

RULES OF PROFESSIONAL ETHICS AT THE EUROPEAN COMMISSION LEVEL

The Rules of Professional Ethics for Members and Staff of the European Commission are governed by the following texts:

- I. The EC Treaty (in particular Article 213 and 287)
- II. The Code of Conduct for Commissioners (in particular Independence and Dignity and Declaration of Financial Interests)
- III. The staff regulations (in particular Article 11 thru 18)
- IV. The Code of Good Administrative Behaviour (in particular objectivity and impartiality)

These texts apply to members and staff of the European Commission both during the period of service and after leaving the Commission.

I. The EC Treaty

Article 213

1.(27) The Commission shall consist of 20 Members, who shall be chosen on the grounds of their general competence and whose independence is beyond doubt.

The number of Members of the Commission may be altered by the Council, acting unanimously.

Only nationals of Member States may be Members of the Commission.

The Commission must include at least one national of each of the Member States, but may not include more than two Members having the nationality of the same State.

2. The Members of the Commission shall, in the general interest of the Community, be completely independent in the performance of their duties.

In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any action incompatible with their duties. Each Member State undertakes to respect this principle and not to seek to influence the Members of the Commission in the performance of their tasks.

The Members of the Commission may not, during their term of office, engage in any other occupation, whether gainful or not. When entering upon their duties they shall give a solemn undertaking that, both during and after their term of office, they will respect the obligations arising there from and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits. In the event of any breach of these obligations, the Court of Justice may, on application by the Council or the Commission, rule that the Member concerned be, according to the circumstances, either compulsorily retired in accordance with Article 216 or deprived of his right to a pension or other benefits in its stead.

Article 287

The members of the institutions of the Community, the members of committees, and the officials and other servants of the Community 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.

II. The Code of Conduct for Commissioners

1. Independence and Dignity: Ethical Issues

1.1. Private Activities

1.1.1. Outside activities

Commissioners may not engage in any other professional activity, whether paid or unpaid. (For example writing a regular column is regarded as a professional activity whereas giving courses free of charge in the interests of the European integration on the other hand is permitted).

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

Commissioners may not accept any form of payment for delivering speeches or taking part in conferences.

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 decision-making power in the management of the body in question. "Foundations or similar bodies" means non-profit making organisations or associations which engage in activity in the public interest in the fields mentioned. Posts held on these terms shall under no circumstance involve any risk of a conflict of interest. They shall be listed in a declaration, laid down according to the model in annex to this Code.

The declaration must relate to 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 those which will continue after that point.

Courses given free of charge in the interests of European integration are the only other outside activities that are permitted and do not have to be declared.

Commissioners may be active members of political parties or trade unions provided that this does not compromise their availability for service in the Commission.

Commissioners shall inform the President of their intention to participate in an election campaign and the role they expect to play in that campaign. 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.

Commissioners standing for election to public office shall also inform the President of their intended level of participation in the election campaign. If their intention is to play an active role in the election campaign, they must withdraw from the work of the Commission for the duration of the campaign.

Commissioners may not hold any public office of whatever kind.

Whenever Commissioners intend to engage in an occupation during the year after they have ceased to hold office, whether this be at the end of their term or upon resignation, they shall inform the Commission in good time. The Commission shall examine the nature of the planned occupation. If it is related to the content of the portfolio of the Commissioner during his/her full term of office, the Commission shall seek the opinion of an ad hoc ethical committee. In the light of the committee's findings it will decide whether the planned occupation is compatible with the last paragraph of Article 213 (2) of the Treaty.

1.1.2. Financial interests and assets

Commissioners must declare any financial interest or asset that might create a conflict of interests in the performance of their duties. The declaration shall include any holdings by the Commissioner's spouse 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 does 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 of his/her family.

Other property whose possession could create a conflict of interests, especially from a tax point of view, must also be declared.

1.1.3. Activities of spouses

To obviate any potential risk of conflict of interest, Commissioners are required to declare the professional activities of their spouses. The declaration must state the nature of the activity on the title of the position held, and, if applicable, the name of the employer.

1.1.4. 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 when the Member of the Commission takes office and revised during his or her term of office if the information changes.

Declarations shall be scrutinised under the authority of the President and with due regard for Members' areas of responsibility. These declarations shall be made public.

