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

The Treaties, in particular Article 17(3) of the Treaty on European Union and Article 245 of the Treaty on the Functioning of the European Union, have laid down the essential principles that govern the conduct of Members of the Commission. The Code of Conduct for the Members of the European Commission defines and clarifies these principles and sets out how they should be applied in practice.

The current Code of Conduct for the Members of the Commission¹ was adopted by the Commission on 31 January 2018. It replaced the previous Code of 2011, 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 third annual report on the application of the new Code and covers the year 2020².

The Commission under President von der Leyen took office on 1 December 2019. The President stressed in her Communication to the Commission on ‘The Working Methods of the European Commission’³ 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 individual Mission letters to each Member of the Commission recall that ‘a stronger relationship with citizens starts with building trust and confidence’. The President insisted in these letters ‘on the highest levels of transparency and ethics for the College as a whole’. She underlined that ‘there can be no room for doubt about [the]

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 and second Annual Reports on the application of the Code of Conduct for the Members of the Commission respectively on 25 June 2019 (SEC(2019) 266) and on 12 October 2020 (SEC(2020) 344); https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration/commissioners-and-ethics/code-conduct-members-european-commission_en#annual-reports.

³ P(2019) 2; https://ec.europa.eu/info/sites/info/files/sec2020344_en.pdf.

behaviour or [the] integrity’ of the Members of the Commission and that ‘the Code of Conduct for Commissioners sets out the standards and the rules to follow’.

The report also covers the activities of the Commission’s Independent Ethical Committee in 2020.

1. IMPLEMENTATION OF THE CODE OF CONDUCT FOR THE MEMBERS OF THE COMMISSION

1.1. Update of the declarations of interests of the Members of the Commission

In accordance with Article 3(3) of the Code, the Members of the Commission updated their declarations of interests in the beginning of 2020 reflecting the situation on 1 January 2020. In case of changes between 1 January 2020 and the date of signature of the declarations of interests, these changes were taken into account as well. 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, the declarations were published on 26 February 2020 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 Conduct⁴. This corresponds to the publication requirements set out in Article 3(5) of the Code⁵. Due to changes in their situation in 2020, several Members updated their declarations in the course of the year in line with Article 3(3) of the Code⁶. The same scrutiny and publication procedures were followed.

1.2. Contact points in the cabinets of the Members of the Commission

In order to facilitate compliance with the obligations in the areas of ethics and transparency, the Commission has set up, for the first time, a Network of Ethics and Transparency Contact Points in the cabinets of the Members of the Commission. In line with the requirements of the Working Methods of the Commission, every Head of Cabinet designated a person within the Cabinet as

⁴ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration/commissioners-and-ethics/code-conduct-members-european-commission_en#declarations-of-interests.

⁵ Article 3(5) provides ‘Declarations shall be made public in an electronic and machine-readable format.’

⁶ Article 3(3) provides ‘Declarations shall be re-submitted on an annual basis on 1 January, and in case of a change in the information to be declared during a Member’s term of office, a new declaration shall be submitted at the earliest opportunity and at the latest within two months of the change in question.’

the Cabinet's 'Ethics and Transparency Contact Point'. This person is the interlocutor for the Member of the Commission, his or her Head of Cabinet and the services of the Commission on questions related to the practical implementation of the Member's ethics and transparency obligations, notably the annual and *ad hoc* updates of the declaration of interests; the publication of meetings held with interest representatives and the prior verification of the registration of those interest representatives in the Transparency Register; and the publication of mission costs. The Secretariat-General organised three online meetings in 2020 with the Ethics and Transparency Contact Points in the Cabinets to present the Code of Conduct and the role of the different Commission services as regards the ethics and transparency issues regarding Members and staff, to discuss the update of the declarations of interests, the implementation of the rules on gifts and of the obligations regarding transparency.

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

The Code of Conduct, and notably its Article 9, sets the conditions that are applicable when Members of the Commission want to participate in a national election campaign. In this context, it is important to distinguish between institutional activities as Members of the Commission in the general interest, and personal activities in a campaign in support of a specific party, candidate or a manifesto. 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.

