Transparency, integrity and accountability in the EU institutions

I. INTRODUCTION: EU CONSTITUTIONAL FRAMEWORK

Transparency, integrity, and accountability are the essential prerequisites of a democracy based on the rule of law. They promote good governance and build trust in the policy-making process, thereby enhancing the legitimacy and credibility of public institutions. They are also extremely important political tools in preventing corruption and bad governance practices.

Transparency requires the disclosure of information on policy-making and spending, while ensuring citizens’ access to such information. It is therefore a key element to build accountability of and trust in decision-makers. In this respect, monitoring and oversight are necessary tools to guarantee the accountability of public institutions, whilst participatory approaches involve civil societies in this process. The notion of integrity of public institutions implies the use of their powers for officially authorised and publicly justified purposes.

This holds true for the European Union as well, where these intertwined principles are at the core of the relations between its institutions and citizens. As such, they benefit from a solid constitutional foundation in the EU treaties, which build up the democratic credentials of the Union by promoting open-decision making, citizens’ participation, transparency and good administration.

EU Treaties lay down the principle of open Union decision-making which should be carried out ‘as closely as possible to the citizen’ (Art. 10(3) TEU), and prescribe that both citizens and representative associations should be given the opportunity to ‘make known and publicly exchange their views in all areas of Union action’ (Art. 11 (1) TEU). These provisions have a linkage with the obligation upon the institutions to act publicly (Article 15(1) and (2) TFEU), and with citizens’ right to access documents held by Union institutions (Art.15 (3) TFEU).

The Union’s constitutional framework provides for independent and accountable institutions. The European Parliament is the only EU institution to be directly elected by European citizens, and is therefore accountable to citizens via direct elections. Legislation adopted by Parliament is subject to judicial review by the Court of Justice of the European Union (CJEU). Complaints can also be referred to the European Ombudsman for maladministration. In addition, Parliament must comply with EU financial rules and external audits by the European Court of Auditors. Members of Parliament (MEPs) are answerable to national law when their immunity is waived.

As co-legislator in the EU institutional framework, the Council is also subject to judicial oversight as far as its legislative activity is concerned and is equally subject to scrutiny by the European Ombudsman for instances of maladministration. The EU executive, the European Commission, is accountable to the European Parliament which has the power to dismiss it and may be also subject to judicial oversight. Its financial activities are bound by audit rules and political scrutiny by other institutions.
Transparency, integrity and accountability in the EU institutions

It is worth recalling that a European Anti-Fraud Office (OLAF) has been set up in 1999 to investigate fraud against the EU budget, corruption and serious misconduct within the EU institutions.

II. CURRENT RULES AND TOOLS ENSURING TRANSPARENCY, INTEGRITY AND ACCOUNTABILITY IN THE EU

The EU institutions have made considerable progress in becoming more open and accountable. For this purpose, they have adopted a number of legislative instruments and operational measures to comply with the highest possible standards of transparency, accountability and integrity.

However, the degree of commitment is not equal in all institutions and several inquiries recently conducted by the European Ombudsman have identified a number of shortcomings and loopholes. In response thereof, both the European Parliament and the Commission stepped up their efforts in order to close transparency gaps and tighten requirements of integrity.

While Junker’s Commission pledged for more transparency at the beginning of its term, as clearly set out in its Political Guidelines, and made considerable steps forward in this context, the European Parliament adopted landmark resolutions and significantly revised its rules of procedure and the code of conduct of its Members.

The following sections aim at providing an overview of the main rules and tools in force in and implemented by the EU institutions as well as of key reforms recently adopted or currently being discussed.

1. Disclosing information on interactions with lobbyists: the Transparency Register

The EU institutions interact with a wide range of organisations representing specific interests. This is a legitimate and necessary component of the law-making process as it ensures that EU policies and legislation ultimately respond to citizens’ needs. Dialogue with stakeholders increases the available expertise and thus contributes to shaping evidence-based legislation. However, such dialogue needs to be transparent to allow for proper scrutiny and avoid misconduct.

