



Mind the gap

MEP code of conduct is not effectively enforced

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Summary

The introduction of the first-ever Code of Conduct for Members of the European Parliament (MEPs) in January 2012 came as a breakthrough. Jerzy Buzek, then President of the European Parliament, expressed the hope that the new guidelines would be a *“strong shield against unethical behaviour”*, further stating that *“the code's guiding principle is transparency. The Code of Conduct is a major improvement on the status quo and is the first-ever Code of Conduct for MEPs”*¹.

Two years later, however, the assessment of its enforcement is sobering. While the code has set out significant obligations for MEPs in performing their duties, their interpretation by the parliamentary authorities has been very disappointing. In particular, Martin Schulz (President of the European Parliament during the period since the Code of Conduct was introduced) has shown a lack of ambition in his role of guardian of the code. As detailed in this briefing, the President has declined to take forward civil society complaints in relation to the application of the code on several occasions, and he has even refused to impose sanctions when recommended to do so by the Code of Conduct advisory committee. Schulz's approach and his narrow interpretation of the rules have undermined the code because they have neither produced meaningful incentives for MEPs to comply with its provisions, nor adequate sanctions for MEPs who might breach these. While the set of rules includes a definition of a conflict of interest and places an obligation on MEPs to take immediate steps to address it, the President has failed to take any real measures to stop conflicts of interest – sticking to the interpretation that the code only contains the obligation to make them transparent.

Effective monitoring has also been missing to make the code a fully working tool. This is due to the lack of enforcement capacities of the European Parliament secretariat dealing with the system, and more importantly the central role of the President of the Parliament in its implementation. An ethics advisory committee was introduced, with the task to advise MEPs in declaring their interests, and interpret the meaning of the code in the case of complaints about potential conflicts of interest, upon request from the President. In its current form, the committee does not have any right of initiative; it is requested by the President to start an investigation and it provides recommendations directly to the President, who then decides whether to take further action. As it does not include external experts, but only MEPs judging the behaviour of their own peers, it is not in a position to take very critical positions, nor is it really able to control how MEPs comply with their obligations, and even less to force them to do so. The limits of the system have been particularly visible when it comes to the declarations of financial interest: once filed by MEPs, they are not checked against completeness and plausibility, unless a complaint is filed and taken forward for investigation after agreement by the President. The handling of complaints has also been extremely slow, with complainants being left in the dark about the process and the timeline between the moment the complaint is sent and the ruling.

While the code was introduced to make up for the reputational damage of MEPs after the “cash-for-amendment” scandal that hit the Parliament in 2011, it is unfortunate that President Schulz has failed to see the urgency of good enforcement in order to regain trust and legitimacy from the public. This could

¹ <http://www.euractiv.com/future-eu/meps-approve-new-code-conduct-news-509386>

still happen however, during the new European Parliament term. In addition to a new President of the Parliament with a more ambitious approach to ensure the code is enforced, there is a clear need for a revision of the code. This should include the introduction of external monitoring and a proper complaint body, as well as clarifications about which situations and outside employment fall under the definition of a conflict of interest. The European elections will be a test and citizens will expect their representatives to behave according to the highest ethical standards.

Introduction: a recap on the code of conduct

A Code of Conduct for Members of the European Parliament (MEPs) was introduced in January 2012. This followed calls for reforms after a major scandal hit the European Parliament. In 2011, three MEPs allegedly accepted an offer of money in exchange for tabling amendments to legislation in what would later be referred to as the 'cash for amendments' scandal². President Schulz, then leader of the Social and Democrats party, said that MEPs should have no other employment on the side, even calling on one of the MEPs involved to give back its mandate³.

Not only did the code introduce obligations on MEPs to declare financial interests, but it also placed an obligation on him/her to obtain clearance for any activities and outside interests with potential to cause a conflict of interest. It provided guidance on the conduct of former MEPs and rules on accepting and declaring third-party gifts and hospitality (under the form of implementing measures)⁴.

