**Follow up to the European Parliament non-legislative resolution on the annual report on the activities of the European Ombudsman in 2017**

**1. Rapporteur:** Eleonora EVI (EFDD / IT)

**2. Reference numbers:** 2018/2105 (INI) / A8-0411/2018 / P8\_TA-PROV(2018)0531

**3. Date of adoption of the resolution:** 13 December 2018

**4. Competent Parliamentary Committee:** Committee on Petitions (PETI)

**5. Brief analysis/assessment of the resolution and requests made in it:**

Every year the European Parliament adopts a resolution on the annual report on the activities of the European Ombudsman. The last resolution was adopted on 13 December 2018 and refers to the activities of the Ombudsman in 2017.

The resolution approves, among other things, the Ombudsman's annual report for 2017 presented by the Ombudsman on 16 May 2018 and congratulates her on the work and collaboration to improve the quality of the EU’s administration. It also stresses the European Parliament’s concern that the greatest proportion of the Ombudsman’s inquiries relates to transparency and accountability, including access to documents. It welcomes the launch of the first Award for Good Administration in 2017, emphasising the overall award won by the Commission’s Directorate-General for Health and Food Safety (SANTE) for developing EU collaboration to help Europeans suffering from rare diseases.

The issues concerning the Commission refer, amongst other things, to: access to documents, the transparency of the EU decision-making process (trilogues), EU Pilot and infringement procedures, Commission expert groups, transparency and EU lobbying, the appointment of its new Secretary-General, the discussion on revolving doors, special advisers, unpaid traineeships, meetings with lobbyists of the tobacco industry, fixed-term contracts in the Member States, and the implementation of the United Nations’ Convention on the Rights of Persons with Disabilities.

**6. Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**

*“Underlines the fact that EU legislation on access to documents should be updated; reiterates its call for Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents to be revised in order to also facilitate the Ombudsman’s work in scrutinising the granting of access to documents by Parliament, the Council and the Commission; welcomes the Ombudsman’s introduction of the fast-track complaint procedure to deal with inquiries on access to documents”* (paragraph 8)

The Commission recalls that in 2017, it entered more than 18,000 documents in its public document register. In addition, it disclosed documents, upon request, fully or partially, in 82% of 6,255 cases at the initial stage, and granted wider or full access in 46.9% of the 299 cases reviewed at the confirmatory stage.

The Commission has tabled two legislative proposals to the European Parliament and the Council that are still pending: the 2008 proposal for a recast of Regulation (EC) No 1049/2001[[1]](#footnote-1) and the 2011 proposal aimed at extending the application of the right of access to documents to all EU institutions, bodies, offices and agencies[[2]](#footnote-2) (the so-called *“Lisbonisation”* of the regulation).

The current stalemate is due to divergent positions between the Council and the European Parliament. Under those circumstances, it is not realistic to expect further progress as long as the divergent positions remain unchanged. The Commission has consistently supported the other institutions to arrive at a common understanding and has not considered a withdrawal of the proposals.

The Commission also remains ready to explore ways to ensure the better application of Regulation (EC) No 1049/2001, including by ensuring a more proactive publication of information and documents.

*“Recognises the need for maximum transparency in the EU decision-making process and commends the Ombudsman’s inquiry into the usual practice of informal negotiations between the three main EU institutions (trilogues); supports the publication of all trilogue documents in accordance with the rulings of the Court of Justice of the European Union”* (paragraph 12)

The Commission has always been committed to enhancing the transparency of the legislative process and welcomed the generally positive assessment made by the Ombudsman in the course of her inquiry. The Commission is committed to greater transparency in the EU's legislative work, as laid down in the Interinstitutional Agreement on Better Law-making, signed by the three institutions on 13 April 2016.

In this context, work is continuing between the services of the three institutions in developing the Joint Legislative Portal. It will provide a user-friendly way for non-specialists to access information about ongoing legislative proceedings.

In July 2016, the Ombudsman issued eight recommendations to increase the transparency of trilogues. One of these recommendations called on the institutions to make proactively available the trilogue *“four-column”* table as soon as possible after the negotiations have been concluded (but not necessarily during the ongoing negotiations as this could potentially damage the negotiation process between the institutions).

