

## **Comments of the Commission on a request for information from the European Ombudsman**

**- Complaint by GONG represented by [REDACTED]  
ref. 1141/2020/MIG and by the Good Lobby represented by [REDACTED]  
ref. 1143/2020/MIG**

---

### **I. BACKGROUND/SUMMARY OF THE FACTS**

In July 2020, the Croatian Democratic Union (Hrvatska demokratska zajednica or HDZ) published an electoral campaign video in which President von der Leyen and Vice-President Šuica made a short appearance.

In a sequence of short clips of European and national political leaders, President von der Leyen and Vice-President Šuica state “Sigurna Hrvatska” (a safe Croatia), the motto of the electoral programme of HDZ.

### **II. THE COMPLAINTS**

On 5 and 6 July 2020, the organisations GONG and “The Good Lobby” submitted complaints to the European Ombudsman concerning the participation of President von der Leyen and Vice-President Šuica in a video clip supporting the election campaign of HDZ.

The complainants questioned whether this was in line with the Code of Conduct for the Members of the European Commission and expressed distrust about the explanation that such a recording had been done in the President’s and Vice-President’s personal capacity. The complainants also raised concerns on the oversight mechanism regarding the Code of Conduct for the Members of the European Commission.

In its letter to the President of the Commission of 14 July 2020, the Ombudsman noted that the Commission, during its midday press briefing of 6 July 2020, had acknowledged that mistakes had been made and had stated that procedures would be put in place to ensure that such mistakes would not be made again. The Ombudsman considered that the Commission was thus already looking into how best to address the matter. It considered it important that the Commission clarified these issues, asked the Commission to take the complainants’ concerns into account when considering possible measures and asked the Commission to inform the Ombudsman about the measures intended to take to follow-up on the concerns raised.

### **III. THE COMMISSION’S COMMENTS TO THE COMPLAINANT’S ARGUMENTS**

The Commission has taken note of the complainants’ concerns regarding the participation of President von der Leyen and Vice-President Šuica in a video used in the election campaign in Croatia.

Political activities and participation of public office holders in election campaigns raise indeed important democratic and institutional questions that occur in any democratic community.

The Commission welcomes this opportunity to clarify and explain its approach in this regard. The clarifications given below concerning President von der Leyen apply *mutatis mutandis* to Vice-President Šuica.

As a preliminary remark, the Commission wishes to point out that, in the present case, President von der Leyen did not make her – extremely short – contribution to the video in question in her capacity as President of the Commission, but as a politician in the context of her affiliation to a political party.

The Commission has already stated publicly that this distinction could have been made clearer in the video. Unfortunately, the President had not been aware of the conditions under which her intervention would be broadcast. However, as the public reactions have shown, the video as such was easily identifiable as a campaign video of a political party, which showed a number of European politicians belonging to the same European political party to which HDZ belongs. The context made it therefore clear that this was not a Commission video or an official call of the Commission to vote for a specific party. Consequently, the Commission considered and still considers the public statements of its Spokesperson on behalf of the Commission a sufficient clarification that dispelled any remaining doubt in this regard.

The Commission has also made clear that the use of Commission resources was a mistake, even if this use of resources was minimal and did not create additional cost for the Commission, as the short recording was part of a series of other recordings.

As to the institutional questions referred to above, it is important to recall that the President of the European Commission is elected by the European Parliament at the end of a process which takes into account the elections to the European Parliament. The European political parties campaign in these elections also with regard to the position of President of the European Commission. The other Members of the Commission are selected based on the suggestions made by Member States, and the Commission as a whole is subject to a vote of consent by the European Parliament before it is appointed by the European Council. During its entire term of office, the Commission, as a body, continues to be responsible to the European Parliament which is composed of political groups which comprise members of different national political parties, usually belonging to the same European political party. Therefore, political parties, both at European and national level, play an important role in the political and democratic life of the European Union. In this regard, it is worth mentioning Article 10 of the Treaty on the European Union, which expressly recognises the importance of representative democracy, and therefore electoral campaigns, for the functioning of the Union as well as the Member States, and the role of political parties at European level, which include national parties as members.

The Code of Conduct for the Members of the European Commission recognises that Members of the Commission have a responsibility to maintain political contacts in view of the accountability of the Commission to the European Parliament and the European electorate and in view of the role of European political parties in the democratic life of the Union, (see Article 2(3) of the Code of the Conduct for the Members of the European Commission).

Article 9(1) of the Code clarifies that Members may also participate in national politics as members of national political parties *or in a national election campaign* regardless of the Member State in which this participation takes place. However, this participation must not compromise their availability for service in the Commission and the priority given to their Commission duties over party commitment.

According to Article 9(2), second sentence, of the Code, Members must temporarily withdraw from the work of the Commission if they stand for election or play otherwise an active role in the campaign. An active role is understood as a role which is similar to being a candidate. In other instances, i.e. in case of other forms of limited participation, like occasional statements during the campaign, Members can continue to perform their duties. This is an established practice of the Commission.

According to Article 9(3) of the Code, the obligation to abstain from making public statements or interventions on behalf of any political party does not apply when Members participate in a campaign, independently of the form of participation.

In accordance with these criteria, the short video message by President von der Leyen did not require a temporary withdrawal from the work of the Commission and was in line with Article 9 of the Code of Conduct.

