

Conference of Committee Chairs  
The Chair

D 318014 22.11.2017

Mr Antonio TAJANI  
President of the  
European Parliament

Geda ref: D(2017)45062

Dear President,

Thank you for your letter of 24 October 2017 inviting the Conference of Committee Chairs to consider the draft Commission decision on a revised Code of Conduct for the Members of the European Commission and to report back to the Conference of Presidents.

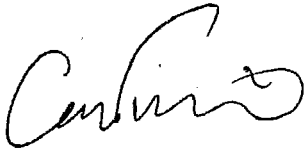
At its meeting on 14 November 2017, the Conference of Committee Chairs had the opportunity to discuss the matter at hand, and, in light of the written contributions submitted by the CONT, JURI and AFCE Committees annexed to this letter, welcomed the revised Code of Conduct for Commissioners which, overall, compared to the current Code of 2011, constitutes a substantial improvement bringing the Code of Conduct to higher standards, notably by taking into account a number of issues raised by Parliament.

Members of the Conference of Committee Chairs emphasised the general improvements regarding transparency, standards of independence, discretion, integrity, ethics and the Commissioners' participation in political activities. However, during the exchange of views, proposals for further improvements were presented concerning:

- the extension to the other Commissioners of the 3 years 'cooling off' period applicable to the President of the Commission;
- the need for appropriate safeguards to ensure the respect of the principles of independence, integrity and discretion of Commissioners when participating in European electoral campaigns;
- the upgrading of the Code of Conduct into an enforceable instrument and further guarantees for the independence of the Ethical Committee, notably by including the participation of other institutions;
- the introduction of concrete timeframes for the submission of the declaration of interests and the need for the provision of complete factual information, notably as regards Commissioner-designates' previous contractual or business relations as well as information on their family members which could impair their independence in relation to their portfolio.

I would be grateful if you could bring this position to the attention of the Conference of Presidents when considering the final position of the European Parliament on the revised Code of Conduct.

Yours sincerely,



Cecilia WIKSTRÖM

Annexes:

- a letter of 9 November 2017 from Ms GRÄSSLE, Chair of the CONT Committee, to Ms WIKSTRÖM, Chair of the CCC
- a letter of 9 November 2017 from Mr SVOBODA, Chair of the JURI Committee, to Ms WIKSTRÖM, Chair of the CCC
- a letter of 9 November 2017 from Ms HÜBNER, Chair of the AFCO Committee, to Ms WIKSTRÖM, Chair of the CCC

Committee on Budgetary Control  
The Chair

IPOL-COM-CONT D(2017)44980  
Ms Cecilia Wikström  
Chair  
Conference of Committee Chairs  
ASP 08B046  
European Parliament

D 317212 09.11.2017

**Subject: Revised Code of Conduct for Commissioners, comments by CONT**

Dear Chair,

At the last meeting of the CCC on 24 October 2017, you invited among others the Committee on Budgetary Control (CONT) to provide you with detailed comments on the draft Commission Decision on a revised code of conduct for the Members of the European Commission.

On behalf of CONT, I hereby would like to inform you of the following observations which have been endorsed by my committee by written procedure:

1. CONT appreciates that its calls on the Commission to review the code of conduct for Commissioners by the end of 2017, including by defining what constitutes a "conflict of interest" as well as introducing criteria for assessing the compatibility of post-office employment and extending the cooling off period to three years for the President of the Commission, have received the required response<sup>1</sup>. CONT further welcomes the annual publishing of a report on the application of the Code of conduct including the work of the Independent Ethical Committee; nevertheless CONT insists that the opinions of the Ethical Committee should be made public when they are issued in order to allow for an informed public debate.
2. By contrast, CONT fears that the appointment of the Independent Ethical Committee (Article 12) does not guarantee its independence. The independent experts should not have held themselves the position of Commissioner, nor should they have held a position of senior Commission officials<sup>2</sup>. It should be considered to appoint former Presidents or members of the Court of Justice, the Court of auditors, the European Parliament and the Ombudswoman/Ombudsman or highly reputed academics. Furthermore, the decision appointing the members of the Independent Ethical Committee should be published by the Commission on a specific website with their CVs, as well as a declaration on their honour attesting the absence of conflicts of interest between their function as member of the Independent Ethical Committee, and their other activities or interests.

