european-commissioners-authorized-occupations_en.

¹⁰ https://ec.europa.eu/info/sites/info/files/political-guidelines-next-commission_en_0.pdf.

There can be no room for doubt about our behaviour or our integrity. The Code of Conduct for Commissioners sets out the standards and the rules to follow.’

In the Working Methods of the new Commission¹¹, President von der Leyen emphasised that she wants a Commission whose internal functioning is based on the principles of collegiality and good governance: with clear roles and responsibilities, a strong commitment to performance management and compliance with the legal framework, clear accountability mechanisms, a high quality and evidence-based regulatory framework, openness and transparency, and high standards of ethical behaviour. The Working Methods also clarify that each Member of the College must ensure compliance with the Code of Conduct for the Members of the Commission and with the rules governing meetings, publication of these meetings and access to documents. Moreover, for the first time, Members had to designate in their Cabinets a person as ‘ethics & transparency contact point’.

3.2. Declarations of interests

The candidate for President and the Commissioners-designate submitted their declarations of interests to the European Parliament in line with Article 3(2) of the Code in order to allow the Parliament to examine the declarations. The declarations were published by the European Parliament on its website dedicated to the hearings¹². The internal procedure followed by the Parliament for the approval of a new Commission, including the examination of the submitted declarations, is laid down in Rules 124 and 125 as well as Annex VII of its Rules of Procedure¹³.

After the Commission took office on 1 December 2019, all Members updated their declarations. As set out in Article 4(2) of the Code, the declarations were subsequently scrutinised by the Secretariat-General under the authority of the President in view of their completeness and in view of the compatibility of the declared information with the provisions of the Code and the commitments made by the designated Members in front of the European Parliament. After the completion of this scrutiny, the Secretariat-General published the declarations in an electronic format on the respective website of each Member and in a machine-readable format on the website dedicated to the Code of Conduct on 26 February 2020. This corresponds to the publication requirements set out in Article 3(5) of the Code.

The declarations of interests were prepared by using a new, more user-friendly electronic form.

¹¹ Communication from the President to the Commission - The Working Methods of the Commission (P(2019) 2) of 1 December 2019, <https://ec.europa.eu/info/sites/info/files/working-methods.pdf>.

¹² <https://www.europarl.europa.eu/news/en/hearings2019/commission-hearings-2019>.

¹³ https://www.europarl.europa.eu/doceo/document/lastrules/TOC_EN.html?redirect#GAX7.

3.3. Information on the Code of Conduct

All designated Members of the Commission received information on the Code of Conduct and the declarations of interests in view of the appointment procedure and the hearings in the European Parliament.

All Members received information about the ethical obligations of Members of the Commission under the Treaties, the Code of Conduct and have a designated contact point in the Secretariat-General in case of questions in this regard.

Similar information was provided to the staff in the Cabinets of Members in order to underline their role in supporting Members to respect and fulfil their obligations on a daily basis. In addition to this, on 6 December 2019, a seminar was organised for all staff members in the Cabinets. Several institutional matters were covered in this seminar, including the ethical obligations of Members of the Commission and the role of Cabinets in supporting them. Further trainings on ethics were offered to Cabinets in early 2020.

4. INDEPENDENT ETHICAL COMMITTEE

Article 12 of the Code established an Independent Ethical Committee which, upon request of the President, advises the Commission on any ethical question related to the Code and provides general recommendations to the Commission on ethical issues relevant under the Code. According to Article 11(3) of the Code, the Committee has to be consulted on post term of office activities if the planned activity is related to the portfolio of the former Member.

Article 13 provides that the annual report on the application of the Code shall include the work of the Independent Ethical Committee.

4.1. Appointment of the members of the Committee

In view of the expiry, on 12 July 2019, of the mandate of the members of the Independent Ethical Committee, the Commission adopted, on 25 June 2019, a decision reappointing Ms Dagmar Roth-Behrendt, former member of the European Parliament, Mr Christiaan Timmermans, former judge at the European Court of Justice, and Mr Heinz Zourek, former Director-General in the Commission services, as members of the Committee.

On 2 October 2019, the Commission appointed Mr Allan Rosas, also a former judge at the European Court of Justice, to replace Mr Timmermans, with effect of 7 October 2019. Mr Timmermans had previously informed the Commission that he would step down in view of other professional obligations. President Juncker thanked Mr Timmermans for his services and commitment.

The composition of the Committee reflects experiences in different institutions or functions as required under Article 12(4) of the Code. Members were chosen in line with the criteria set out in Article 12(4) of the Code, namely their competence, experience, independence, professional qualities, impeccable record of professional behaviour as well as experience in high-level functions in European, national or international institutions.

The decisions and information about the members of the Committee have been published¹⁴.

4.2. Opinions delivered

The Committee adopted an opinion on 17 June 2019 on Vice-President Katainen's application for the position of President of the Finnish Innovation Fund SITRA. After Vice-President Katainen had been appointed to this position, the Committee confirmed its opinion on the compatibility of this position with Article 245 of Treaty on the Functioning of the EU on 2 October 2019.

On 27 November 2019, the Committee issued an opinion on Commissioner Moedas' envisaged activity as Member of the Board of Trustees of the Gulbenkian Foundation.

On 23 December 2019, the Committee issued an opinion on Former Commissioner Thyssen's envisaged post term of office activity as Chair of the Board of Trustees and of the Board of Governors of the University of Leuven (Katholieke Universiteit Leuven). The Commission took a decision on this activity on 5 February 2020.

All opinions have been published¹⁵ (cf. above section 2.3).

¹⁴ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration/commissioners-and-ethics/independent-ethical-committee_en.

¹⁵ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration/commissioners-and-ethics/former-european-commissioners-authorized-occupations_en.