

Fairness, Trust and the Rule of Law

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On October 10, 2019, the European Parliament's Committees in charge of her proposed fields of responsibility rejected Sylvie Goulard, the French candidate for the position of Commissioner in the new Commission. It was the second hearing she had to undergo, on the basis of another around 60 pages of written Q&A. Several issues should be carefully considered.

Sylvie Goulard and the frustration about "Spitzenkandidaten"

Given the undisputed general competence and deep European commitment of Sylvie Goulard, this unexpected refusal of trust, primarily based upon issues of independence and integrity, took place under circumstances which give rise to serious concerns regarding the impartiality and credibility of the European Parliament itself.

After the European Parliament's inability to find a majority in favour of any of the "Spitzenkandidaten" put forward by the political parties for the position of President of the Commission and President Macron's opposition to the "Spitzenkandidaten" model itself, the campaign against Sylvie Goulard has been widely understood as a political revenge against the French President, in particular by those whose frustration was greatest, because their party came out first from the elections to the EP.

Nothing in the Treaties, yet, requires the application of this model. Article 17 (7) of the Treaty on the European Union only requires a decision of the European Council "taking into account the elections to the European Parliament" and a vote of the EP. The choice of Ursula von der Leyen as President elect, both by the European Council and by the European Parliament, was perfectly in conformity with the law as it stands.

We are deeply concerned not only regarding the fairness of the process in the given circumstances, and the respect of the rule of law, but also for the political consequences this way to proceed may have for the role of the European Parliament, its credibility in the eyes of citizens, and the EU in the future. The outcome can be understood as a great victory of Eurosceptics and populists in the EP and in many of the Member States, if it sets aside a highly qualified personality, widely regarded – across Member States and party lines – as one of the most promising pro-European protagonists, from taking operational responsibilities in the institution that is made for promoting the common European interest. Moreover, such outcome results from the insinuation of issues on integrity that do not correspond to reality and certainly were not ascertained in a fair process.

The alleged issues of integrity

Regarding Sylvie Goulard's former assistant, the European Parliament has checked in depth the reality of his work and concluded this summer that "the file is closed"; the President of the European Parliament, David Sassoli himself, asked whether that file was indeed closed, answered : "Cette affaire est close pour le Parlement" (Le Monde, September 19, 2019). For the Parliament, the assistant has provided sufficient work according to the contract and the European rules. The resignation of the assistant having taken longer than foreseen at the end of 2014, some sums in doubt were finally asked and paid.

As far as the procedure against the Modem party is concerned in France, Sylvie Goulard, who never held any position of responsibility in the party, was heard by the competent French authorities on September 10, 2019. She is not indicted. The presumption of innocence, enshrined in Article 48 (1) of the Charter of Fundamental Rights of the European Union as well as in Article 6 (2) ECHR, must apply to her, without any insinuation or reserve. If the European law makers do not respect the Charter, who will?

The political requirement by the EP that a Commissioner-designate undertakes to resign in case of future indictment could put in danger the independence of the college, which is crucial. As, since the Lisbon treaty, the President of the Commission can call for individual resignations, such ex-ante commitment appears unnecessary. It echoes a culture of suspicions rather than the rule of law. If it were intended just to ensure a swifter decision in case of actual indictment during the term of office, then the pre-commitment should be required for *each* Commissioner.

Furthermore, Sylvie Goulard's consultancy with the Berggruen Institute was perfectly legal and transparently declared in accordance with the EP's Rules of Procedure, from its beginning in October 2013 until its end in January 2016. The JURI Committee of the European Parliament, that, according to Article 2 of Annex VII to the EP Rules of procedure (7/2019), is in charge of checking possible conflicts of interest, did not find this activity to raise concerns on the integrity of Sylvie Goulard.

OLAF also investigated whether there was "a potential conflict of interest and / or a failure to comply with the obligations as member of the European Parliament resulting from this remunerated activity". On October 1st OLAF decided that "no facts corroborate the suspicions that have been established". This decision, mentioned in Sylvie Goulard's written answers of October 8th was not even taken into consideration during her second hearing by the competent committees.