1.2.5. Acceptance of gifts, decorations or honours

Commissioners shall not accept any gift with a value of more than EUR 150. When, in accordance with diplomatic 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 the gift, an evaluation shall be undertaken under the authority of the Director of the Office for Infrastructure and Logistics in Brussels, whose decision on the matter shall be final.

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

Commissioner shall notify the President of the Commission of any decoration, prize or honour awarded to them.

III. The staff regulations (in particular Article 11 thru 18)

Article 11 (96)

An official shall carry out his duties and conduct himself solely with the interest of the Communities in mind; he shall neither seek nor take instructions from any government, authority, organisation or person outside his institution. He shall carry out the duties assigned to him objectively, impartially and in keeping with the duty of loyalty to the Communities.

An official shall not without the permission of the appointing authority accept from any government or from any other source outside the institution to which he belongs any honour, decoration, favour, gift, payment of any kind whatever, except for services rendered either before his appointment or during the special leave for military or other national service and in respect of such service.

Article 11a (96)

1. An official shall not, in the performance of his duties and save as hereinafter provided, deal with a matter in which directly or indirectly, he has a personal interest such as to impair his independence, and, in particular, family and financial interests.
2. Any official to whom it falls, in the performance of his duties, to deal with a matter referred to above shall immediately inform the Appointing Authority. The Appointing Authority shall take any appropriate measure, and may in particular relieve the official from responsibility in this matter.
3. An official may neither keep nor acquire, directly or indirectly, in undertakings, which are subject to the authority of the institution to which he belongs or which have dealings with that institution, any interest of such kind or magnitude as might impair his independence in the performance of his duties.

Article 12 (96)

An official shall refrain from any action or behaviour which might reflect adversely upon his position.

Article 12a (96)

1. Officials shall refrain from any form of psychological or sexual harassment.
2. An official who has been the victim of psychological or sexual harassment shall not suffer any prejudicial effects on the part of the institution, provided the official has acted honestly.
3. “Psychological harassment” means any improper conduct that takes place over a period, is repetitive or systematic and involves physical behaviour, spoken or written language, gestures or other acts that are intentional and that may undermine the personality, dignity or physical or psychological integrity of any person.
4. “Sexual harassment” means conduct relating to sex which is unwanted by the person to whom it is directed and which has the purpose or effect of offending that person or creating an intimidating, hostile, offensive or disturbing environment. Sexual harassment shall be treated as discrimination based on gender.

Article 12b (96)

1. Subject to Article 15, an official wishing to engage in an outside activity, whether paid or unpaid, or to carry out any assignment outside the Communities, shall first obtain the permission of the Appointing Authority. Permission shall be refused only if the activity or assignment in question is such as to interfere with the performance of the official’s duties or is incompatible with the interests of the institution.
2. An official shall notify the Appointing Authority of any changes in a permitted outside activity or assignment which occur after the official has sought the permission of the Appointing Authority under paragraph 1. Permission may be withdrawn if the activity or assignment no longer meets the conditions referred to in the last sentence of paragraph 1.

Article 13 (96)

If the spouse of an official is in gainful employment, the official shall inform the appointing authority of his institution. Should the nature of the employment prove to be incompatible with that of the official and if the official is unable to give an undertaking, that it will cease within a specified period, the appointing authority shall, after consulting the Joint Committee, decide whether the official shall continue to his post or be transferred to another post.

Article 14 (96)

Repealed

Article 15 (96)

1. An official who intends to stand for public office shall notify the Appointing Authority. The Appointing Authority shall decide, in light of the interests of the service, whether the official concerned:
 - (a) should be required to apply for leave on personal grounds, or
 - (b) should be granted annual leave, or
 - (c) may be authorised to discharge his duties on a part-time basis, or
 - (d) may continue to discharge his duties as before.

2. An official elected or appointed to public office shall immediately inform the Appointing Authority. The Appointing Authority shall, having regard to the interests of the service, the importance of the office, the duties it entails, and the remuneration and reimbursement of expenses incurred in carrying out those duties, take one of the decisions referred to in paragraph 1. If the official is required to take leave on personal grounds or is authorised to discharge his duties on a part-time basis, the period of such leave or part-time work shall correspond to the official's term of office.

Article 16 (96)

An official shall, after leaving the service, continue to be bound by the duty to behave with integrity and discretion as regards the acceptance of certain appointments or benefits.

