

VĚRA JOUROVÁVICE-PRESIDENT OF THE EUROPEAN COMMISSION

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Honourable Member,

I would like to thank you and the co-signatories for your letter dated 16 December 2022 and for sharing your concerns. Trust in the institutions of the European Union and the observation of the highest standards of ethical conduct are a concern that the Commission fully shares.

You raise several different issues to which I wi!l respond.

First, let me reply to the reference you make to 'numerous allegations involving former senior EU officials in revolving doors cases' and to one newspaper article concerning a former Commissioner. I would like to assure you that all authorised activities of the former Commissioner in question have been thoroughly examined by the Commission in order to protect the general interest, where necessary after consultation of the Independent Ethical Committee of the Commission. I would like to highlight in this regard that the Commission's ethical committee is, together with the committee of the ECB, the only committee among the committees of the EU institutions which is entirely composed of independent personalities. All decisions on post-mandate activities and the related opinions of the Independent Ethical Committee are public:

https://commission.europa.eu/about-european-commission/service-standards-andprinciples/ethics-and-good-administration/commissioners-and-ethics/former-europeancommissioners-authorised-occupations_en.

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The Independent Ethical Committee and the Commission have analysed decisions of other bodies, notably the French High Authority for Transparency in Public Life, which your group has often quoted as an example, where their decisions concerned similar cases.

In the Commission's view, there are no significant differences in the approach which was followed. If you find such differences, I invite you to share your findings with the Commission. This would allow a constructive debate on the handling of post-mandate activities, which is an important issue as both public interests and the rights of public office holders to pursue a career after the end of their mandate must be duly taken into account.

Second, you express concerns with regard to a professional activity of Prof. Dr. von der Leyen, the husband of Commission President von der Leyen. Prof. Dr. von der Leyen indeed accepted to temporarily represent the company Orgenesis Italy in the Supervisory Committee of the Foundation 'National Center for Gene Therapy and Drugs based on RNA Technology'. This is a project led by the University of Padua and comprises in total 49 partners (24 public universities, 1 public research institute, 2 private universities, 1 private research institute, 1 private hospital, 3 private foundations and 17 private companies incl. Orgenesis Italy srl).

The election of Prof. Dr. von der Leyen took place on 30 September 2022 and the President updated her declaration of interests on 25 November 2022. Article 3(3) of the Code of Conduct requires updating the declaration in case of a change at the earliest opportunity or at the latest within two months of the change in question.

In substance, there is no conflict of interest concerning this project. According to the applicable rules, the call and the selection of the project fell under the responsibility of the Italian Ministry of Universities and Research and the selection was performed by a committee of international experts. The Commission is not, and was not, involved in the selection of the project. Therefore, a conflict of interest can be excluded with regard to the President in relation to the selection of the project.



In addition, the participation of Prof. Dr von der Leyen in the Supervisory Board on behalf of Orgenesis Italy took place after the award decision had been taken, and both Orgenesis Inc. and Prof. Dr. von der Leyen declared that he had not been involved in the grant application process and the award. Therefore, a conflict of interest of the President can also be excluded for this reason.

Since Prof. Dr. von der Leyen has no longer any function in this project and his role in the project was limited to the short period from 30 September 2022 to 24 October 2022 without any meeting of the Supervisory Board, there is no particular risk of conflict of interest for the President in relation to this specific project in the future either.

As regards the company MIDA Biotech, a consortium of several entities led by this company, which is one of Orgenesis Inc.'s subsidiaries, was approved in 2022 to receive a grant of EUR 4 million, under the European Innovation Council Pathfinder Challenge Program.

The "granting authority" in this regard is the European Innovation Council and SMEs Executive Agency (EISMEA) and the Responsible Authorising Officer its Director. The Commission and its President are not involved in such individual award decisions. There is therefore no conflict of interest of the President either.

Generally, it is important to recall that 'a conflict of interest does not exist where a Member is only concerned as a member of the general public or of a broad class of persons' (Article 2(6) of the Code of Conduct). In the present case, the company Organesis is one of many actors in this area.