Indeed, the activity for the "Council for the Future of Europe", established by the Berggruen Institute and composed of leading European political and academic personalities, was entirely aimed at promoting European integration and, thus, the European interest. With regard to Sylvie Goulard's remunerated position as Special Adviser, the Chairmen of the "Council for the Future of Europe" at the relevant period – two former Prime Ministers and longtime members of EU institutions, Mario Monti and

Guy Verhofstadt – have officially testified, in a letter of October 1st to the President of the EP and made available to the Committees holding the hearings, her commitment to the pro-European objectives of the Council, the absence of any relationship to the business interests of Nicolas Berggruen, and the detailed reasons why there was no potential or actual conflict of interest with her activity as MEP. The content of that letter has simply been ignored, so that libellous and insulting assertions could flow unrestrained, without any anchor to reality or evidence of a conflict of interest.

It is difficult to see how working for the Berggruen Institute and, in particular, for the “Council for the Future of Europe” could raise conflicts of interest. The remuneration was in line with international standards, taking into account the high level of the work requested, given the composition of the Council, and the background, experiences and skills of Sylvie Goulard.

Facts, rules and new “ethical standards”

It is worth noting that according to [Transparency International](#), 30 % of the MEPs currently are exercising external activities, some of them with private business. The European Parliament knows about the existence of such remunerated external activities of its Members, and with its Rules of procedure it has opted for the rule of transparency instead of a prohibition. With the latest revision of the Rules of procedure this has not been changed.

In a rules-based society, “ethical standards” cannot be based ad hoc on subjective, or even arbitrary judgment of a group of MEPs or two committees. If the EP wants to change its own rules, it shall do so, through a majority decision of the plenary, not case by case. Yet, any new rules can apply for the future only. Sylvie Goulard’s activities years ago should be evaluated, thus, under the rules that were relevant at the time of her consultancy contract.

A fair hearing procedure?

In a report of 10 October [EurActiv](#) published under the heading “Why the European Parliament rejected Sylvie Goulard” the following news:

„The EPP tweeted, and then deleted, a message that was supposed to be kept internal, which reads ‘Guys, we are going to kill her in the vote later but do not say until then’. The communication blunder demonstrates Goulard’s uphill-battle with the EPP group.“

Such statements cannot be accepted. They show hatred and a spirit of aggression that is unworthy for a democratic society, let alone for an institution as the European Parliament. And they also witness surprising disregard of the function and work of the Committee responsible for legal affairs. The behaviour amounts to an abuse in the implementation of the examination of the declaration of financial interests in making a mockery of the filter function of this committee. Finally, and more importantly, the

statements undermine the necessary collegiality of the Parliament and are about to put at risk its proper functioning. If such a spirit has determined the rejection of Sylvie Goulard, we cannot see how this could be for the benefit of the European Union.

We believe that the European project requires further powers for the EP. Power, however, does not mean irresponsibility. If the exercise of power disregards or violates fundamental rights and the applicable rules, it is an abuse of power. If decisions taken by abusing power are exhibited as moral victories against pretended misdeeds, this is the quintessence of demagogic populism. The formation of a new Commission cannot be vitiated by signs of this kind. They need to be corrected, in the interest of the EP itself and of the Commission, even more than for the individual concerned.

To the attention of the President of the European Parliament

The hearings of Commissioners-designate have not yet been officially closed, the evaluations have neither been finally adopted nor formally published yet. According to Article 4 (5) of Annex VII to the Rules of procedure, the Conference of Presidents has the final authority over the hearings and the letters of evaluation. If the decision of the Committees competent in a specific case is based on biased insinuations and wrong allegations, the procedure is tainted with misuse of proceedings and the Conference of Presidents should “decide to seek further information”, as explicitly foreseen in the above Article, before the hearings are declared closed.

We respectfully submit this statement to the attention of the President of the European Parliament because, beyond the outcome of the specific case mentioned, it would be of serious concern for the credibility of the EU if confirmation proceedings by the EP – a fundamental component of the democratic legitimacy of the Commission – were seen to be tainted by misuse of proceedings.

October 2019

Signed:

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All the best, *Max Steinbeis*

SUGGESTED CITATION Pernice, Ingolf: *Fairness, Trust and the Rule of Law: Statement on the European Parliament's confirmation procedure concerning Sylvie Goulard*, *VerfBlog*, 2019/10/21, <https://verfassungsblog.de/fairness-trust-and-the-rule-of-law/>.