In March 2018, the General Court issued a ruling in the *De Capitani* case (T-540/15), stating that the institutions' views reflected in the *“four-column”* documents did not fall under a general presumption of non-disclosure, even where the procedure was still ongoing. The preliminary nature of discussions, the sensitive nature of the subject matter, and the fact that no agreement had been reached yet were not in themselves sufficient grounds to refuse access. In the Court's view, a refusal to disclose could take place only on a case-by-case basis when it is demonstrated that granting access to documents at issue would be likely to undermine, specifically and actually (as opposed to hypothetically), the decision making process at issue.

The transparency of trilogues as such is, first and foremost, a matter for the co-legislators. When it comes to access to documents requests addressed to the Commission, the Commission complies with the applicable case law.

*“Calls on the Commission to ensure maximum transparency and access to documents and information with regard to the EU Pilot procedures, at least in relation to petitions received, and full transparency and full access to the EU Pilot and infringement procedures that have already ended”* (paragraph 16)

EU Pilot is a phase of informal dialogue between the Commission and the Member States on issues related to potential non-compliance with EU law. Communication is strictly bilateral, between the Commission and each Member State concerned. The Commission announced, in its new Communication on enforcement policy[[3]](#footnote-3), a different approach as regards the investigations of breaches of EU law, including the use of the EU Pilot mechanism. The Commission will launch infringement procedures without relying on the EU Pilot mechanism, unless recourse to this mechanism is seen as useful in a given case.

The Commission provides information in its written replies to the European Parliament about any links that may exist between a given petition and on-going investigations carried out by the Commission or on-going formal infringement procedures.

The Framework Agreement between the European Parliament and the Commission gives the European Parliament the possibility to obtain specific information on a case-by-case basis and underlines that the Commission is always ready to share with the European Parliament specific information on infringements and investigations carried out in the context of a presumption of an infringement, pursuant to and in compliance with the provisions of the Framework Agreement.

Concerning the public disclosure of information on infringement procedures in progress, it should be pointed out that from the initial phase of an infringement procedure, the Commission must respect the principle of sincere cooperation with the Member States and not jeopardise the conflict resolution process. This is justified by the rationale behind the procedure, which is to give the Member State concerned an opportunity to comply with its obligations under EU law and to avail itself of the right to defend itself against the preliminary objections raised by the Commission. This means that transparency and access to a specific file have to be limited while the Commission conducts its initial investigation in order to clarify the often unclear legal and factual background of the case at hand. The Commission also considers that disclosing detailed information before opening a formal infringement procedure would be premature, given that no breach of EU law has been confirmed yet. The informal dialogue between the Commission and the Member States is covered by requirements of confidentiality, as confirmed by the Court of Justice. In this context the Commission has discretionary power to launch an infringement procedure, or not. Its ultimate aim is not to bring a case before the Court but to ensure compliance with EU law by the Member State concerned at the earliest possible stage.

Concerning the disclosure of information on investigations and formal infringement procedures that have already ended, it should be stressed that in accordance with the provisions governing public access to documents laid down in Regulation (EC) No 1049/2001, in principle documents held by the institutions are accessible if they are not covered by any exception mentioned in that regulation, in accordance with the exception regime provided for therein. Due regard should be had for the protection of personal data, as set out in the recently adopted Regulation (EU) 2018/1725.

The Commission has taken concrete measures to enhance the transparency of decisions taken in infringement procedures. In 2014, it set up a centralised platform with comprehensive information on infringements on the Europa website. The Commission remains fully committed to providing the European Parliament and the public with information on EU Pilot and infringements files in its annual reports on monitoring the application of EU law. The quality of the information offered was recognised by the Court of Auditors in its Landscape Review of September 2018.

*Urges the Ombudsman to continue to monitor the implementation of the Commission’s reform of the expert groups’ system in order to ensure full compliance with legally binding rules and maximum transparency in the performance of all expert groups’ activities, and to investigate and report any possible conflict of interests; believes that a careful assessment of and information on all expert groups is needed in order to understand their degree of independence, with a view to serving the public interest and delivering added value in EU policymaking; believes that all members of expert groups must be on the transparency register”* (paragraph 17)

On 30 May 2016, the Commission adopted revised *“horizontal rules”* governing the creation and functioning of expert groups[[4]](#footnote-4). These revised rules improve significantly the management, balance and transparency of expert groups and provide a positive response to many suggestions made by the European Parliament, the Ombudsman, and non-governmental organisations over the years.

In her decision of 14 November 2017, the Ombudsman congratulated the Commission on this reform, which in her opinion has resulted in a more robust, inclusive, transparent and legally binding system, and indicated that she would continue to monitor implementation.