For this purpose, Parliament set up its transparency register in 1996, followed by the Commission in 2008. The two institutions merged their instruments in a joint European Transparency Register in 2011 on the basis of an Interinstitutional Agreement (IIA). The IIA was further revised in 2014 when the Council became an observer. The Transparency Register provides citizens with information on who seeks to influence law-making, whom they represent, what their mission is and how they are funded.

As regards transparency and reporting obligations on interactions with interest representatives, the current Commission’s rules on meetings with interest representatives provide that both Commissioners and senior management staff (members of Cabinets and Directors-General) are required to disclose on their websites information on meetings with lobbyists, including the names of participants, time, location and the subject of the meeting.

2. Integrity and standards of conduct in the EU institutions

With the exception of Council, which is composed of national ministers whose conduct is - in the absence of common EU standards - regulated by national rules, Parliament and Commission adopted codes of conduct laying down specific rules regarding ethics, integrity and transparency that MEPs and Commissioners should comply with during and after their mandates.

Since 2012, MEPs are bound by a Code of Conduct, which sets out MEPs’ duty to act solely in the public interest and to conduct their work with disinterest, integrity, openness, diligence, honesty, accountability and respect for the European Parliament’s reputation. The Code of Conduct also includes a definition of conflicts of interest and provides guiding principles on how Members should address them.
In addition, MEPs are required to submit a **detailed declaration of their financial interests**. Members are also obliged to declare their attendance at events organised by third parties, where the reimbursement of their travel, accommodation, or subsistence expenses, or the direct payment of such expenses, is covered by a third party. The Code also addresses the issue of **former Members** engaging in professional lobbying or interest representation. As regards enforcement of the conduct rules, an **Advisory Committee** has been established and entrusted with the responsibility for providing MEPs with guidance on the interpretation and implementation of the Code of Conduct and for assessing alleged breaches thereof. Significant revisions of the Code of Conduct took place recently as further explained in the next sections.

**European Commissioners** are equally bound by a **Code of Conduct** in force since 2011 and further amended in 2018. It sets out Commissioners’ obligations and provides for measures to prevent conflicts of interest, to regulate outside activity; on post-employment; on the acceptance of gifts and on public declarations of professional and financial interests.

**EU staff members** are also subject to a number of obligations governing their actions and behavior in the exercise of their professional activities. These rules are set out in the **Staff Regulations** of officials and conditions of employment of other servants of the European Union and **codes of conduct** in force within each institution. It may be worth recalling that on the occasion of the 2014 reform of the Staff Regulations, amendments were adopted to further assess and prevent any risk of conflict of interests for officials joining or leaving the EU institutions.

Specific attention has also been recently paid to the **transparency of procedures for appointments to EU management positions**. Following a **resolution** of the European Parliament on the matter, in May 2018 the European Ombudsman conducted an investigation into the Commission’s appointment of its new Secretary-General. Based on her inquiry, the Ombudsman recommended that the Commission develop a specific appointment procedure for Secretary-General, separate from the procedure for other senior appointments and provided a number of guidelines for this purpose.

### 3. Access to documents and transparency of the legislative process

Access to documents is an essential component of transparency of policy- and law-making, as acknowledged by the EU treaties, which grant citizens and residents of EU Member States the **right of access to documents of the Union’s institutions** (Article 15(3) TFEU).

General principles governing this right and the limits thereto are laid down in secondary legislation. Access can only be refused on the basis of one of the exceptions provided for in **Regulation 1049/2001**. These include the need to protect the institutions’ decision-making process and the public interest as regards international relations, public security and military matters. As these exceptions derogate to a citizens’ constitutional right, they have been interpreted narrowly by the established case-law of the CJEU, which contributed to clarifying and developing the principle of the widest possible access to legislative documents.

