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CODE DE CONDUITE DES COMMISSAIRES

Communication de M. le **PRESIDENT**

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MEMORANDUM TO THE COMMISSION

The obligations of independence and integrity imposed upon the Members of the Commission derive from the Treaties, namely article 17 of the Treaty on European Union and article 245 of the Treaty on the Functioning of the European Union. The Members of the Commission must indeed discharge their duties in the general interest of the Union, without seeking nor taking instructions from any government or from any other body.

In addition, the general interest requires that Commissioners should behave in a manner that is in keeping with the dignity and the duties of their office, both during and after their term of office. Ruling out all risks of a conflict of interests helps to guarantee their independence.

In 1999, the Commission adopted a Code of Conduct for Commissioners, which was subsequently modified in 2004. The code develops the obligations of independence and integrity imposed upon the Members of the Commission by the Treaties. It aims at ruling out all risks of a conflict of interests, sets limits to Commissioners outside and post-office activities and responds to the need to codify certain provisions relating to the performance of their duties.

Several studies were undertaken in recent years on the effectiveness of the codes of conduct of holders of public office worldwide. Within the European Union, both the Commission and the European Parliament commissioned studies on this matter¹. These studies provided useful recommendations to enhance the completeness and effectiveness of the Commission's code of conduct.

In his "*political guidelines for the next Commission*", delivered in September 2009, President Barroso announced his intention to review the Code of Conduct for Commissioners, which he hoped would become a "document of reference that will inspire other EU institutions".

The Commission held an orientation debate on 18.11.2010 on President Barroso's envisaged revised Code of Conduct for Commissioners. This document was subsequently sent to the European Parliament, for Parliament's opinion, in conformity with paragraph II.8 of the new Framework Agreement on relations between the European Parliament and the Commission, concluded in October 2010.

The draft revised Code of Conduct for Commissioners takes account of the comments expressed by the European Parliament within the framework of the 2011 budgetary procedure and of the views expressed by the Parliament as contained in President Buzek's letter to President Barroso dated 14 April 2011

The draft new Code clarifies many provisions of the current Code and strengthens some of them. The most relevant reinforcements concern the following areas:

- Clearer rules on political activities, including Commissioner's participation in electoral campaigns (paragraph 1.1);

¹ Through its Bureau of European Policy Advisors (BEPA), the Commission commissioned the study "*Regulating Conflicts of Interest for Holders of Public Office in the European Institutions* » , which was delivered in October 2007. Upon request from the European Parliament's committees on budgetary control (CONT) and constitutional affairs (AFCO) a private consultant delivered, in May 2009, a study on "*The Code of Conduct for Commissioners – improving effectiveness and efficiency*".

- Stricter rules on activities after leaving the Commission, including the extension of the notification obligation of post term-of-office activities from 12 to 18 months after the former Commissioner's term of office (paragraph 1.2);
- Improved template and annual revision of the declarations of interests (paragraph 1.5 and annex 1);
- Introduction of a clear procedure to deal with a conflict of interests during the mandate (paragraph 1.6);
- Clearer rules for gifts and hospitality (paragraph 1.11);
- Exclusion of spouses, partners and direct family members from the cabinet of the Member of the Commission (paragraph 1.12);
- Reinforcement of the remit of the Ad hoc Ethical Committee (paragraph 2.3).
- Reinforced transparency in the rules for missions (annex 2);

In line with the view expressed by the European Parliament, the new Code specifies that the declarations of interests of Commissioners-designate must be available before their hearings with the European Parliament and contains an additional requirement on the timeline which former Commissioners have to respect when informing the Commission about intended post office activities.

The period during which former Commissioners must notify their intended post-office activities is extended to 18 months, in conformity with current best practices. Some groups within the European Parliament recommended to further extend this period to two years. The Commission might envisage a further extension in the future, in line with similar developments in the other EU institutions and Member States.

Part 2 of the Code of Conduct for Commissioners adopted in 2004, on the relations between the Commissioners and their departments, is no longer contained in the new Code, since the relevant provisions have been replaced by the President's communication of February 2010, in accordance with Article 17 (6) TEU, on the working methods of the Commission 2010-2014.