In its reply of May 2017 to the European Parliament’s report on expert groups adopted in February 2017, the Commission indicated why it could not accept a number of additional requests put forward by the European Parliament to reform further the expert groups system.

The Commission is fully committed to ensuring correct implementation of the revised horizontal rules on expert groups, including as regards transparency and conflict of interests.

The Commission points out that with the exception of individuals appointed in a personal capacity - who should act independently and in the public interest - other types of group members represent legitimate and well identified interests. The Commission and its departments remain fully independent regarding the way they take into account the expertise and views gathered through expert groups.

According to the horizontal rules, individuals and organisations representing private interests must be registered in the Transparency Register in order to be appointed. In contrast, registration in the Transparency Register is neither required for experts appointed in a personal capacity who, by definition, cannot defend or represent any specific interest nor for public authorities, including Member States’ authorities.

*“Reiterates its call for a central transparency hub for all EU institutions and agencies”* (paragraph 18)

In May 2016, the Ombudsman wrote to President Juncker that the *“Transparency Register should constitute the central transparency hub, with other registers, such as that established for expert groups, linking to it. Going forward, it should be possible, from the Transparency Register, to get a comprehensive picture of how exactly a particular organisation tried to wield influence — what expert groups it sat on, who its representatives met and when, what public consultations they contributed to, what hearings they attended, and so on.”*

The Transparency Register is gradually assuming the role of a central transparency hub.

In 2016, the Commission adopted new rules on expert groups and introduced synergies between the Transparency Register and the Register of Expert Groups. Registration in the Transparency Register is now required in order for certain types of members to be appointed as expert group members.

As of October 2018, the Transparency Register displays the list of meetings that registrants have had with Commissioners, their cabinet members and Directors-General (in PDF format), in addition to the publication of those meetings on their respective websites. This additional tool further increases transparency by facilitating access to the relevant data when consulting the Register.

The Commission is working on further IT improvements and will continue to reflect on how to enhance the functioning of the Transparency Register, so that citizens have access to information on those who carry out activities with the objective of influencing the EU institutions and their activities.

*“Supports the Ombudsman’s commitment to improving the transparency of EU lobbying; stresses the importance of adopting an appropriate legislative act to make the EU transparency register mandatory and legally binding for all EU institutions and agencies and interest representatives, thereby ensuring full transparency of lobbying”* (paragraph 19)

In September 2016, the Commission presented its proposal for *an Inter-institutional Agreement on a mandatory Transparency Register* covering the European Parliament, the Commission and, for the first time, the Council. Following the adoption of the mandates of the European Parliament and the Council in 2017 and first orientation meetings, negotiations commenced in January 2018.

The proposal aims to strengthen transparency compared to the current, voluntary Transparency Register operated by the European Parliament and the Commission, by covering all three law-making institutions and moving to a mandatory regime, in particular by making meetings with decision-makers, including MEPs and the current Council Presidency as well as the forthcoming one, conditional upon registration in the Transparency Register.

The Commission is already leading by example in this field by requiring registration in order for interest representatives to be able to meet with Commissioners, their cabinet members and Directors-General.

In relation to the European Parliament's call for a legislative act, the Commission considers that an Inter-institutional Agreement based on Article 295 of the Treaty on the Functioning of the European Union constitutes an appropriate instrument and the most pragmatic avenue to achieve a *de facto* mandatory scheme. Making sure that meetings between decision-makers and interest representatives in all three institutions are subject to prior registration in the Transparency Register, which entails acceptance of its Code of Conduct, would make such registration a precondition for interest representation vis-à-vis the EU institutions.

*“Stresses the importance of regularly updating and greatly improving the accuracy of data on the EU transparency register, including the obligation for law firms that lobby to declare all their clients; underlines the need to make available all information on the influence of lobbyists free of charge, fully comprehensible and easily accessible to the public; believes that full transparency of the funding of all interest representatives must be ensured; calls for any organisation that breaks the revolving doors rules to be suspended from the transparency register”* (paragraph 20)

The quality of data in the Transparency Register is critical for its reliability and reputation. The Joint Secretariat, operated by the European Parliament and the Commission, performs regular eligibility and quality checks and acts upon complaints and alerts that it receives. Stronger data quality control, assisted by a newly introduced automatic mechanism, has brought tangible results. 9 % of all registrants were deemed to have suboptimal data as of June 2017 whereas that is the case for only 1.8 % today.