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<sup>1</sup> Paragraph 390 of European Parliament resolution of 28 April 2016 with observations forming an integral part of the decisions on discharge in respect of the implementation of the general budget of the European Union for the financial year 2014, Section III – Commission and executive agencies (2015/2154(DEC).and paragraph 242 of the European Parliament resolution of 27 April 2017 with observations forming an integral part of the decisions on discharge in respect of the implementation of the general budget of the European Union for the financial year 2015, Section III – Commission and executive agencies (2016/2151(DEC))

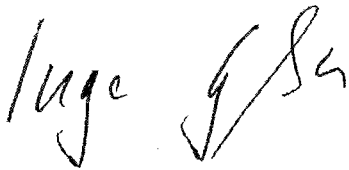
<sup>2</sup> Paragraph 15 of the report of 28.10.2016 on Commissioners declaration of interest - guidelines - 2016/2080 INI.

3. CONT would further suggest to take into account the following suggestions:

- Acceptance of gifts from donors from Member States should be prohibited (Article 6 (4));
- The participation of Commissioners in national politics during their term of office raises questions with regard to their independence (Article 2 (3) and Article 9 (1)), in CONT's eyes the national political activity should be suspended or limited to passive party membership;
- The reference to "*diplomatic or courtesy usage*" (Article 6 (2 and (5) suffers from a lack of precision and clarity and might be prone to abuse;
- Participation of Commissioners in national election campaigns should be aligned to participation in European election campaigning (Articles 9 and 10). In both cases, Commissioners should be obliged to take unpaid electoral leave;
- Finally, with regard to the possible referral to the ECJ under Article 245 or 247 TFEU (Article 13 (3)), more clarity should be provided on the criteria for such a referral.

I should be most grateful if you would accept to integrate these comments in the final position on the matter to be adopted by the Conference of Presidents at one of its subsequent meetings.

Yours sincerely,



Dr Inge Gräßle

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Европейски парламент Parlamento Europeo Evropský parlament Europa-Parlamentet Europäisches Parlament  
Euroopa Parlament Ευρωπαϊκό Κοινοβούλιο European Parliament Parlement européen Parlaimint na hEorpa  
Europski parlament Parlamento europeo Eiropas Parlaments Europos Parlamentas Európai Parlament  
Parlament Ewropew Europees Parlement Parlament Europejski Parlamento Europeu Parlamentul European  
Európsky parlament Evropski parlament Euroopan parlamentti Europaparlamentet

Committee on Legal Affairs  
The Chairman

Ref. D(2017)44821

D 317148 09.11.2017

Cecilia Wikström  
Chair of the Conference of Committee Chairs  
ASP 08G201  
Brussels

**Subject:** *Draft Code of Conduct for the Members of the European Commission*

Dear Ms Wikström,

Following your request of 24 October 2017, the Coordinators of the Committee on Legal Affairs agreed by written procedure to submit the following remarks on the draft Code of Conduct for the Members of the European Commission (C(2017) 6200).

The Coordinators welcome the draft Code of Conduct as an important step towards improved standards of independence, discretion, integrity, transparency and ethics for the Members of the European Commission. They welcome, in particular, the Commission's decision to undergo a complete overhaul of the existing rules and the drafting of a text having a much clearer structure and, most importantly, accommodating many of the requests that the European Parliament has made over the years.

Indeed, *inter alia* in its resolution of 1 December 2016<sup>1</sup>, which endorsed a report from the Committee on Legal Affairs (rapporteur: Mr Pascal Durand), Parliament expressed its views and asked the Commission for concrete action on the Code of Conduct, in general, and on Commissioners' declarations of interests, in particular.

The Coordinators agree that, from the general principles inspiring Commissioners' action to the much more detailed information to be provided in the declaration of interests, from the procedures to prevent and manage conflicts of interests to the newly established Independent Ethical Committee, the draft Code of Conduct addresses most of the concerns that Parliament voiced in its resolution of 1 December 2016.

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<sup>1</sup> European Parliament resolution of 1 December 2016 on Commissioners' declarations of interests – guidelines P8\_TA(2016)0477.