The Commission is requested to adopt the enclosed draft Code of Conduct for Commissioners, with its two annexes, which replace, with immediate effect, the previous Code of Conduct for Commissioners and its annexes (SEC(2004) 1487/2).

Code of conduct for Commissioners

C(2011) 2904 final

CODE OF CONDUCT FOR COMMISSIONERS

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INTRODUCTION

The Treaty articles on the Commission, namely article 17 TEU and article 245 TFEU make special reference to the complete independence enjoyed by the Members of the Commission, who are required to discharge their duties in the general interest of the Union. In the performance of their duties they must neither seek nor take instructions from any government or from any other body.

In addition, the general interest requires that Commissioners should behave in a manner that is in keeping with the dignity and the duties of their office, both during and after their term of office. Ruling out all risks of a conflict of interests helps to guarantee their independence.

The general interest also requires that Commissioners establish good working relations, based on loyalty, trust and transparency, with their departments.

1. INDEPENDENCE AND DIGNITY: ETHICAL ISSUES

1.1. Outside activities during the term of office

Commissioners may not engage in any other professional activity, whether gainful or not. Unpaid courses given from time to time in the interests of European integration and other communication activities on areas of European interest are the only outside activities that are permitted, and do not have to be declared.

Commissioners shall notify the President if they are intending to publish a book. Royalties from copyright in a work published in connection with Commissioners' functions shall be paid over to a charity of their choice.

Commissioners may not accept any form of payment for writing articles, delivering speeches or taking part in conferences. Should a payment be made, it should be donated to a charity of their choice.

Commissioners may hold honorary unpaid posts in political, cultural, artistic or charitable foundations or similar bodies. They may also hold such posts in educational institutions. "Honorary posts" means posts in which the holder has no management role, no decision-making power, and no responsibility or control of the operations of the body in question. "Foundations or similar bodies" mean not-for-profit organisations or associations which engage in activities in the public interest in the fields mentioned. Posts held on these terms shall under no circumstances involve any risk of a conflict of interest. This risk exists in particular whenever the body receives any kind of financing from the EU Budget. All such honorary posts shall be listed in the declaration of interests referred to in point 1.5 of this Code, laid down according to the model in annex 1.

The declaration must relate to all activities engaged in over the last ten years and must distinguish between activities which ended before the Member of the Commission took up office and the honorary functions which will continue after that point.

Commissioners may be politically active; in particular they may be members of national and European political parties or trade unions, provided that this does not compromise their availability for service in the Commission or their independence in their functions. They may hold honorary or non-executive functions within political parties and trade unions and hold political functions in European political parties; provided that any type of function would not involve management responsibilities. Commissioners are expected to defend and support the decisions taken by the College. Their Commission duties must prevail over party commitment.

In respect of the principle of independence that must guide the performance of their duties, Commissioners should abstain from making public statements or interventions on behalf of any political party or trade union of which they are members, except where they are standing for election, as referred to hereafter. This rule is without prejudice to the right of Commissioner to express their personal opinions.

Commissioners shall inform the President of their intention to participate in an election campaign and the role they expect to play in that campaign. If they intend to stand for election and to play an active role in the election campaign, they must withdraw from the work of the Commission for the entire period of active implication and at least for the duration of the campaign. In other instances, the President, taking into account the particular circumstances of the case, shall decide on whether the envisaged participation in the election campaign is compatible with the performance of the Commissioner's duties.

When, in accordance with the previous paragraph, Commissioners withdraw from the work of the Commission or are requested to do so by the President, the latter shall grant them "unpaid electoral leave". During their period of unpaid electoral leave, Commissioners may not use the Commission's human or material resources. The period of unpaid electoral leave of Members of the Commission participating actively in electoral campaigns as candidates for European elections shall start at least as of the end of the last part session of the European Parliament before these elections².

