



Brussels, 18.6.2019
C(2019) 5110 final

COMMISSION DECISION

on the Status of the candidate for President/President-elect and the Commissioners-designate

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1. CONTEXT

The appointment procedure for a new Commission starts, pursuant to Article 17(7), first subparagraph, of the Treaty on the European Union (TEU), with the decision of the European Council to propose to the European Parliament a candidate for President of the Commission (hereinafter ‘candidate for President’). The European Parliament proceeds then to the election of the future President of the Commission (hereinafter ‘President-elect’).

Thereafter, the Council adopts, by common accord with the President-elect, the list of the other persons whom it proposes for appointment as Members of the Commission (hereinafter ‘Commissioners-designate’) (Article 17(7), second subparagraph, TEU).

The Commission as a body is subsequently subject to a vote of consent by the European Parliament following hearings of the individual Commissioners-designate; on the basis of this consent, the Commission is appointed by the European Council (Article 17(7), third subparagraph, TEU).

Previous experience has shown that it is necessary for the candidate for President/the President-elect and the Commissioners-designate to spend considerable time in Brussels, Luxembourg and/or Strasbourg to attend preliminary meetings with Members of the other Institutions and with Commission staff.

The Commission adopted in 2014 a Decision on the Status of the Candidate for President/President-elect and the Commissioners-designate¹ defining an appropriate status for these persons and putting in place arrangements to enable them to be provided with the staff, infrastructure and budget to operate during the period preceding their appointment as the new Commission.

In the interest of clarity, legal certainty, transparency and good administrative practice, it is appropriate to update that Decision, in order take into account, as was regularly done in the past², the evolution of the legal framework relating to this area during the last five years. This Decision therefore introduces some practical adjustments and specificities compared to the Decision of 2014 which is repealed and replaced by this Decision.

The most appropriate mechanism to support the candidate for President/President-elect and the Commissioners-designate is to award them a Special Adviser contract under the combined application of Articles 5 and 6 of the Conditions of Employment of Other Servants (CEOS) and in accordance with Articles 123 and 124 thereof³.

¹ C(2014) 4432 final of 25.6.2014.

² See PERS(2004)103/2, C(2009) 7600 final and C(2014) 4432 final.

³ Should the candidate for President or the Commissioner-designate be legally inhibited from signing such contract, they shall be requested to sign a declaration of confidentiality instead.

The financing of these contracts and related expenses, and, if necessary, of any additional needs will be covered by redeployment of existing appropriations.

This decision is applicable only to the candidate for President/President-elect and the Commissioners-designate who are not already Members of the Commission.

2. THE CANDIDATE FOR PRESIDENT/PRESIDENT-ELECT AND THE COMMISSIONERS-DESIGNATE

The candidate for President shall be awarded a contract as Special Adviser with the specific title ‘candidate for President’ unless he or she is already Member or President of the Commission. The contract of the candidate for President will take effect from the date on which the European Council decides that he or she is the candidate whose candidacy it proposes to the European Parliament. If the European Parliament elects the candidate for President, the specific title in his or her Special Adviser contract shall be changed automatically to ‘President-elect’.

Commissioners-designate shall be awarded a contract as Special Adviser with the specific title ‘Commissioner-designate’ unless they already are Members of the Commission. The contracts of a Commissioner-designate shall take effect at the earliest on the date on which the President-elect announces that he or she has accepted his or her candidacy as Member of the Commission.

The contracts of the President-elect and the Commissioners-designate shall expire on the day before the new Commission takes office.

The contracts of the candidate for President/President-elect and the Commissioners-designate shall be concluded by the Member of the Commission responsible for Human Resources ⁴, in agreement with the President. For administrative purposes, these Special Advisers shall be attached to the Cabinet of the Member of the Commission responsible for Human Resources.

Under these contracts, the candidate for President/President-elect and the Commissioners-designate shall receive a gross monthly honorarium. It shall correspond to the basic salary of an official in grade 9, step 1 ⁵. The payment will be adjusted pro-rata for the month in which their Special Adviser contracts take effect or end. The honorarium should be paid on the condition that they do not receive any other remuneration. If they do not fulfil this condition, the candidate for President/President-elect and the Commissioners-designate shall be awarded a non-remunerated Special Adviser contract.