Officials intending to engage in an occupational activity, whether gainful or not, within two years from leaving the service shall inform their institution thereof. If that activity is related to the work carried out by the official during the last three years of service, and could lead to a conflict with the legitimate interests of the institution, the Appointing Authority may, having regard to the interests of the service, either forbid him from undertaking it or give its approval subject to any conditions it thinks fit. The institution shall after consulting the Joint Committee, notify its decision within 30 working days of being so informed. If no such notification has been made by the end of that period, this shall be deemed to constitute implicit acceptance.

Article 17 (96)

1. An official shall refrain from any unauthorised disclosure of information received in the line of duty, unless that information has already been made public or accessible to the public.
2. An official shall continue to be bound by this obligation after leaving the service.

Article 17a (96)

1. An official has the right to freedom of expression, with due respect to the principles of loyalty and impartiality.
2. Without prejudice to Articles 12 and 17, an official who intends to publish or cause to be published, whether alone or with others, any matter dealing with the work of the Communities shall inform the Appointing Authority in advance.

Where the Appointing Authority is able to demonstrate that the matter is liable seriously to prejudice the legitimate interests of the Communities, the Appointing Authority shall inform the official of its decision in writing within 30 working days of receipt of the information. If no such decision is notified within the specified period, the Appointing Authority shall be deemed to have had no objections.

Article 18 (96)

1. All rights in any writings or other work done by any official in the performance of his duties shall be the property of the Community to whose such activities such writings or work relate. The Communities shall have the right to acquire compulsorily the copyright of such works.

2. Any invention made by an official in the course of or in connection with the performance of his duties shall be the undisputed property of the Communities. The institution may, at its own expense and on behalf of the Communities apply for and obtain patents therefore in all countries. Any invention relating to the work of the Communities made by an official during the year following the expiration of his term of duty shall, unless proved otherwise, be deemed to have been made in the course of or in connection with the performance of his duties. Where inventions are the subjects of patents the name of the inventors shall be stated.
3. The institution may in appropriate cases award a bonus, the amount of which shall be determined by the institution, to an official who is the author of a patented invention.

IV. The Code of Good Administrative Behaviour (in particular Objectivity and Impartiality)

Staff shall always act objectively and impartially in the Community interest and for the public good. They shall act independently within the framework of the policy fixed by the Commission and their conduct shall never be guided by personal or national interest or political pressure.

Where a member of the public requests information relating to a Commission administrative procedure, staff shall ensure that this information is provided with the deadline fixed for the procedure in question.

Conclusions

While many elements of an ethics infrastructure are in place within the European Commission, the absence of a systematic approach towards ethics has led to a framework with no clear identification in the Commission of what the ethics infrastructure is. This is complicated by the fact that there are two parallel systems, in operation in the institution, one for Commissioners and one for officials. Drawing on the existing academic literature on administrative and political ethics, a bespoke ethics infrastructure for the Commission into which existing initiatives could fit could be defined. This would have the advantage of a) sending an important message to the outside world that the Commission was taking these issues seriously on its own account and not simply introducing actions to respond to criticism from the Parliament and the media, and b) it would allow the Commission to identify more easily gaps in the existing framework, providing for new initiatives.

There are many reasons for implementing an ethics infrastructure. First, the stronger the ethics framework is, the higher the level of trust in public organisations. Second, high ethical standards which are encouraged and facilitated by a strong ethics framework have a positive effect on the efficiency and effectiveness of public organisations. High ethical standards contribute not just to the input-oriented legitimacy of the EU, but also its output legitimacy as well. Third, the absence of an ethics framework makes it more likely that the Commission just like the European Parliament will suffer from ethics-related crises.

It is not just prevention of ethical misconduct that should interest the Commission, but also the prevention of crises, because of the damage that can they do to the Commission's reputation and because they draw attention and often draw resources away from the

Commission's priorities. Of course, there can be no assumption that even with an ethics infrastructure in place, ethics-related scandals will be a thing of the past, only that an ethics infrastructure makes this less likely or easier to manage post-hoc. Fourth, an explicit ethics infrastructure could make the Commission a model for other public organisations, turning the Commission into a world class administration which would be in a position to set standards for other public organisations rather than just reacting to them.