Following the 'Guidelines on Ethical Standards for the Participation of the Members of the European Commission in the Election Campaign'⁷ approved by the Commission in 2019 in view of the European election campaign (in which the Commission clarified the involvement of the Members of the Commission and its practical consequences, notably with regard to the use of Commission resources), the President has decided that the Commission will also establish guidelines for the participation of its Members in national election campaigns after consultation of its Independent Ethical Committee⁸. These guidelines are under preparation.

⁷ https://ec.europa.eu/info/sites/info/files/guidelines_election_campaign_en.pdf.

⁸ Case 1141/2020/MIG and 1143/2020/MIG;

<https://www.ombudsman.europa.eu/en/correspondence/en/136786>.

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 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 2020, the Commission published the costs for 458 missions⁹. The publication via the so-called 'ATMOS' application provides transparency both on the costs and the purpose of the respective missions. A link to the relevant information can be found on each Member'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 resumed in June 2020 and the three institutions reached a final political agreement in December 2020. The new Interinstitutional Agreement¹⁰ is bound to increase transparency concerning interest representation at the Union level. It expands the scope of the Transparency Register and it makes it mandatory through the adoption of conditionality measures, by which the signatory institutions make registration of interest representatives a necessary precondition for carrying out certain types of interest representation activities. In addition, the new agreement provides for strong political oversight with the possibility of making recommendations at the institutions' political level for further advances in transparency; it is therefore expected to have a dynamic and lasting impact on the Union's transparency policy agenda.

Article 7(1) of the Code provides that Members of the Commission and their members of Cabinet shall meet only those organisations or self-employed individuals, which are registered in the Transparency Register established

⁹ Due to the pandemic, the number of missions was lower in 2020 than in previous years.

¹⁰ Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register, OJ L 207, 11.6.2021, p.1.

pursuant to the Interinstitutional Agreement of 2014 between the European Parliament and the Commission (which was in force in 2018 when the Code was adopted). 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 on the Code of Conduct for the Members of the Commission

In 2019, the European Commission's webpages related to 'Commissioners and Ethics'¹¹ were updated and made more easily accessible via a new portal on 'Ethics and Good Administration'¹².

It contains three sections: 'Code of Conduct for the Members of the European Commission'; 'The Independent Ethical Committee' and 'Former European Commissioners' authorised activities'. 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.

The website has been regularly updated notably as concerns the Commission decisions on the post-mandate activities of former Members of the Commission. (See section 2.2 below)

1.7. Replacement of a Member of the Commission

Following the resignation of Commissioner Phil Hogan with effect from 26 August 2020, the President allocated the trade portfolio to Executive Vice-President Valdis Dombrovskis.

Ms Mairead McGuinness (former Member and First Vice-President of the European Parliament) was appointed Member of the Commission in charge of Financial Services, Financial Stability and the Capital Markets Union with effect from 13 October 2020. In line with Article 3(2) of the Code of Conduct, Ms McGuinness signed a declaration of interests on 11 September 2020 as Commissioner-Designate.

¹¹ https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration/commissioners-and-ethics_en.

¹² https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration_en.

2. FORMER MEMBERS OF THE COMMISSION

2.1. Rights and duties of the Former Members of the Commission

The duties of integrity and discretion enshrined in Article 245 of the Treaty on the Functioning of the European Union continue to apply to the former Members of the Commission beyond their term of office and are unlimited in time. Against this background, the post term of office professional activities envisaged by the Former Members of the Commission must be assessed and duly approved by the Commission during a two-year period following the end of their term of office (three-year period as concerns former Presidents – cf. below section 2.2).

Under Council Regulation 2016/300 of 29 February 2016 determining the emoluments of EU high-level public office holders, the former public office holders are entitled to a transitional allowance for a limited period. This right entails an obligation to inform their previous institutions about other forms of remuneration for new gainful activities during the period in which they are entitled to receive the above-mentioned allowance.