Regardless of whether they receive a honorarium or not, the mission expenses of the candidate for President/President-elect and Commissioners-designate will be reimbursed in accordance with the existing rules for Members of the Commission.

⁴ According to the Commission Decision (C(2013) 3288, Annex I, table XII, as amended by decision C(2016) 1881 final of 4.4.2016.

⁵ The monthly payments to the candidate for President/President-elect and the Commissioners-designate will be subject to the provisions relating to tax for the benefit of the European Union. The amount is calculated on the basis of 20 working days per month at a rate corresponding to the salary of an official in grade 9, step 1.

Should the candidate for President/President-elect withdraw or fail to obtain the majority in the European Parliament as required under Article 17(7), first subparagraph, TEU, the contract shall be automatically terminated on the last day of the month in which this takes place. Should any Commissioner-designate withdraw or should the President-elect withdraw his/her support to the Commissioner-designate, the contract shall be automatically terminated on the last day of the month in which this takes place.

The status and rights of a Commissioner-designate as defined in this decision shall also apply, *mutatis mutandis*, to a person who is designated with a view of being appointed, before the regular end of the Commission's term of office, as a Member of the Commission following the resignation, compulsory retirement or death of a Member of the Commission, in accordance with the procedure set out in Article 246 TFEU. In this case, the contract will take effect at the earliest on the date on which the Council has decided to consult the European Parliament in accordance with Article 246(2) TFEU, and it will expire on the day before the appointment of the person as Member of the Commission takes effect.

3. STAFF

The candidate for President/President-elect and the Commissioners-designate, provided that they are not already Members of the Commission, shall be entitled to have at their disposal staff of their choice to constitute their private office during the period covered by the contract as Special Adviser.

During this period, each of the Commissioners-designate shall be supported by one administrator or equivalent and one assistant or secretary. The candidate for President/President-elect shall be supported by up to five administrators or equivalent and up to three assistants or secretaries.

Where the staff selected by the candidate for President/President-elect or by the Commissioners-designate are officials of the European Union, they will be seconded under Article 37 of the Staff Regulations. Such staff will be seconded, for administrative purposes, to the office of the Member of the Commission responsible for Human Resources, but within a sub-structure directly placed under the authority of the candidate for President/President-elect or the Commissioners-designate concerned. Selected Commission staff other than officials will be attached ('*mis à disposition*'), for administrative purposes, to that office in the same manner.

As regards staff selected who are not already statutory staff, the administrators or equivalent shall be awarded a contract as contract agent under Article 3b of the Conditions of Employment of Other Servants in function group IV. The assistants shall be engaged as contract agents under Article 3b of the Conditions of Employment of Other Servants in function group III. Secretaries shall be engaged in function group II. There shall be no formal selection procedures for the engagement of those agents. The contracts shall be concluded for a fixed period of not less than three months and may be extended until the day before the new Commission takes office.

The staff are attached, for administrative purposes, to the Cabinet of the Member of the Commission responsible for Human Resources.

Should the staff need to travel with the candidate for President/President-elect or with a Commissioner-designate on official Commission business, the costs will be covered in accordance with the existing rules for statutory staff.

The Directorate-General for Human Resources and Security will manage these secondments, attachments and contracts upon receipt of a request from the candidate for President/President-elect and the Commissioners-designate⁶.

4. INFRASTRUCTURE AND SUPPORT

Under the authority of the President, the Secretary-General will coordinate the Commission services to provide the candidate for President/President-elect and the Commissioners-designate with the necessary human resources support, information and logistics such as office space, equipment and transport. The Secretary-General may coordinate any further administrative support to the candidate for President/President-elect and Commissioners-designate, in agreement with the President, and in order to ensure a smooth transition.

Further details are outlined in the Annex.

The present decision repeals and replaces Commission decision C(2014)4432 final of 25 June 2014.

Done at Brussels,

For the Commission

The President

⁶ The rules of the Code of Conduct for choosing members of Cabinet apply mutatis mutandis.