Law firms engaging in influencing activities are expected to join the Transparency Register and are required to list all their clients as well as the relevant revenue received from them. Since the start of the Juncker Commission, approximately 100 law firms have joined the Register, bringing the total number to 122 as of today.

The information contained in the Register is accessible free of charge, in a way that is fully comprehensible and easily accessible to the public.

Regarding funding, entities featuring on the Transparency Register are required to provide substantial information on their revenue, costs or budget, depending on the section. This is in contrast with many national lobby registers which require limited, if any, financial details.

Removal from the Transparency Register can only occur on the basis of an established violation of the Code of Conduct, one of the provisions of which lays down conditions as regards cases of employment of former members, officials and other staff of EU institutions.

*“Believes that the Commission failed to respect the principles of transparency, ethics and the rule of law in the procedure it used to appoint Martin Selmayr as its new Secretary-General; strongly regrets the Commission’s decision to confirm Mr Selmayr as its new Secretary-General, disregarding the extensive and widespread criticism from EU citizens and the reputational damage caused to the EU as a whole; emphasises that Mr Selmayr must resign as Secretary-General and calls on the Commission to adopt a new procedure for appointing its Secretary-General, ensuring that the highest standards of transparency, ethics and the rule of law are upheld”* (paragraph 12)

The European Commission rejects any suggestion that the procedure adopted to appoint its Secretary-General failed to respect the principles of transparency, ethics and rule of law.

In appointing its Secretary-General, the European Commission acted in full compliance with the EU Staff Regulations, as interpreted by the case law of the European Union Courts, and with its Rules of Procedure.

The European Ombudsman’s reading of the EU Staff Regulations and of other relevant rules is not accurate. A number of the Ombudsman’s findings are based on a fundamental misunderstanding of the possibilities offered by Article 7 of the Staff Regulations and an interpretation of the rules set out in Articles 4, 7 and 29 of the Staff Regulations that the Commission cannot share since it contradicts the constant case law of the EU courts. The Commission’s opinion of 3 December 2018 addressed to the Ombudsman clarifies facts and legal elements that the Ombudsman refers to in support of her recommendation.

The Commission also has a different factual assessment to the European Ombudsman on many of the elements presented in support of alleged instances of maladministration. The Commission’s opinion of 3 December 2018 clarifies its position on this.

Like all institutions of the Union, the Commission acts autonomously within the limits of the powers conferred on it in the Treaties and within the framework of the applicable law. This includes the power to decide on its own internal organisation, its rules of procedure and the exercise of its appointing authority powers under the EU Staff Regulations.

On 25 September 2018, the Commission organised an interinstitutional round table on senior management selection and appointment procedures, which was first proposed by Commissioner Oettinger during the CONT meeting of 27 March 2018.

The round table brought together representatives of the institutions at political or senior management level. The discussions confirmed that the way in which the different institutions implement the rules is both adequate and fit for purpose and that there is much in the way of common best practice. Although the procedures may differ in certain respects, all the institutions have the same objective – to recruit, appoint and promote talented individuals, on the basis of skills, qualifications and experience. This serves the common goal of building and maintaining a European administration of excellence with a European Union civil service that supports the respective institutions in their work for the European Union’s general interest and is independent from any government, authority, organisation or person outside the institution.

The Commission is confident that its current procedures, which are based on the Staff Regulations as interpreted by case law, are a robust framework guaranteeing an equitable and transparent selection and appointment process for senior managers.

*“Calls on the Ombudsman to continue her work on strengthening ethics rules within the EU institutions in order to solve revolving door issues and to guarantee full transparency on all information relating to such cases, including the swift publication of the names of all those EU senior officials involved; looks forward to the Ombudsman’s analysis into how the Commission is implementing her guidelines and suggestions on how to improve the handling of revolving doors situations, including the possibility of adopting legislative rules for preventing and sanctioning such situations and possible abuses”* (paragraph 23)

The ethical rules in place in the institutions ensure the absence of conflicts of interest at all stages of the career of an official.