Two years on however, the code remains poorly implemented. Concerns raised by civil society groups, media and others about individual cases of problematic implementation, and sometimes potential breach of the rules, have been poorly addressed by the European Parliament authorities. Likewise calls to tighten up the rules in order to avoid poor interpretation that could be detrimental to the reputation of the European Parliament have mainly remained unanswered by President Schulz. This is all the more disappointing as his earlier statements had raised expectations of an ambitious leadership on transparency and ethics issues under his presidency: *"Being an MEP is a time-consuming job and a well-paid one. Parliament has to make sure that members cannot use their position as an MEP to make money on the side"* he said at the time of cash-for-amendments⁵.

According to an opinion poll, conducted by TNS opinion, and completed by over 6,000 people in six European countries and released in January 2013, four out of five respondents (80 per cent) feel less confident that an MEP represents the best interests of citizens if they also work for a lobby group or a private company. Sixty seven per cent declared that MEPs should not be allowed to work for a lobby group or a private company while they are serving as elected representatives⁶.

As Members of the European Parliament are entering into the election campaign, transparency standards and ethics practices in the European institutions will be under special public scrutiny. Candidates running for the new parliamentary term should express the highest commitment to promote a better ethics culture in the European institutions, ideally by supporting the ALTER-EU Politics for People pledge⁷. This can happen with a revision of the Code of Conduct under the new parliamentary term.

² <http://www.foeeurope.org/press/2011/Mar21 ALTEREU cash for laws scandal.html>

³ <http://euobserver.com/political/32130>

⁴ http://www.europarl.europa.eu/pdf/meps/926701_1_EN_IM_DEF.pdf

⁵ <http://euobserver.com/political/32130>

⁶ <http://www.foeeurope.org/EUcitizenspoll>

⁷ www.politicsforpeople.eu

Mind the gap: what the code says versus how the code has been interpreted

The Code of Conduct has provided welcome guidance on how MEPs should behave and seek to avoid conflicts of interest in order to prevent new scandals from happening again.

According to the Code of Conduct⁸, Members have an obligation to:

- Act with “*disinterest, integrity, openness, diligence, honesty, accountability and respect for Parliament’s reputation*”;
- “*act solely in the public interest and refrain from obtaining or seeking to obtain any direct or indirect financial benefit or other reward*”.

In performing their duties, they shall:

“*not [...] enter into any agreement to act or vote in the interest of any other legal or natural person that would compromise their voting freedom*”;

“*not solicit, accept or receive any direct or indirect financial benefit or other reward in exchange for influencing, or voting on, legislation [...] and shall consciously seek to avoid any situation which might imply bribery or corruption*”.

The code defines a conflict of interest as a situation where “*a Member of the European Parliament has a personal interest that could improperly influence the performance of his or her duties as a Member [...] Any Member who finds that he or she has a conflict of interest shall immediately take the necessary steps to address it, in accordance with the principles and provisions of this Code of Conduct*”.

From the start, transparency campaigners warned that robust interpretation through clear implementing rules was an absolute prerequisite to make the code a fully functioning tool to promote the highest ethics standards and prevent new scandals from happening⁹. According to Transparency International’s recent analysis on the integrity system of the European Union, “no evidence could be found that the financial information declared by [...] MEPs is being systematically verified by the institutions themselves, undermining the effectiveness of this essential safeguard against conflicts of interest and illicit enrichment. Meanwhile, committees monitoring compliance with ethics rules are usually filled with

⁸ http://www.europarl.europa.eu/pdf/meps/201305_Code_of_conduct_EN.pdf

⁹ <http://www.foeeurope.org/press/2011/Dec01 ALTEREU Parliament votes on new code of conduct.html> <http://www.alter-eu.org/documents/2012/03/alter-eu-factsheet-on-implementation-of-mep-code>

current or former members of the institutions, and therefore lack independence or real teeth”¹⁰. It recommended that “the European Parliament should improve the monitoring and sanctioning mechanisms regarding the conduct of MEPs and their assistants, including the comprehensive verification of declarations of interest, the introduction of an independent ethics body with binding sanction powers, and publication of information on members’ expenses”¹¹. It is very disappointing however that under the presidency of Martin Schulz, the parliamentary authorities have gone in exactly the opposite direction. As the guardian of the code, the President seems to have lacked any real ambition to ensure a strict implementation of the code and ensure that conflicts of interest are prevented.