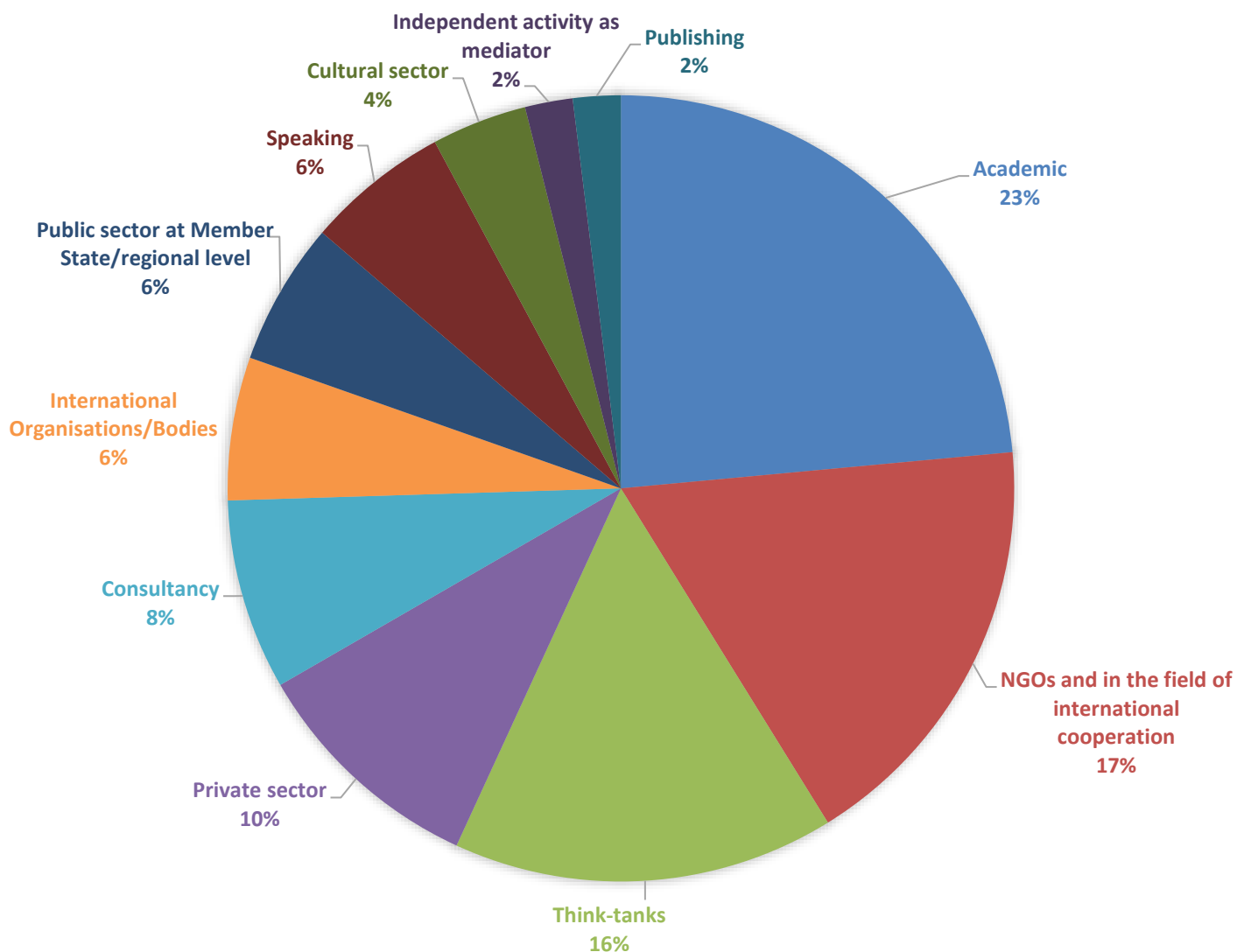
2.2. Post term of office activities of Members of the Commission and corresponding Commission decisions

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. If the planned activity is related to the portfolio of the former Member, the Commission can only decide after consultation of the Independent Ethical Committee. Members can also seek advice from the Secretariat-General on the application of the Code to activities which they might envisage.