* Before entry into service, officials have an obligation to declare any actual or potential conflicts of interests. If a conflict of interests is declared or detected, appropriate and proportionate mitigating measures to address the risks are adopted.
* During service, officials have an obligation to declare certain situations (occupational activity of their spouse, any situation where they might have a direct or indirect personal interest such as to impair their independence). Moreover, they have to obtain an authorisation prior to engaging in an outside activity, whether paid or unpaid, or to receiving a gift, honour or payment coming from a source outside his or her institution.
* During leave on personal grounds, officials must obtain prior authorisation from the institution to engage in an occupational activity outside of their institution; when coming back from leave on personal grounds, a declaration of any actual or potential conflicts of interests must be made.
* After leaving the service, officials have an obligation to inform their institution of their intention to engage in any occupational activity within two years of leaving the service. If the activity is related to the work carried out by the official during the last three years of service and could lead to a conflict of interest, the institution may either forbid the official from undertaking the activity or give its approval subject to any conditions it thinks fit. Senior officials are in principle subject to a 12 months cooling-off period with regard to lobbying and advocacy of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service.
* As far as the decisions on senior officials' post-employment activities are concerned, the responsibility lies with the institution of the civil servant concerned, according to the Staff Regulations. This institution is accountable for its decisions. In the Commission, several services are involved in the assessment of possible risks of conflict of interests. This ensures the combination of technical expertise, knowledge of the specific policy area concerned and a coherent overall approach.

The Staff Regulations and the related implementing rules of each institution provide a solid and comprehensive legal framework to prevent conflicts of interests for officials and other servants.

The rules regarding 'revolving doors' address both situations, when an official joins and leaves the Commission. Consequently, any move of a staff member between the Commission and the private sector and vice versa is scrutinised to make sure that there is no real, potential or apparent conflict of interests. These rules were strengthened in the 2014 reform of the Staff Regulations.

With regard to transparency, since 2014, the Staff Regulations provide that each institution must annually publish information on the implementation of the relevant provisions of the Staff Regulations (Article 16 (3) and (4)). The Commission publishes its annual reports, which contain a list of cases assessed, online, in compliance with the relevant legislation on data protection.

*“Strongly believes that stricter, clear and easily applicable moral and ethical rules and standards need to be swiftly applied throughout the EU institutions, agencies and bodies, with a view to securing respect for the duty of integrity and discretion, and to preventing conflict of interests with the private sector; considers that these rules and standards must be based on a legislative act; takes note of the updated code of conduct for Commissioners, which entered into force in February 2018 and introduced stricter cooling-off periods; considers, however, that post-term-of-office notification periods should be increased”* (paragraph 24)

The legal framework for the ethical obligations applied by the Commission is regularly revised and it is based on the provisions of the Treaty (e.g. confidentiality) and of the Staff Regulations as amended by Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013). In the latest revision of the Staff Regulations, several new provisions were introduced to reinforce the rules and to strengthen ethical principles and further prevent the risk of conflict of interests in the entire EU civil service. In addition, the Commission adopted a new decision on outside activities and assignments and occupational activities after leaving the service in 2018.

Ethical behaviour remains a cornerstone of the Commission. The Staff Regulations, by which all staff members have to abide, constitute a comprehensive set of ethical obligations ensuring that staff of the EU institutions acts objectively and impartially in the Union interest and for the public good.

They aim to protect the legitimate interest of the institution, while being fully compliant with the fundamental rights of the individual.

*“Stresses the urgent need for the existing Code of Good Administrative Behaviour to be upgraded effectively, by adopting a binding regulation on the matter”* (paragraph 25)

Article 298 of the Treaty on the Functioning of the European Union provides the legal basis for the adoption of regulations on good administration:

"*In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration.*

*In compliance with the Staff Regulations and the Conditions of Employment adopted on the basis of Article 336, the European Parliament and the Council, acting by means of regulations in accordance with the ordinary legislative procedure, shall establish provisions to that end.*"

This article must be read in conjunction with Article 41 of the Charter of Fundamental Rights of the European Union of 7 December 2000, which sets forth that every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union.

All European Union institutions, except for the Court of Justice, have adopted Codes of Good Administrative Behaviour imposing appropriate obligations on the staff of their administrations. In 2000, the Commission adopted its own Code of Good Administrative Behaviour (for staff in their relations with public) as an annex to its Rules of Procedure.

In 2016, the European Parliament adopted a resolution that called on the Commission to submit an appropriate proposal for a regulation based on Article 298 of the Treaty on the Functioning of the EU, binding for all institutions and applicable to all institutions, containing a Code of Good Administrative Behaviour. This resolution was accompanied by a draft regulation, drafted by the European Parliament and based on a proposal of the Ombudsman. The Commission is, at this stage, not convinced that the benefits of using a legislative instrument that would codify administrative law would outweigh the costs.