A tentative revision of the 2001 Regulation was made in 2008, when the Commission submitted a proposal for a recast of the 2001 Regulation with a view to enhancing transparency and accountability. However, the Council has not adopted any position at this stage. In its resolution of 28 April 2016 on public access to documents for the years 2014-2015, Parliament expressed regret that the revision of the 2001 Regulation was still being stalled by the Council.

To help citizens exercise their right of access to documents, each main institution, Parliament, Commission and Council, put in place a **public register** available online. The European Parliament’s public register contains, in particular, legislative documents. Where possible, other categories of documents are also made directly accessible. When direct access is not granted through the public register, citizens may apply for access to a document, in any written form, in one of the Union’s official languages.

**Parliament is, and remains, the most open EU institution**, where plenary sittings and most committee meetings are held in public and web-streamed. Members of the public can physically attend plenary sittings.
Transparency, integrity and accountability in the EU institutions

Agendas, minutes, including results of votes, on-going work, events and texts adopted during the various steps of the legislative process are accessible via its website, thus enabling citizens to follow the progress of legislation.

The Council, being the second chamber of the European legislature, is expected to commit to the same high degree of transparency of the legislative process as the European Parliament. However, it does not yet comply with comparable standards. Although EU ministers meet in public when they discuss or vote on draft legislative acts as required by the Treaty (Article 15(2) TFEU), work of its preparatory bodies, notably the Committee of Permanent Representatives (Coreper) and of more than 150 working groups having significant influence on the final legislative text, is still not made directly accessible to the public.

Considering the growing concerns about a perceived lack of accountability of the Council, in March 2017, the European Ombudsman opened an inquiry into transparency of Council’s legislative work, focusing on the openness of legislative discussions in Council’s preparatory bodies. As a result of her inquiry, the Ombudsman found that the Council’s current practices constitute maladministration and recommended that Member States’ positions be systematically recorded and that the Council develop clear and publicly-available criteria for how it designates documents as not to be published (‘LIMITE’).8

In order to further boost openness of law-making in the EU, the European Ombudsman also conducted an inquiry into EU interinstitutional legislative negotiations, known as “trilogues” between the European Parliament, the Council and the European Commission. As a result thereof, the three institutions were called upon to make key documents related to their trilogue meetings available to the public and to develop a joint database for this purpose9. The General Court of the European Union went in the same direction in its judgment in Case T-540/15 De Capitani v European Parliament, where the Court stated that Parliament must in principle grant access on specific request to documents relating to trilogues.10

III. RECENT INITIATIVES AND REFORMS TO INCREASE TRANSPARENCY, INTEGRITY AND ACCOUNTABILITY

In view of the growing distance between the EU and citizens (as demonstrated by the steady decline in voter turnout at the European Parliament’s elections since 1979, falling to 42.61% in 2014) a number of initiatives aiming at enhancing transparency and accountability and thus rebuilding trust in the EU institutions have been recently adopted or are currently debated.

1. A mandatory Transparency Register for lobbyists

The current Transparency Register jointly operated by Parliament and Commission is not sufficient to ensure full transparency as it is voluntary; therefore registration is not a compulsory condition for lobbying the EU institutions. Furthermore, it only applies to Parliament and Commission with the exclusion of the other co-legislator, the Council.

In conformity with its strong commitment to transparency, Parliament on several occasions called for the establishment of a mandatory register covering the three main institutions, including the Council.11

As a response to Parliament’s concerns and in line with the Juncker Commissions’ commitment to greater transparency, on 28 September 2016, the Commission presented a proposal for an Inter-institutional Agreement on a mandatory Transparency Register. The proposal aims at enhancing both openness of EU decision-making process and accountability of the EU institutions by making certain types of interactions with the EU institutions conditional upon prior registration for any interest representatives seeking to influence policy-making. Furthermore, it applies to all three institutions, thus also including the Council and, on a voluntary basis, other EU institutions, bodies, offices and agencies.