The President of the Commission shall inform the President of the Parliament in due time of his decision to grant this leave and which Member of the Commission will take over the relevant responsibilities for that period of leave. Commissioners may not exercise any public functions of whatever kind³.

² As foreseen by the Revised Framework Agreement on relations between the European Parliament and the Commission (October 2010).

³ Functions of an honorary nature and/or attributed for life, or when such functions are formally suspended by direct effect of law, during the mandate as Members of the Commission, and as long as the independence of the Commissioner is guaranteed may be maintained.

1.2. Post term-of-office activities

Whenever former Commissioners intend to engage in an occupation during the eighteen months after they have ceased to hold office, whether this is at the end of their office or upon resignation, they shall inform the Commission in good time, as far as possible with minimum four weeks notice. The Commission shall examine the nature of the planned occupation.

If the planned occupation is related to the content of the portfolio of the Commissioner, the Commission shall seek the opinion of the Ad Hoc Ethical Committee. In the light of the committee's findings it shall decide whether the planned occupation is compatible with Article 245 of the Treaty (TFEU).

During the eighteen months after ceasing to hold office, former Commissioners shall not lobby nor advocate with members of the Commission and their staff for her/his business, client or employer on matters for which they have been responsible within their portfolio as Member of the Commission during their mandate.

Paragraphs 2 and 3 above shall not apply where the former Commissioner engages in a public office. This is without prejudice to the possibility for the President to seek an opinion of the Ad Hoc Ethical Committee in cases of doubt.

The above rules are without prejudice to the duty to behave with integrity and discretion pursuant to Article 245 of the Treaty (TFEU) even beyond the period of 18 months after ceasing to hold office.

1.3. Financial interests and assets

Commissioners must declare any financial interest or asset which might create a conflict of interests in the performance of their duties. The declaration shall include any holdings by the Commissioner's spouse/ partner which might entail a conflict of interests.

The financial interests which must be declared are any form of individual holding in company capital. This therefore includes shares but also any other form of holding such as convertible bonds or investment certificates.

Units in unit trusts, which do not constitute a direct interest in company capital, do not have to be declared.

Any property owned either directly or through a real estate company must be declared, with the exception of homes reserved for the exclusive use of the owner or his/her family.

1.4. Activities of spouses/ partners

To obviate any potential risk of a conflict of interests, Commissioners are required to declare the professional activities of their spouses/ partners⁴.

The declaration must state the nature of the activity, the title of the position held and, if applicable, the name of the employer.

1.5. Declaration of interests

The attached form includes all information that Members of the Commission are required to declare under the Code of Conduct. It must be completed and made available before the hearing of the Commissioner-designate by the European Parliament and revised during his or her term of office if the information changes, and at least every year.

Each Commissioner is responsible for her/his declaration. These declarations shall be scrutinised under the authority of the President and with due regard for each Member's areas of responsibility. They shall be made public.

1.6. Reallocation of files between Members of the Commission in case of potential conflicts of interest

A Commissioner shall not deal with matters within her/his portfolio in which, she/he has any personal interest, in particular a family or financial interest which could impair her/his independence.

Any Commissioner confronted with such situation shall immediately inform the President. The President shall take any measure he considers appropriate, including the reallocation of the file to another Member of the Commission.

Should the President of the Commission be confronted with such situation, the President will refer the file to a Vice-President.

The President of the Commission shall inform the President of the Parliament in due time of his decision to reallocate any file to another member of the Commission⁵.

1.7. Collective responsibility and confidentiality

In accordance with the principle of collective responsibility, Commissioners shall not make any comment which would call into question a decision taken by the Commission. They shall also refrain from disclosing what is said at meetings of the Commission.

⁴ Stable non matrimonial partner as defined in Regulation 2278/69 (OJ L 289, 17.11.1969 in particular Article 1(2) (c) of Annex VII of the Staff Regulations.

⁵ As foreseen by the Revised Framework Agreement on relations between the European Parliament and the Commission, agreed text after closure of negotiations on 29 June 2010.