In 2020, the Commission adopted 47 decisions on 51 post term of office activities¹³ envisaged by former Members of the Commission under President Juncker and under President von der Leyen (i.e. activities of Former Commissioner Hogan). In most cases, these activities were approved subject to conditions and/or restrictions deemed necessary to ensure their full compatibility with Article 245 of the Treaty on the Functioning of the European Union and the Code of Conduct for the Members of the Commission.

¹³ Some decisions covered several activities.

ACTIVITIES APPROVED



The breakdown of the activities approved per type of activity is: 12 academic activities; 9 activities for NGOs and in the field of international cooperation; 8 activities for think-tanks; 5 activities in the private sector; 4 consultancy activities; 3 activities for International Organisations/Bodies; 3 activities in the Public Sector at Member State/regional level; 3 speaking activities; 2 activities in the cultural sector; 1 independent activity as mediator and 1 publishing activity.

All decisions and 14 related opinions of the Independent Ethical Committee on 16 activities¹⁴, adopted in 2019 and 2020, were published as required by Article 11(7) of the Code¹⁵ (cf list of decisions in Annex 1).

¹⁴ Some opinions covered more than one activity. If the planned activity is related to the portfolio of the former Member, the Commission shall only decide after having consulted the Independent Ethical Committee; see Article 11(3) of the Code. In other cases, it can decide without consultation.

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.

3. 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.

The Committee is composed of three independent external members selected for their competence, experience, independence, professional qualities, impeccable record of professional behaviour and experience in high-level functions in European, national or international institutions. The composition of the Committee reflects experiences in different institutions or functions.¹⁶

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.

In 2020, in line with Article 11(3) of the Code of Conduct, the Committee adopted 17¹⁷ opinions on envisaged activities of the former Members of the Juncker Commission, which were followed by a Commission decision approving the activities in question. In the cases concerning Former Commissioner Andriukaitis, one member of the Committee withdrew from the deliberations of the Committee referring to the fact that she had been an unpaid Special Adviser to the Commissioner during his term of office and to the risk of perception that this could create for the Committee's impartial and independent work. The Committee issued its opinions in these cases with two members. (cf list of Opinions in Annex 2).

Finally, in three cases, the Committee informed the Commission that it considered adopting a negative opinion. Based on Article 12(3) of the Code, former Members have the possibility to be heard in such cases before the Committee adopts an opinion. In all three cases, the former Members decided to withdraw their notification. Consequently, the Committee did not adopt any opinions on these cases.

The Committee's deliberations and opinions are based on the merits of each file. Where relevant, the Committee has looked into previous similar cases and has drawn inspiration from similar decisions or opinions of national authorities or bodies, such as the French *Haute Autorité pour la Transparence de la Vie Publique* (HATVP). In assessing the files, the Committee has regularly taken into consideration the following elements:

- the risk of casting doubt on the independent decision-making process of the institution during the term of office of the former Member in relation to links

¹⁶ For information on the members see the report on 2019 ([SEC\(2020\) 344](#)) and the relevant website: https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration/commissioners-and-ethics/independent-ethical-committee_en.

¹⁷ The subsequent decisions of the Commission were adopted either in 2020 or in 2021. Only the decisions adopted in 2020 are included in the statistics of this report covering 2020.

between the previous responsibilities as Member of the Commission and the new activity;

- the possibility to protect sensitive / confidential information and insights obtained during the term of office while performing the new activity;
- in view of possible risks for the decision-making process in the Commission in the future, the possibility to perform the new activity in compliance with the restrictions on lobbying and avoiding possible risks in relation to the use of contacts within the Commission;
- the need to ensure respect of the principles of collegiality and discretion with regard to decisions and activities of the Commission during the former Member's term of office.

In this regard, it should be noted that, in its above-mentioned opinion of 19 June 2020, the Committee, in line with Article 12 of the Code of Conduct, formulated some considerations specifically relating to consultancy services, including the principle that former Members of the Commission intending to offer consultancy services should not offer lobbying services towards the Commission on any matter, and not merely on matters for which they were responsible within the portfolio, for a period of two years after ceasing to hold office.