EU staff are subject to the obligations provided by the Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Union.

The Commission’s Code of Good Administrative behaviour provides a guide for Commission staff in relations with the public, taking into account the *“right to good administration”* provided for by the Charter of Fundamental Rights, which is compulsory and directly applicable to all Institutions.

Citizens can claim that the administration apply the Code in its relations with them and the infringement of a provision of the Code may result in maladministration. Members of the public are entitled to lodge complaints with the Ombudsman in such cases.

The assessment of the existence of a case of maladministration can only be done in reference to specific circumstances. Such cases can be considered as failures by staff to comply with their obligations which, in some cases, can make them liable to disciplinary action provided for in the Staff Regulations.

*“Believes that the meeting between former Commission President Barroso and a current Commission Vice-President, which was registered as an official meeting with Goldman Sachs, further demonstrated the urgent need to revise the current rules and practices in order to strengthen integrity requirements for Commissioners both during and after their mandates”* (paragraph 26)

This situation was already explained in the plenary of the European Parliament on 28 February 2018 by the relevant Vice-President himself and in replies of the Commission to the Ombudsman.

The Commission explained that the Vice-President accepted to meet Mr Barroso on the basis of their long-established personal friendship and in view of the expected private nature of their encounter.

Meetings of a 'purely private or social character’ are not covered by the obligation to publish - as by their very nature they do not involve any lobbying activity. However, this meeting was published by Vice-President Katainen in line with the policy set out in a letter of President Juncker to the Ombudsman of 9 September 2016, which provides that, as of taking up his employment, any meeting with Mr. Barroso, independently of the capacity in which Mr. Barroso acts and independently of the possibly private or social character, shall be published as a meeting with an interest representative. It is therefore unfortunate that the Commission's particularly strict approach is interpreted as implying that every meeting with Mr. Barroso has a purpose of lobbying. It is to be noted that the Commission decision of 25 November 2014 provides for the publication of the names of the organisation met, not of the names of individual persons representing the organisation in meetings.

The prohibition to lobby set out in Article 11(4) of the Code of Conduct for Members of the Commission adopted on 31 January 2018 explicitly refers to activities falling under the scope of the Transparency Register, i.e. Section III of the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation of 16 April 2014. It only aims at activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions.

The European Commission as of November 2014 has led by example among EU institutions by taking the unilateral step to publish information on meetings between interest representatives with Commissioners, their Cabinet members and Director-Generals. These meetings are published on the respective websites of Commissioners and Directors-General. The high standards applied in the Commission with regard to such meetings go well beyond the standards of other EU institutions.

*“Reiterates its call on the Commission to guarantee proactive publication and full transparency with regard to the post-term-of-office occupations of former Commissioners; calls on the Commission to ensure that the Ethics Committee is fully independent and accountable and encourages the Ombudsman to continue to assess and report on any possible conflict of interest of the Ethics Committee’s members”* (paragraph 27)

On 31 January 2018, the Commission adopted, after consultation of the European Parliament in line with the Framework Agreement on relations between the European Parliament and the Commission, a new Code of Conduct for the Members of the European Commission. The new Code significantly reinforces the provisions of the previous Code and incorporates several suggestions made notably by the European Parliament and the Ombudsman. The reinforcements established by the new Code encompass *inter alia* the extension of the period for mandatory notification of post-mandate activities and for the prohibition of lobbying the Commission by former Commissioners, the Commission's handling of former Commissioners' post-mandate activities and the creation of an Independent Ethical Committee.

The Commission already decided in Article 11(7) of its new Code of Conduct that decisions on former Commissioners' post mandate activities and related opinions of the Independent Ethical Committee will be published.

The new Code of Conduct created an Independent Ethical Committee and significantly reinforced its independence compared to the previous Ad-hoc Committee. It increased its remit and powers by extending its scope to advise on any relevant ethical issue and establishing its obligatory involvement in issues such as certain post-mandate activities or possible sanctions.

The members of the Independent Ethical Committee are selected for their competence, experience, independence and professional qualities, their impeccable record of professional behaviour and their high-level experience in European, national or international functions. The members sign a declaration of absence of conflict of interest, and the Commission ensures full transparency on their backgrounds and qualities.