As foreseen by Article 339 of the Treaty (TFEU), the members of the Commission shall be required, even after their duties have ceased, not to disclose information of the kind covered by the obligation of professional secrecy, in particular information about undertakings, their business relations or their cost components.

1.8. Rules for missions

Missions are defined as travel by a Commissioner on Commission business away from the Commission's place of work. They are governed by the Guide to Missions, the Financial Regulation and the internal rules on the implementation of the general budget of EU, completed with the rules in annex 2.

1.9. Rules governing receptions and professional representation

The rules governing receptions and professional representation are laid down in the relevant Commission decision⁶. Where entertainment expenses are not covered by this decision, they will be met by the Commissioner from the flat-rate entertainment allowance provided for in the regulation laying down the emoluments of the Members of the Commission.

1.10. Rules governing the use of Commission's resources

The Members of the Commission shall use their cabinets and Commission's infrastructure and resources, in full compliance with the relevant rules. The College's global envelope, which covers mission expenses and receptions/professional representation expenses, is fixed annually by the budgetary authority. It is distributed between all Commissioners according to their respective portfolios and real needs, under the responsibility of the President. Global envelope expenses are authorised by the Head of Cabinet of the Commissioner concerned (legal authorising officer), who also certifies the validity of invoices. They are paid on the basis of the invoice and proof of payment, under the responsibility of the Director of the Office for the Administration and Payment of Individual Entitlements (PMO, authorising officer for budgetary commitments and payments)

1.11. Acceptance of gifts, hospitality, decorations or honours

Commissioners shall not accept any gift with a value of more than EUR 150. When, in accordance with diplomatic and courtesy usage, they receive gifts worth more than this amount, they shall hand them over to the Commission's Protocol department. In case of doubt as to the value of a gift, an evaluation shall be undertaken under the authority of the Director of the Office for Infrastructure and Logistics in Brussels (OIB), whose decision on the matter shall be final.

⁶ C (2007) 3494 – 18 July 2007

The Commission's Protocol department shall keep a public register of gifts with a value of more than EUR 150.

Commissioners shall not accept hospitality except when in accordance with diplomatic and courtesy usage. Attendance upon invitation to any events where Commissioners represent the Institution shall not be considered as hospitality.

Commissioners shall notify the President of the Commission of any decoration, prize or honour awarded to them. Should a prize include a sum of money or valuables, it should be donated to a charity of their choice.

1.12. Composition of the cabinets of the Members of the Commission

The President of the Commission sets the rules concerning the composition of the cabinets of the Members of the Commission⁷.

The Members of the Commission chose the members of their cabinets with due respect to the rules above mentioned and on the basis of objective criteria taking into account the demanding nature of the function, the professional profiles requested and the Commissioners' need to establish a relation based on mutual trust between themselves and the members of their cabinets.

Spouses, partners and direct family members shall not be part of the cabinet of the Member of the Commission.

2. FINAL PROVISIONS

2.1. Resignation of Commissioners

A Member of the Commission shall resign, if the President so requests, in conformity with article 17.6 of the Treaty (TEU).

2.2. Compulsory retirement and sanctions to Commissioners

If any Member of the Commission no longer fulfils the conditions required for the performance of her/his duties or if she/he has been guilty of serious misconduct, the Court of Justice may, on application by the Council acting by a simple majority or the Commission compulsorily retire her/him or deprive her/him of her/his right to a pension or other benefits in its stead, in conformity with articles 245 and 247 of the Treaty (TFEU).

⁷ As foreseen by article 17.6 of the Treaty (TEU), the President of the Commission shall (a) lay down guidelines within which the Commission is to work; (b) decide on the internal organisation of the Commission, ensuring that it acts consistently, efficiently and as a collegiate body.

2.3. Consultative competence of the Ad Hoc Ethical Committee

In addition to being asked to deliver opinions on certain post term-of-office activities of former Members of the Commission, as referred to in point 1.2 above, the Ad Hoc Ethical Committee may be requested by the President to deliver opinions on any general ethical question concerning the interpretation of this Code of Conduct.