One of the main illustrations of this lax approach has been the introduction of a complementary “Users’ Guide”¹², which contradicts the code on key points. While the code is clear in its guidance to MEPs who find that they have a conflict of interest ie. they “shall immediately take the necessary steps to address it”; the users’ guide states that: “*The Code of Conduct does not interdict conflicts of interests, but seeks to ensure that any actual or potential conflict of interest is declared promptly and transparently by a Member*”. Such a weak interpretation fundamentally undermines the spirit of the code as well as its effort to promote a culture of openness, ethics and accountability. While the code was approved by the plenary of the European Parliament, the users’ guide was introduced by the advisory committee without further consultation, or vote, within the institution.

The examples of specific cases of violations of the code of conduct compiled in the next section further illustrate how the loose interpretation of the rules has undermined the code. They show an urgent need to initiate a review of the code and proper implementation once the new Parliament is elected.

¹⁰ Transparency International – EU Office, “The European Union Integrity System”, http://www.transparencyinternational.eu/wp-content/uploads/2014/04/EU_Integrity_System_Report.pdf, p.9

¹¹ Transparency International – EU Office, “The European Union Integrity System”, http://www.transparencyinternational.eu/wp-content/uploads/2014/04/EU_Integrity_System_Report.pdf, p.17

¹² http://www.europarl.europa.eu/pdf/meps/CoC_Users_Guide_draft4web_EN_rev.pdf

A track-record of poor implementation of the rules

Conduct of former MEPs: Former Members' Association

In May 2013, Friends of the Earth Europe and Corporate Europe Observatory wrote to President Schulz raising concerns that the European Parliament's Former Members' Association (FMA) had breached the code's provisions applying to former MEPs. The FMA was found to have been seeking corporate sponsorship for activities at the premises of the European Parliament, by offering access to high level EU officials during a dinner in the European Parliament in exchange for payment¹³. According to the Code of Conduct, "*former Members of the European Parliament who engage in professional lobbying or representational activities directly linked to the European Union decision-making process may not, throughout the period in which they engage in those activities, benefit from the facilities granted to former Members under the rules laid down by the Bureau to that effect*". Following the letter, President Schulz informed the transparency groups that he had: "*recently been informed that the Former Members' Association has decided to withdraw the "sponsorship" element of that dinner.*" The answer suggested that the event took place and that no further action was taken in response to the FMA's conduct, ignoring the fact that the reason for the complaint was that the sponsorship was a violation of the code in the first place.

MEPs filing amendments drafted by industry lobby groups: the case of Louis Michel

In November 2013, MEP Louis Michel was found to have submitted over 200 amendments drafted by industry lobby groups to the EU's Data Protection Directive. The MEP denied having filed such amendments, and put the blame on his assistant. Corporate Europe Observatory (CEO) wrote to President Schulz to raise concerns that the code of conduct might have been breached, since MEPs should observe the principles of "*disinterest, integrity, openness, diligence, honesty, accountability and respect for Parliament's reputation*"¹⁴. The case was investigated by the advisory committee, which concluded that the Code of Conduct had been breached in March 2014, five months after the complaint was filed. However, President Schulz refused to take any further action, arguing that sanctions were not needed because Louis Michel admitted his mistakes¹⁵. As pointed out by MEP Bart Staes, this case raises a fundamental question about the usefulness of having a code in the first place: "*If you can violate the code of conduct without sanctions, then why do we have one?*" In the meantime, Louis Michel has been commenting in the media that the outcome of the text proves that he is innocent, while

¹³ <http://www.alter-eu.org/documents/2013/05/02/alter-eu-groups-complain-about-breach-of-parliamentary-code-of-conduct-by>