*“Highlights the need to adopt major improvements on conflict of interest rules for special advisers; specifically calls on the Commission to fully implement the Ombudsman’s recommendations in this regard, by adopting maximum transparency and a proactive approach to its assessment of any potential conflict of interests before and after the appointment of special advisers, and to ensure that citizens have complete access to all the relevant information”* (paragraph 29)

The Commission has a solid and transparent framework in place for the examination of (potential) conflicts regarding special advisers.

The Commission endeavours to make further progress in this area, in line with the suggestions made by the Ombudsman in the context of her inquiry (referred to in the final reply to the Ombudsman of 20 November 2017):

* The Commission strives to formulate the mandates of special advisers as precisely as possible.
* The Commission agrees that the mitigating measures set out in the statement of assurance should be as specific and operational as possible and makes the necessary efforts to this end. The formulation depends on the concrete circumstances of the case at hand. In some cases, it will still be necessary to resort to a relatively broad statement in order to cover all possible situations of conflicts of interests.
* The Commission contacts the special advisers every six months to remind them of their obligation to update their declaration of activities if there have been any changes. A clause recalling this obligation has been inserted into the standard contracts for special advisers.

The Commission provides a substantial amount of information concerning special advisers. It publishes (on the Europa website) the names and mandates of the special advisers, their CVs and their declarations on the honour. The Commission also envisages amending the Rules of 19 December 2007 on Special Advisers to the Commission so as to provide that the declarations of activities and the statements of assurance are also published. In addition, the Commission has agreed to provide more general information on special advisers on the Europa website, which has been made available in the meantime.

*“Applauds the Ombudsman’s constant interest in issues pertinent to the staff of the institutions and highlights the importance of diminishing any kind of discrimination that might arise from differentiated status; reiterates the significance of the Ombudsman’s findings on unpaid traineeships in EU delegations of the EEAS (case 454/2014/PMC) and the recommendation that the EEAS should pay its trainees an appropriate allowance in accordance with the principle of non-discrimination; deplores the fact that other EU institutions follow the same malpractice of unpaid traineeships, which does not afford fair opportunities to young people or offer work equal to that of an employee, leaving young professionals excluded from a lack of sufficient funds with which to sustain themselves and inadequately remunerated for their services; points out that shortcomings in the status of trainees are witnessed in other areas, such as a lack of mechanisms for reporting sexual harassment in agencies of the Union; calls on the Ombudsman, therefore, to open a general strategic inquiry on the status of trainees”* (paragraph 30)

All trainees selected under the blue book traineeships programme are paid, regardless of whether they are placed in the Commission, in an agency, the EEAS or in a delegation.

The Commission's blue book traineeships programme offers paid traineeships with a monthly grant at the level of EUR 1,176.83 (which may be increased by up to 50 % when the person suffers from a disability) and reimbursement of travel and any visa costs.

To ensure a positive experience for every trainee, the Traineeships Office provides for all blue book trainees a welcome programme including awareness raising about the provisions of the Staff Regulations relating to moral and sexual harassment and about the existence of a network of confidence persons in the Commission.

To detect and address possible shortcomings, the Commission's Traineeships Office organises participants' surveys at the beginning and the end of the traineeship. Generally, these show very high satisfaction rates. The vast majority of trainees are satisfied or very satisfied with the job content and working conditions. Most trainees also appreciate the information and support they got from their services and from the Traineeships Office. 97.49 % of trainees said they would recommend the programme.

The Commission also periodically assesses the effectiveness and impact of the programme through external evaluations, the last one dating from 2014[[5]](#footnote-5).

The Commission is keen to ensure the quality of its blue book traineeships programme and to maintain the high satisfaction rates among its trainees. The Commission is thus open to consider any future recommendation to improve the blue book traineeships programme, its services to trainees and its general management, as appropriate.

In addition to the blue book traineeships, Directorates-General are authorised to host trainees outside the corporate schemes described above. Such hosting can occur under a formalised framework or informally. To date, only the Joint Research Centre (JRC) has adopted a formal framework for traineeships. Under this framework, traineeships can start at any time and their duration must be between 3 and 5 months. Trainees benefit from a monthly basic allowance (which is based on that of blue book trainees) plus a travel allowance. Other traineeships can take place, and as these traineeships are not organised in sessions and since their duration is very volatile and subject to seasonality, the Commission gives a regular overview of the total number of trainees three times a year.