2.4. Objective and interpretation of this Code of conduct

The objective of this Code is to clarify the obligations for Commissioners deriving from article 17 TEU and article 245 TFEU, in particular as regards the principle of independence and their obligation to discharge their duties in the general interest of the Union. The Code shall be applied in good faith and with due consideration to the proportionality principle.

CODE OF CONDUCT FOR COMMISSIONERS ANNEX 1 – DECLARATION OF INTERESTS

Full name:

I. PREVIOUS ACTIVITIES

I.1. Posts held over the last 10 years, in foundations or similar bodies

(Please indicate the nature of the post, the name of the body and its objective/activity)

I.2. Posts held over the last 10 years in educational institutions

(Please indicate the nature of the post and the name of the institution)

I.3. Post held over the last 10 years in the governing, supervisory and advisory organs of companies and other bodies devoted to commercial or economic activities.

(Please indicate the nature of the post and the name and the business of the company or other body)

I.4. Other professional activities held over the last 10 years, including services, liberal profession, consulting activities.

(Please indicate the nature of the activity)

II. OUTSIDE ACTIVITIES

II.1. Posts currently held in foundations, similar bodies or educational institution

(Please indicate the nature of the post, the name of the body and its objective/ activity)

II.2. Additional relevant information (e.g. other functions of an honorary nature and/or attributed for life)

III. FINANCIAL INTERESTS

Shares:

Company	Number of shares	Total current value
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Other stock:

Company	Number of securities	Total current value
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IV. ASSETS

(except the homes reserved for the exclusive use of the owner and his/her family)

Real estate:

Other property:

V. SPOUSE'S/ PARTNER'S PROFESSIONAL ACTIVITY

(please include also spouse's/ partner's financial interests which might entail a conflict of interests)

I hereby declare that the information given above is correct.

Date:

Signature:

CODE OF CONDUCT FOR COMMISSIONERS

ANNEX 2 - TRAVEL ON OFFICIAL BUSINESS (MISSIONS) BY COMMISSIONERS⁸

1. BUDGET

Mission expenses incurred by Commissioners travelling on official business are covered by an allocation from budget item 25.010213. Mission expenses for the staff of private offices are covered (in accordance with the Commission's Guide to Missions) from budget item 25.010211.01.01.10

2. NOTIFICATION OF MISSION - CANCELLATION OF MISSION

A travel order, signed by the Commissioner concerned, must be drawn up for all missions using the appropriate form (MIPS). It must set out the following:

- purpose of the mission,
- the place of mission,
- means of transport to be used,
- date and time of departure and return,
- start and completion of work.

In the event of a mission being cancelled, the Commissioner must immediately:

- see that the travel tickets and reservations issued by the travel agency are cancelled in writing,
- ensure that hotel reservations are also cancelled in writing.

3. MEANS OF TRANSPORT

Commissioners may use any means of transport appropriate for the purposes of the mission based on its cost-effectiveness and taking into account the needs of the Institution.

4. TICKETS AND TRAVEL EXPENSES

According to the Guide to Missions, travel expenses reimbursed in the context of a mission are in principle for travel between Brussels and the place of the mission.

Tickets are issued on request by the Commission's official travel agency. The costs are borne in full by the Commissioner's mission allocation. Any unused, including partly unused, tickets or reservations must be returned promptly to the travel agency. Any private travel will be personally paid for by the Commissioner, who will pay the travel agency directly by credit card.

⁸ In the absence of specific rules, the general rules in the Guide to Missions are applicable by analogy.

5. CHARTERING AIR TAXIS

The use of air taxis must be authorised by the President. As a general rule, the air taxi may be authorised only under exceptional circumstances, either when commercial flights are not available to reach a destination or when they can not fit with the Commissioner's diary, or for security reasons. A careful check of all options should be made, including agenda planning, so that the air taxi is only envisaged as a last option.

Requests completed with all practical details (place, date, programme, participants, justification, etc.), and the contractor's offer, must receive the approval from the PMO before being submitted for authorisation by the President. For travellers other than the Commissioner, financial participation equivalent to the cost of a regular flight ticket is foreseen. The PMO will implement the necessary distribution between budget lines.