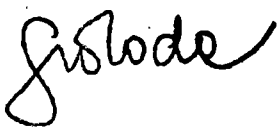
At the same time, the Coordinators consider that, in some important areas, the draft Code of Conduct does not take into account, in full or in part, the views expressed in the said resolution and would appreciate it if the final version of the Code of Conduct could better reflect those views. The most significant of these areas are listed in Annex I to this letter. The Coordinators would, nevertheless, like to stress the importance of establishing concrete timeframes in Article 3 of the draft Code of Conduct, as well as that of providing complete factual information, notably as regards Commissioners-designates' previous contractual or business relations. Information on their family members which could impair the Commissioner-designates' independence in relation to the portfolio in question must also be provided.

The Coordinators would also like to voice their concern about Article 10 of the draft Code of Conduct on participation in European politics during the Commissioners' term of office, where the possibility is mentioned for Commissioners to run for the European election, without their activities as Commissioners being subject to suspension during the electoral campaign. This raises several doubts on the compatibility of this provision with the independence of the Members of the European Commission referred to in article 17(3) TEU and may entail, at the same time, an evident problem of conflict of interests. This is all the more surprising since Article 9 of the draft Code of Conduct on participation in national politics during the term of office explicitly provides for a suspension of the activities during the electoral period at national or local level. There seems to be a clear contradiction between the two provisions regulating, in substance, the same type of situation, i.e. an electoral campaign.

As you know, the procedural guidelines for the scrutiny of the declarations of interests referred to in the 2016 resolution have subsequently been included in the latest reform of Parliament's Rules of Procedure and have become part of current Annex VI thereto<sup>2</sup>. The Coordinators consider, therefore, that the Code of Conduct could include provisions so as to facilitate the provision of additional information or the appearance of a Commissioner-designate before the Committee on Legal Affairs in the context of the scrutiny of his or her declaration of interests (see notably Article 2(3)(b) of Annex VI to the Rules of Procedure).

I would be grateful if you could submit the above remarks to the Conference of Committee Chairs.

Yours sincerely,



Pavel Svoboda

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<sup>2</sup> Annex VI: Approval of the Commission and monitoring of commitments made during the hearings.

## ANNEX I

### Parliament's resolution of 1 December 2016 and draft Code of Conduct - main differences

<i>Parliament's resolution of 1 December 2016</i>	<i>Commission's draft Code of Conduct</i>
<p>10. Considers that the following guidelines should be applied when the declarations of financial interests are scrutinised by the Committee on Legal Affairs:</p> <p>[...]</p> <p>(c) if the Committee on Legal Affairs identifies a conflict of interests based on the declaration of financial interests or the supplementary information supplied by the Commissioner-designate, it shall draw up recommendations aimed at resolving the conflict of interests; the recommendations may include renouncing the financial interests in question, changes being made to the portfolio of the Commissioner-designate by the President of the Commission; in more serious cases, if no other recommendation is able to provide for a solution to the conflict of interests, as the last resort, the committee responsible for legal affairs can conclude on the inability of Commissioner-designate to exercise his/her function according to the Treaty and to the Code of Conduct; the President of Parliament shall ask the President of the Commission what further steps the latter intends to take;</p> <p><i>(see also Article 2(3)(c) of Annex VI to Parliament's Rules of Procedure)</i></p>	<p><b>Article 4 – Procedure for Conflicts of Interest</b></p> <p>(1) Members shall recuse themselves from any decision or instruction of a file and from any participation in a discussion, debate or vote in relation to a matter that falls under Article 2(6).</p> <p>(2) Declarations submitted under Article 3 shall be scrutinised under the authority of the President.</p> <p>(3) Members shall inform the President of any situation that falls under Article 2(6) as soon as they become aware of it.</p> <p>(4) The President shall take any measure he considers appropriate, in the light of the information referred to in paragraphs (2) and (3) or other available information, if necessary after consultation of the Independent Ethical Committee, such as:</p> <p>(a) the reallocation of a file to another Member or to the responsible Vice-President. The President shall inform the President of the European Parliament in due time of any such reallocation.</p> <p>(b) the request for the sale or placing in a blind trust of the financial interests referred to in Article 3(4)(a) where these give rise to a conflict of interest in the area of the Member's portfolio responsibilities.</p> <p><i>Article 4 only applies to Members of the Commission, and not to Commissioners-designate. As a consequence, the draft Code of Conduct is silent on how to resolve conflicts of interests involving a Commissioner-designate.</i></p>
<p>18. Considers that, in order to gain a more complete picture of the financial situation of the declaring Commissioner, the declarations of financial interests [...] should include all financial interests and activities of the Commissioner-designate and his/her spouse/partner, and should on no account be</p>	<p><b>Article 3(4)(a)</b></p> <p>[...]</p> <p>(4) The declaration shall identify:</p> <p>(a) financial interests, including assets and liabilities, that might be considered to be capable of giving rise to a conflict of interest, and in any case where the</p>