¹⁴ <http://corporateeurope.org/lobbyocracy/2013/11/belgian-mep-lobby-amendments-scandal>
http://corporateeurope.org/sites/default/files/attachments/mep_michel_complaint_follow-up.pdf

¹⁵ <http://www.demorgen.be/dm/nl/989/Binnenland/article/detail/1832786/2014/03/28/Louis-Michel-heeft-gedragscode-voor-Europarlementsleden-geschonden.dhtml> http://www.standaard.be/cnt/dmf20140328_01045196
<http://deredactie.be/cm/vrtnieuws/buitenland/1.1924226>

he was in fact found politically responsible for what happened¹⁶. CEO wrote to President Schulz to insist that MEP Michel should not get away with violating the code of conduct without sanctions, but in his reply Schulz repeated that there was no need for further measures¹⁷.

Concerns about potential cases of individual conflicts of interest

MEP cashing in industry stock options: Jean-Luc Dehaene and ABInBev

In May 2012, several media outlets reported that Belgian MEP Jean-Luc Dehaene had been granted stock options from world leading brewing group ABInBev, worth several million euros. The stock options were nowhere to appear in the financial interests declared by the MEP. Transparency groups Friends of the Earth Europe, Corporate Europe Observatory, LobbyControl and Spinwatch called on President Schulz to make sure the MEP complied with his obligations to fully declare his financial interests and avoid any related situation of potential conflict of interest¹⁸. They argued that holding these stock options and being allowed to exercise them, while sitting as an MEP, risked a potential conflict of interest. As a result the MEP declared the existence of the stock options, but the parliamentary authorities failed to put any safeguards in place to ensure that these interests would not conflict with the MEP mandate. In response to further concerns raised by the groups in October 2012 that this was contradictory and detrimental to the spirit and wording of the code, President Schulz wrote: “*The Code of Conduct does not interdict conflicts of interests, but seeks to ensure that any actual or potential conflict of interest is declared promptly and transparently by a Member. I believe that the European Parliament’s follow-up in this case had ensured this transparency*”¹⁹. The case was subsequently closed by the parliamentary authorities, and no sanctions were brought against the MEP²⁰. This is a clear misinterpretation of the Code of Conduct.

MEPs with outside employment and other outside financial interests

In July 2013, Friends of the Earth Europe, Corporate Europe Observatory, LobbyControl and Spinwatch, released a report detailing the cases of four individual MEPs from Austria, Denmark, and Germany risking potential conflicts of interest²¹. The four MEPs – Bendt Bendtsen, Othmar Karas, Klaus-Heiner Lehne, Paul Rübig - were found to have financial or other links with companies and industry groups that have a direct interest in European Parliament legislation and are involved in lobbying, either because they hold second jobs with industry lobby groups and law firms active at the EU level, or because they declare receiving support in terms of staff from industry lobby groups. The transparency groups asked President Schulz to investigate those cases to clarify whether those MEPs risked finding themselves in breach of the code because of such overlaps of interests. They also

¹⁶ <http://www.levif.be/info/belga-politique/m-michel-satisfait-d-avoir-ete-blanchi-par-le-comite-consultatif-du-parlement-europeen/article-4000574579538.htm>

¹⁷ http://corporateeurope.org/sites/default/files/attachments/mep_michel_complaint_follow-up.pdf
http://corporateeurope.org/sites/default/files/attachments/reply_schulz_re_mep_michel_0.jpg

¹⁸ <http://www.foeeurope.org/Parliament-act-potential-case-conflict-interest-091012>

¹⁹ http://www.foeeurope.org/sites/default/files/news/schulz_aw_ngo_letter_on_dehaene-25102012.pdf

²⁰ Transparency International – EU Office, “The European Union Integrity System”, http://www.transparencyninternational.eu/wp-content/uploads/2014/04/EU_Integrity_System_Report.pdf, p.38

²¹ <http://www.foeeurope.org/new-code-old-conduct-European-Parliament-180713>

provided suggestions for clarifying the wording of the code so as to promote better management of MEPs' outside interests.