6. DURATION OF A MISSION

The duration of a mission is reckoned from the time of departure to the time of arrival back at the place of employment by the means of transport used.

7. MISSIONS COMBINED WITH LEAVE

Missions combined with leave are reckoned as starting at the beginning of the official work if the leave is taken before the mission and as finishing at the close of the official engagement if the leave follows the mission. The same applies in the case of public holidays and weekends, unless the work schedule provides otherwise. Even if this is the case, however, no allowances are paid for the public holidays/weekends if the official engagement is in the country of origin of the Commissioner.

8. DAILY SUBSISTENCE ALLOWANCE

The daily subsistence allowance payable to Commissioners is the allowance payable to officials plus 5%. This is calculated using the rules applicable to officials in the Guide to Missions.

9. HOTEL EXPENSES

Hotel expenses (excluding breakfast and other meals) are reimbursed on presentation of the bill. If hotel expenses exceed €300 per day, a justification shall be attached to the statement of expenses.

10. OTHER EXPENSES

Other expenses justified by the nature of the mission are reimbursed on application and on presentation of supporting documents. Entertainment and representation expenses must be claimed separately in line with a Commission decision governing such expenses.

11. EXPENSES CLAIMS

Commissioners will be reimbursed on the basis of a statement of mission expenses to be sent as soon as possible for the reimbursement of mission expenses to the PMO using the appropriate form (MIPS).

Claims must contain the following details:

- the purpose of the mission,
- the place of mission,
- date and time of departure and arrival at the place of employment by the means of transport used,
- starting and finishing times of the work,
- number of days' leave, if any, combined with the mission,
- transport costs paid on the spot by the Commissioner,
- hotel expenses (excluding breakfast and other meals),
- any meals paid by third parties for the Commissioner,
- other expenses for which reimbursement is claimed.

All supporting documents must be attached.

12. CERTAIN EXPENSES PAID BY REPRESENTATIVE OFFICES AND EU DELEGATIONS IN OTHER COUNTRIES

In certain cases authorisation may be given for expenses incurred during a mission to be paid at the destination by Representative Offices and Delegations. This is an exceptional procedure which is authorised only when expenses incurred on mission cannot be paid with the corporate credit card or directly billed to the PMO⁹. Given the heavy administrative burden involved, such requests should be limited to the strict minimum.

13. SPECIAL RULES CONCERNING MISSIONS BY COMMISSIONERS' DRIVERS AND THE USE OF THE CAR POOLS OF COMMISSION OFFICES AND DELEGATIONS IN OTHER COUNTRIES

Under Article 14 of the Commission's Decision of 14 September 1979, all Commissioners have an official car and driver assigned to them at all times. Drivers may not be asked to make private journeys if this involves overtime or mission expenses for the driver, unless security dictates.

⁹ Article 66 of the implementing rules of the Financial Regulation limit the use of imprest accounts to cases where, owing to the limited amounts involved, it is materially impossible or inefficient to carry out payment operations by budgetary procedures.

Daily commuting between the Belgian residence of the Commissioner and the office (or the station and airport) shall be considered professional travel.

Drivers are covered by a travel order when driving the official car of a Commissioner, even if the Commissioner or a private office official is not in the car, when returning from an official destination or bringing the car back from there. Claims for mission expenses should be filled in by the driver using the appropriate form (MIPS) and signed by the Head of Cabinet, giving the following particulars:

- purpose of the mission,
- the place of mission,
- route taken,
- date and time of departure and return to workplace,
- hotel expenses (excluding breakfast and other meals),
- other details included on the claims form.

Drivers' mission expenses are covered by the private office's own mission budget.

A Commissioner visiting a Representative Office or a EU Delegation is entitled to an official car on the spot, if the Office or Delegation is directly involved in the mission. If it is not, a self-drive or chauffeur-driven car may be hired from a local car-hire firm. Car-hire costs are charged to the Commissioner's mission allocation.