In conclusion on that aspect, the participation of Members of the Commission in electoral campaigns is part of the democratic life in the Member States and in the Union. It is a result of the fact that Members can remain affiliated to a national and European political party during their mandate. It is an intrinsic part of the institutional cycle in Member States' and the EU's democracy. As long as the participation in a national election campaign is limited, there is no conflict with the exercise of the functions of a Member of the Commission and no need to require the Member to withdraw temporarily from the duties at the Commission. This is different if Members are a candidate in a national election or campaign actively as a candidate would do.

Against this background and as described above, President von der Leyen's recording of the video which was used in the national electoral campaign of a Member State was a limited participation and was compatible with the Treaty and the Code of Conduct.

The Commission would like to recall in this regard the general framework for the participation of Members of the Commission in national election campaign.

The Code of Conduct sets the conditions that are applicable when Members of the Commission want to participate in a national election campaign. In this context, it is important to distinguish between institutional activities as Members of the Commission in the general interest, and activities in a campaign as politicians in support of specific parties, candidates or manifesto. The institutional activities as Members of the Commission and the participation in a campaign need to be separated from each other as clearly as possible. Whereas Members participating in the campaign can support and speak on behalf of a political party, the Commission as an institution – and consequently its Members acting in their institutional capacity – has to be impartial and objective with regard to the campaign.

For the participation of Members of the Commission in the European election campaign in 2019, the Commission clarified their involvement and its practical consequences, notably with regard to the use of Commission resources, in 'Guidelines on Ethical Standards for the

Participation of the Members of the European Commission in the Election Campaign'<sup>1</sup> which were based on an opinion of the Commission's Independent Ethical Committee<sup>2</sup>. These Guidelines constitute an example of good practice which gave the necessary guidance to the Members of the Commission in a transparent and consistent manner.

In order to clarify the practical modalities for the participation in national election campaigns in the future, the President has decided that the Commission will establish guidelines for the participation of its Members in national election campaigns after consultation of its Independent Ethical Committee, as previously done for the participation in the European election campaign in 2019.

On the issue of the oversight it is worth mentioning that the Treaties set specific provisions on the checks and balances of the Commission and its Members, including its President. The oversight of the application of the Code of Conduct itself has to respect this framework.

The oversight of individual behaviour of Members of the Commission is entrusted to the Commission and more particularly to its President who has the possibility to request the resignation of a Commissioner, the Council and ultimately the Court of Justice. According to Article 245 TFEU, in the event of any breach of the Treaty obligations, the Court of Justice may act on application by the Council acting by a simple majority or the Commission.

In addition to this oversight with regard to the behaviour of individual Members, the Commission, as a body, is politically responsible to the European Parliament according to Article 17(8) TEU. Within this general framework set by the Treaties, the internal organisation and procedures of the Commission are, however, like for other institutions, the responsibility of the institution itself. In the case of the Commission, the basis for these rules is provided for in Article 17(6) TEU and in Articles 248 and 249(1) TFEU.

The complainants also raise questions with regard to the applicability of the Code of Conduct to the President of the Commission and the responsibility of the President to ensure the proper application of the Code.

The Code of Conduct for the Members of the Commission defines and clarifies the obligations applicable to Members and former Members of the Commission set out in the Treaties. The Code needs to be applied and interpreted by the Commission within the framework set by the Treaties.

The Code is a Commission decision by which the Commission has bound its Members. It applies to the Members of the Commission, including the President of the Commission, and where explicitly specified, to former Members of the Commission, to the person proposed as candidate for President of the European Commission and to Commissioners-Designate.

The responsibility of the President of the Commission for ensuring the proper application of the Code reflects the prerogatives and overall political responsibility of the President set out in the Treaties, in particular Article 17(6) TEU, and the Rules of Procedure of the Commission. This specific role of the President is reflected in the Framework Agreement between the European Parliament and the European Commission on relations between the

---

<sup>1</sup> [https://ec.europa.eu/info/sites/info/files/guidelines\\_election\\_campaign\\_en.pdf](https://ec.europa.eu/info/sites/info/files/guidelines_election_campaign_en.pdf).

<sup>2</sup> [https://ec.europa.eu/info/sites/info/files/opinion\\_draft-guidelines\\_participation-of-members-in-the-campaign-ep-elections\\_en.pdf](https://ec.europa.eu/info/sites/info/files/opinion_draft-guidelines_participation-of-members-in-the-campaign-ep-elections_en.pdf).

European Parliament and the European Commission (see notably points 4 and 5 of section II ‘Political responsibility’).

The President of the Commission can always bring a matter to the attention of the College and propose any measure that he or she considers appropriate to tackle a conflict of interest. The President may also consult the Commission’s Independent Ethical Committee. The Rules of Procedure of the Commission contain a provision on deputising for the President in case the President is prevented from exercising his or her functions (see recital 7 of the Code in this regard). In the present case no specific measures were required.

#### **IV. CONCLUSIONS**

The Commission will clarify the practical modalities for the participation of its Members in national election campaigns in guidelines. It remains the responsibility of every individual Member of the Commission to decide if he or she wants, or deems opportune, to participate in a national election campaign. If a Member decides to do so, the participation has to comply with Article 9 of the Code of Conduct and the future guidelines.

*For the Commission*  
*Maroš ŠEFČOVIČ*  
*Vice-President*