Once again, the response of President Schulz was very disappointing, suggesting a clear lack of willingness to promote ambitious ethics standards in the Parliament, and contradicting article 3 of the Code of Conduct on conflicts of interest. After repeating that the code is not there to interdict conflicts of interest, he wrote *“if the Members you refer to [...] should nevertheless in any given event be regarded as having conflicts of interests such as described by you, they have, however, been promptly and transparently declared by them in their respective Declaration of Financial Interests.”* [...] *“I understand that there are different opinions on whether the Code of Conduct is good enough or not. That is the nature of politics. But these are the current rules that our institution has adopted and which I am responsible to ensure are respected by all Members. If we think the rules are wrong, we should not apply them incorrectly, but seek to change them. That is the nature of democracy”*²². According to this interpretation, there is nothing wrong with an MEP having a conflict of interest as long as it is declared transparently. However the code is not only disclosing potential or actual conflicts of interest, but also about taking action to address them; Schulz's interpretation strongly undermines the value of the code as an instrument to ensure ethical behaviour of MEPs.

Unanswered questions over Rachida Dati's links with energy group GDF Suez

Recent French media reports have highlighted potential problematic consultancy links between energy group GDF Suez and MEP Rachida Dati²³. These alleged links currently do not appear on the MEP's declaration of financial interests which only mentions that the MEP is a *“lawyer”* with a monthly salary of more than 10,000 euros²⁴. Under its current form, the declaration of financial interest fails to provide the reader with full transparency about the tasks performed by the MEP as part of the declared activity as a *“lawyer”*, as well as who is paying the salary received for this side employment. In November 2013, Friends of the Earth Europe first wrote to the MEP to ask for clarification about the nature of the declared activity as a lawyer and the reported links with GDF Suez, but the member has not replied²⁵. Since oral declarations of (potential) conflicts of interest made by members before speaking in committee or plenary are not available to the public, it was impossible to verify whether the MEP ever mentioned such a link in the context of her work at the European Parliament. In February 2014, FoEE then wrote to President Schulz to request clarifications from the MEP in order to clear all doubts. To date, 12 weeks later, President Schulz has failed to respond.

The member has sat on the committee on Industry, Research and Energy, which legislates on issues of direct interest to GDF Suez²⁶, an organisation signed up to the Transparency Register for interest

²² http://www.foeeurope.org/sites/default/files/press_releases/schulz-aw-mepreport-complaint-30012014.pdf

²³ <http://archives.lesechos.fr/archives/2013/Enjeux/00301-006-ENJ.htm>

<http://fr.reuters.com/article/topNews/idFRPAE9BB04V20131212>

http://www.liberation.fr/politiques/2013/12/12/dati-recuse-tout-conflit-d-interet-avec-gdf-suez_965985

<http://www.europeVOICE.com/article/imported/azerbaidjan-visits-broke-parliament-rules-/79924.aspx>

²⁴ http://www.europarl.europa.eu/ep-dif/72775_05-03-2012.pdf

²⁵ Friends of the Earth Europe, letter to MEP Rachida Dati, 6 November 2013

²⁶ <http://ec.europa.eu/transparencyregister/public/consultation/displaylobbyist.do?id=90947457424-20&isListLobbyistView=true>

representatives active at the EU level. If the allegations that the member is providing consultancy services to GDF Suez are true, she could find herself in a situation of a potential conflict of interest.

Speaking at a conference in the European Parliament in April 2014, Gerald Häfner, finishing his mandate as chair of the Code of Conduct advisory committee, suggested that the case had been raised in the advisory committee, but that there had been no follow-up by the President on its recommendations to act: “Rachida Dati is another case. For some time now, she has been a Member of the Parliament. She was completely inactive for a long time, and then she suddenly started to do a huge amount of work on energy, and strangely enough, everything that she does seems to correspond exactly to the interest of one particular industry lobby, namely Gaz De France. At one time a publicist admitted that she was acting on behalf of Gaz De France and specifically stated the amount she got in payment for that; and that case was also recommended for an official investigation [...] not a single one of these cases has had any conclusion and there have been no consequences.”²⁷