<i>Parliament's resolution of 1 December 2016</i>	<i>Commission's draft Code of Conduct</i>
<p>limited to those 'likely to constitute a conflict of interest';</p>	<p>value of an investment exceeds EUR 10,000. These financial interests may be in the form of a specific financial holding in an entity's capital, in particular, shares, or any other form of financial interest, such as bonds or investment certificates. This obligation applies to financial interests of spouses, partners<sup>9</sup> and minor children where those might be considered to be capable of giving rise to a conflict of interest; [...]</p>
<p>20. Takes the view that, in order to extend and improve the rules on conflicts of interest, the declarations of interests should also include the details of any contractual relation of the Commissioners-designate which might create a conflict of interests in the performance of their duties;</p>	<p><i>No mention.</i></p>
<p>23. Notes that the code of conduct does not stipulate any concrete time frame for submission of the declaration prior to Parliament's hearing of the Commissioners-designate; regards this requirement as a fundamental aspect of the revision of the procedure for hearing Commissioners-designate;</p>	<p><b>Article 3(2)</b> [...] (2) The requirements in paragraph (1) shall also apply to the person proposed as candidate for President of the Commission and to Commissioners-Designate who shall submit the declaration to the European Parliament in due time. [...]</p>
<p>27. Welcomes the fact that the code of conduct has introduced a provision concerning the reallocation of files between Members of the Commission in the event of potential conflicts of interest, but deplores the fact that:  [...]  (b) the provision is limited to matters within the relevant Commissioner's portfolio and thus ignores the Commissioner's duties as a member of a college;  [...]</p>	<p><i>Whereas Article 2(4) reiterates the principle of collegiality, the procedure for conflicts of interests established in Article 4 does not seem to reflect it.</i></p>



<i>Parliament's resolution of 1 December 2016</i>	<i>Commission's draft Code of Conduct</i>
<p>28. Calls on the Commission to revise, as a matter of urgency, the 2011 Code of Conduct for Commissioners to take account of the recommendations made by Parliament in its recent resolutions and of the development of the general ethics and transparency standards that apply to all EU institutions; recommends that the Commission modify its Code of Conduct for Commissioners with a view to ensuring:</p> <p>[...]</p> <p>(b) that Commissioners declare all their interests (as shareholders, company board members, advisors and consultants, members of associated foundations, etc.) as regards all the companies in which they have been involved, including close family interests, as well as the changes that took place at the time their candidacy was made known;</p> <p>(c) that Commissioners' dependent and/or direct family members disclose the same information as spouses or partners;</p>	<p><i>No mention.</i></p> <p><i>Article 2(6) refers to 'spouses, partners or direct family members', but Article 3 limits the information to be provided in the declaration of interests to that concerning 'spouses, partners and minor children'.</i></p>
<p>(d) that Commissioners clarify fully the objectives of organisations with which they and/or their spouse and/or their dependent children are involved, in order to establish whether any conflict of interest exists;</p>	<p><b>Article 3(4)(c)</b></p> <p>[...]</p> <p>(4) The declaration shall identify:</p> <p>[...]</p> <p>(c) every entity in which the Member has an interest or in which or for which he or she exercised an activity as specified in subparagraphs (a) and (b) above, except entities in which the Member owns holdings which are managed on an independent basis by a third party, unless they are linked to specific industries like sector or thematic funds. In the case of a foundation or similar body, the purpose of the entity shall be stated;</p>