If, in the future, a situation should give rise to a conflict of interest or may reasonably be perceived as such, the procedure set out in Article 4 of the Code of Conduct would apply, and the President and her Cabinet would have to 'recuse themselves from any decision or instruction of a file and from any participation in a discussion, debate or vote' in relation to such a matter. In such a case, the President would have to ask another Member of the Commission to replace her. In cases of doubt, the advice of the Independent Ethical Committee could indeed be sought.



As regards the observation that Orgenesis is not registered in the Transparency Register, I would like to recall that the Interinstitutional Agreement between the European Parliament, the Council of the European Union, and the European Commission on a mandatory transparency register covers activities carried out by interest representatives with the objective of influencing the formulation or implementation of policy or legislation, or the decision-making processes of the EU institutions. It is not a register of all natural or legal persons in the European Union that have any kind of interactions with the EU institutions. Its Article 4 explicitly exempts from its scope a number of activities including, inter alia, making submissions as a party in the framework of a legal or administrative procedure established by Union law and submissions based on a contractual relationship with any of the signatory institutions or based on a grant agreement financed by Union funds. Such activities cannot be made subject to a registration in the Transparency Register.

For these reasons, insofar as a company or other entity does not engage in any covered interest representation activity, there is no justification to require those to register in the Transparency Register.

Third, as regards your request to create an EU Ethics Body common to all EU institutions, I can confirm that the Commission will make a proposal shortly.

Fourth, you assert that the mandates of the European Anti-Fraud Office (OLAF) and the European public prosecutor office (EPPO) would not be sufficient.

Let me recall that OLAF has a mandate that concerns all institutions and their members according to Article 1(4) of Regulation 883/2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF):

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'Within the institutions, bodies, offices and agencies established by, or on the basis of, the Treaties ('institutions, bodies, offices and agencies'), the Office shall conduct administrative investigations for the purpose of fighting fraud, corruption and any other illegal activity affecting the financial interests of the Union. To that end, it shall investigate serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of officials and other servants of the Union liable to result in disciplinary or, as the case may be, criminal proceedings, or an equivalent failure to discharge obligations on the part of members of institutions and bodies, heads of offices and agencies or staff members of institutions, bodies, offices or agencies not subject to the Staff Regulations.'

OLAF has therefore a unique mandate to carry out administrative investigations into misconduct by EU officials or members of the EU institutions, bodies, offices, agencies (IBOAs) especially where that can damage the Union's financial interests or its reputation. OLAF has investigative powers and staff specialised in such investigations. I do not think that an Ethics Body can, or should, replace OLAF or duplicate its tasks. OLAF has demonstrated on many occasions that it makes use of these powers in relation to members of EU institutions.

As regards the EPPO, its mandate is the following according to Article 4 of Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'):

The EPPO shall be responsible for investigating, prosecuting and bringing to judgment the perpetrators of, and accomplices to, criminal offences affecting the financial interests of the Union which are provided for in Directive (EU) 2017/1371 and determined by this Regulation. In that respect the EPPO shall undertake investigations, and carry out acts of prosecution and exercise the functions of prosecutor in the competent courts of the Member States, until the case has been finally disposed of.'

Where the EPPO is not competent to investigate a crime, the national prosecution services are competent. We have recently seen this division of tasks in action in the context of the allegations of corruption in the European Parliament. Therefore, the framework to investigate misconduct or criminal offences is complete.



As régards your request to revise Directive 2004/109/EC of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, I am not sure how an amendment of this directive can contribute to the ethics and transparency framework applicable to the members of the EU institutions.

Finally, I would like to recall that each institution has a responsibility for the conduct of its members and can internally examine suspicions of unethical conduct. These mechanisms might have to be strengthened in different institutions in different ways. A future EU Ethics Body will play a key role in this regard.

In addition to this, according to the Treaties, the Commission and its members are, in different ways, under the oversight of the European Parliament, the Council, the Court of Justice, the Court of Auditors and the European Ombudsman. It would therefore not be correct to give the impression that there is a 'complete lack of independent oversight' since all these institutions are independent and take their role very seriously, also with regard to ethical behaviour of individual members of the institutions, as demonstrated on many occasions.

Yours sincerely,

Věra Jourová