Gifts and hospitality paid by third parties: MEPs’ paid trip to Azerbaijan

In March 2014, President Schulz was reported to have decided not to take action against six MEPs who went to Azerbaijan in October 2013 without declaring sponsorship for the trip within a deadline of 30 days following the event, as required by the implementing rules of the Code of Conduct²⁸. The implementing rules were introduced in April 2013 in an attempt to strengthen transparency around free trips and hospitality received by MEPs, and for which the code originally did not provide any guidance. Transparency International recently found that “with regard to the recording of engagement with lobbyists and other third-parties, MEPs are completing declarations of their attendance at third party events, where their costs were covered by a third party. No specific scrutiny measures regarding these declarations appear to be in place.”²⁹ While not addressing the excessive influence of corporate lobby groups on MEPs through gifts and hospitality, transparency watchdogs welcomed these new rules as a positive step, warning that monitoring and enforcement was absolutely essential.

One year later however, enforcement has been disappointing. An earlier investigation from the advisory group had found that six out of the nine MEPs who took part in the trip to Azerbaijan were in breach of the Code of Conduct³⁰. While the advisory committee concluded that there should be follow-up action, including sanctions, this recommendation was ignored. This is unfortunate as it undermines the credibility of the committee and more generally of the whole ethics system it is supposed to monitor. Meanwhile, media outlets have reported that the advisory committee is currently investigating another trip by several MEPs to China, also paid by third parties³¹. There are no further details on this case at the time of writing.

²⁷ <http://greenmediabox.eu/archive/2014/04/10/lobbying-corruption-and-lack-of-transparency-in-the-eu/> (starts at 02:04:45)

²⁸ <http://www.europeanvoice.com/article/imported/no-action-in-azerbaijan-case/80267.aspx>

²⁹ Transparency International – EU Office, “The European Union Integrity System”, http://www.transparencyinternational.eu/wp-content/uploads/2014/04/EU_Integrity_System_Report.pdf, p. 39

³⁰ <http://www.europeanvoice.com/article/2014/february/parliament-to-act-on-meps-failure-to-declare-trips/79727.aspx>

³¹ <http://www.europeanvoice.com/article/2014/february/parliament-to-act-on-meps-failure-to-declare-trips/79727.aspx>

Conclusions and recommendations

Since the code was introduced, Friends of the Earth Europe, LobbyControl and Corporate Europe Observatory have repeatedly called on President Schulz and the parliamentary authorities to promote a strict implementation of the Code of Conduct, including by developing comprehensive implementing measures and closely monitoring the conduct and declaration of outside interests by MEPs.

The examples compiled in this briefing show that so far this has not been the case. As the parliamentary elections approach, it is urgent to remedy the current situation and finally take an ambitious approach to ethics regulation in the European Parliament. Our recommendations to the new European Parliament and in particular the new European Parliament President are as follows:

Initiate a review process of the Code of Conduct as soon as the new Parliament starts working, including:

- Clarify and ensure that the Code of Conduct not only serves to make potential conflicts of interest transparent but also to prevent and address them when they occur and particularly when they influence the EU decision-making process.
- Establish a list of clear criteria to define which activities constitute a conflict of interest, and proactively check the submitted declarations of interest for plausibility and investigate any inconsistencies. Paid or unpaid positions or holdings in companies or organisations that have a direct interest in EU legislation and/or are involved in EU lobbying constitute a conflict of interest and should be included in the list.
- Reform the advisory committee: replace composition with external ethics experts, and give the committee the authority to undertake random checks of the submitted declarations.
- Require declarations of financial interest to be filled in online in a searchable database, making public scrutiny easier.
- Take appropriate measures against conflicts of interest by augmenting the existing remedies and/or sanctions and applying these when conflicts of interest occur.
- Clarify that all entities involved in lobbying (such as companies, consultancies, etc.) should not be allowed to give support in terms of staff or other support to MEPs during their mandate as elected representatives.



Initiative für Transparenz und Demokratie