*“Urges the Commission to make its work fully transparent by publishing data online on all its meetings with tobacco lobbyists or their legal representatives and all minutes thereof, in line with its obligations under the WHO FCTC”* (paragraph 31)

The EU is party to the World Health Organisation's (WHO) Framework Convention on Tobacco Control (FCTC). Article 5(3) of the FCTC requires Parties to protect their public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry in accordance with national law. The Commission fully implements the Framework Convention on Tobacco Control, including Article 5(3). Its ethical and integrity framework, as well as the rules on access to documents and on transparency, ensure the integrity of policy and law making and prevent undue influence in all areas. They constitute a framework that is fully consistent with the Framework Convention on Tobacco Control and ensures that it is respected. Meetings with the tobacco industry at the level of the Commission's decision-makers and those who are responsible for advising them are governed by the Commission's horizontal rules on transparency of meetings with interest representatives. The publication of information on meetings held by Commissioners, their Cabinet members and Directors-General with lobbyists in all areas is an important part of the wider Commission transparency policy and ensures that all such meetings are publicly known. An examination of the information proactively published since December 2014 clearly indicates that meetings between Commissioners, members of their Cabinets and Directors-General and the tobacco industry or their representatives are very few. The Commission has explained the framework it has in place to comply with the Framework Convention on Tobacco Control in its response to the Ombudsman's recommendations of 5 October 2015.

*“Deeply regrets the delays accumulated by the Commission in connection with infringement procedures on the abuse of fixed-term contracts in both the private and public sectors, which has allowed for the abuse and violation of workers’ rights in the Member States; calls on the Ombudsman to monitor this issue in order to safeguard citizens’ rights effectively”* (paragraph 33)

The Commission is fully committed to ensuring correct implementation of the Fixed Term Work Directive by the Member States and is in contact with the national authorities of those Member States that generate the highest number of complaints and petitions. There is neither a specific timeframe for nor a legal obligation on the Commission as guardian of the Treaties to initiate infringement proceedings against a Member State.

Some of the Member States concerned by the cases to which the report refers have adopted new legislation, which needed to be examined by the Commission regarding compliance with the Fixed Term Work Directive.

Furthermore, the Court of Justice has been examining several cases (replies to requests for a preliminary ruling) on the compliance of national law with the Fixed Term Work directive in recent months, which have a direct impact on the cases referred to. Two are still pending before the Court of Justice. Therefore, it would be premature to draw final consequences already at this stage.

*“Welcomes the Ombudsman’s strategic inquiries into the treatment of persons with disabilities under the Commission’s Joint Sickness Insurance Scheme and on the accessibility of the Commission’s web pages and online tools for persons with disabilities; encourages the Ombudsman to do her utmost with a view to ensuring the full and consistent implementation of the UN CRPD by the EU administration”* (paragraph 36)

Parties to the United Nations’ Convention on the Rights of Persons with Disabilities (UNCRPD) are required to promote, protect, and ensure the full enjoyment of human rights by persons with disabilities and ensure that they enjoy full equality under the law. In July 2018, the Ombudsman sent a recommendation and suggestions for improvement to the Commission concerning the improvement of the JSIS compliance with the UNCPRD.

The Commission considers that it is already compliant with the UNCRPD.In practice, a significant number of medical-related expenses linked to disabilities are already reimbursed at 100% by following a flexible and holistic approach to the four criteria for the recognition of the status of serious illness.

However, the Commission recognises that legal texts could be updated in the light of current practice and therefore agrees to formalise this flexible approach with regard to medical expenses of people with disabilities through a revision of the General Implementing Provisions (GIPs), which govern the operation of the Joint Sickness Insurance Scheme (JSIS) as regards the criteria for serious illness.

The Commission will also continue to implement and raise awareness concerning its reasonable accommodation policy and to work closely with associations representing staff with disabilities or staff with dependents with disabilities and also with relevant national authorities and NGOs to ensure a holistic approach supporting people with disabilities.

The Commission is also committed to produce on-line information material according to the latest standards of accessibility to persons with disability. The upgrade of existing material is to be done gradually as existing information is progressively updated.

1. COM (2011) 137 final [↑](#footnote-ref-1)
2. COM (2008) 229 final. [↑](#footnote-ref-2)
3. Communication "EU law: better results through better application", C(2016) 8600, OJ C 18, 19 January 2017 [↑](#footnote-ref-3)
4. C(2016) 3301 [↑](#footnote-ref-4)
5. <https://ec.europa.eu/education/sites/education/files/traineeship-programme-evaluation-2014_en.pdf> [↑](#footnote-ref-5)