Parliament's resolution of 1 December 2016	Commission's draft Code of Conduct
<p>(e) that Commissioners disclose their membership of any non-governmental organisations, secret societies or associations which conceal their existence that carry out activities intended to interfere with the exercise of the functions of public bodies;</p> <p>(f) that Commissioners and their dependent family members disclose their membership of any non-governmental organisations and any donations to NGOs of more than EUR 500;</p> <p>[...]</p>	<p><b>Article 3(4)(d)</b></p> <p>[...]</p> <p>(4) The declaration shall identify:</p> <p>[...]</p> <p>(d) membership of associations, political parties, trade unions, non-governmental organisations or other bodies, if their activities, in public or private, are intended to influence or affect the exercise of public functions;</p> <p>[...]</p>
<p>(g) that the code of conduct be amended, in line with Article 245 TFEU, to extend Commissioners' post-office employment restriction to a period of at least three years and not shorter than the length of time during which former Commissioners are eligible for a transitional allowance as defined in Regulation No 422/67/EEC;</p> <p>[...]</p>	<p><b>Article 11(2),(4) and (5)</b></p> <p>[...]</p> <p>(2) Former Members shall inform the Commission with a minimum of two months' notice of their intention to engage in a professional activity during a period of two years after they have ceased to hold office. [...]</p> <p>(4) Former Members shall not lobby Members or their staff on behalf of their own business, that of their employer or client, on matters for which they were responsible within their portfolio for a period of two years.</p> <p>(5) In the case of a former President, the periods set out in paragraphs (2) and (4) shall be three years.</p>
<p>(i) that Commissioners-designate submit their declarations within a specific time frame and sufficiently well in advance, so that the Ad Hoc Ethical Committee can submit to Parliament its views on potential conflicts of interests well in time for the hearings in Parliament;</p> <p>[...]</p>	<p><i>No mention.</i></p>
<p>(q) that the Ad Hoc Ethical Committee is composed of independent experts who have not themselves held the position of Commissioner;</p>	<p><i>No mention.</i></p>

Committee on Constitutional Affairs  
The Chair

D 317211 09.11.2017

Ref.: D(2017)45138

Ms Cecilia Wikström  
Chair of the Conference of Committee Chairs  
ASP 08G201  
Brussels

**Subject: Draft Code of Conduct for the Members of the European Commission**

Dear Chair,

As requested during the last CCC meeting in Strasbourg on 24 October, please find hereafter on behalf of AFCO an assessment of the draft of a new Code of Conduct for Commissioners.

To start with we should thank the Commission for honouring the commitment it undertook in point 8 of the Framework Agreement on relations between the European Parliament and the Commission, namely to seek Parliament's opinion when it proceeds to a revision of the Code of Conduct for Commissioners relating to conflict of interest or ethical behaviour.

All in all, we welcome this new Code of Conduct and consider that it is a significant improvement in comparison with the current one.

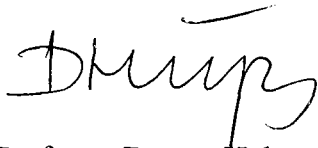
It indeed contains significant steps towards more transparency as well as it ensures more impartiality and safeguards, notably when it comes to the Commissioners' participation in political activities, including European elections, in line with what was mentioned in my letter to President Tajani of 6 June last concerning the opinion of AFCO on the Commission proposal to amend the Framework Agreement on relations between the European Parliament and the European Commission. I highlight that this proposal to modify the Framework Agreement had already been welcomed by the Parliament in paragraph 25 of its resolution of 25 February 2017 on improving the functioning of the European Union building on the potential of the Lisbon Treaty.

We consider that the new provisions constitute in general an important step forward, although some political groups expressed concerns about the different Rules foreseen as regards participation in national or European elections.

As far as the cooling off period is concerned, I note that the new text does not meet Parliament's request to extend it to three years to all the Commissioners, as included in Paragraph 28 g) of its resolution of 1 December 2016 on Commissioners' declaration of interests - guidelines, and in Paragraph 31 of its resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions.

Finally, some political groups highlighted the need to reinforce the independence of the Ethical Committee vis-à-vis the Commission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'D. Hübner', with a horizontal line above the first few letters.

Professor Danuta Hübner, PhD