Following the adoption of the negotiating mandates by Parliament and Council respectively on 15 June 2017 and on 6 December 2017, interinstitutional talks began in April 2018. However, after two political negotiating
meetings, on 18 July 2018 the College of Commissioners gave its chief negotiator First Vice-President Frans Timmermans the mandate to suspend negotiations if the European Parliament and the Council failed to follow the Commission’s approach on the principle of ‘conditionality’ (the possibility of only meeting with lobbyists who are registered). Interinstitutional negotiations therefore progressed quite slowly due to blocking issues mainly revolving around the independent mandate of MEPs and conditionality.

A breakthrough followed the renewal of Parliament’s negotiating mandate, which resulted from the adoption on 31 January 2019 of a series of amendments to Parliament’s Rules of Procedure12. Parliament decided that when MEPs act as rapporteurs, shadow rapporteurs or committee chairs, they have the duty to publish online for each report their scheduled meetings with interest representatives. This new obligation will complement the already existing provision requiring that MEPs "should adopt the systematic practice" of only meeting representatives of interest groups that have registered in the Transparency Register.

Parliament’s new amendments to the Rules of Procedure and in particular the obligation of transparency on interactions with lobbyists imposed on MEPs having a leading role in the legislative process contributed to resume interinstitutional political talks on the mandatory Transparency Register, which are currently ongoing.

2. Reform of European Parliament’s Rules of Procedure

In December 2016, Parliament approved a general overhaul of its Rules of Procedure13 to increase transparency and efficiency of parliamentary work. Although the changes introduced concern many aspects of parliamentary activities and procedures, this section only summarises the main changes related to transparency and integrity.

As a result of the wide-ranging revision of Parliament’s Rules of Procedure, enhanced transparency is now imposed on MEPs’ financial interests and standards of conduct. While MEPs’ declarations of financial interests need to be more detailed, regularly updated and checked, the revised rules include an explicit ban on serving MEPs to engage in paid professional lobbying directly linked to the Union decision-making process and the systematic practice of only meeting interest representatives that have registered in the Transparency Register. Former MEPs who engage in new occupations as lobbyists are required to inform Parliament thereof in addition to the already existing prohibition of benefiting from the facilities granted to former Members.

Additionally, prohibition of defamatory, racist or xenophobic language or behaviour in parliamentary debates is explicitly introduced and the range of disciplinary penalties for non-compliance with standards of conduct is increased.

A particular attention is also devoted to ensuring transparency throughout the whole legislative process. In this regard, the rules governing interinstitutional negotiations during the ordinary legislative procedure have been modified to make decisions to enter into negotiations and the conduct of negotiations more transparent. Concerning access to documents, as governed by Regulation 1049/2001, the revised rules provides that the Bureau adopts an annual report disclosing the number of cases where access was denied and the reasons thereof.

As mentioned in the previous section, in the pursuit of more openness, transparency and accountability, Parliament recently undertook another significant reform of its Rules of Procedure to introduce the duty for MEPs playing a leading role in drafting and negotiating legislation to disclose to the public their meetings with lobbyists. For this purpose, the Bureau has been entrusted to provide the necessary infrastructure on the Parliament website. Additionally, the revised rules adopted on 31 January 2019 further strengthen MEPs’ standards of conduct. As a result thereof, an explicit reference is introduced to MEPs’ duty to refrain from any improper behaviour (e. g. displaying banners in plenary), offensive language and psychological or sexual harassment. A code of appropriate behaviour for Members of the European Parliament will be annexed to the Rules of Procedure and MEPs will have to commit, by signing a written declaration, to respect it. MEPs refusing to sign such a declaration will face serious consequences such as being banned from holding a high-level position, being appointed rapporteur or representing the Parliament in interinstitutional negotiations or official delegation.
3. New transparency tools: the legislative footprint

With a view to ensuring greater transparency about who contributes to shaping legislation, Parliament progressively took steps towards the creation and development of a “legislative footprint”. This tool aims to allow citizens to see at a glance who has influenced the drafting of specific EU legislation.

Following the Bureau’s decision in 2016 to request its administration to develop a template for MEPs to produce a voluntary legislative footprint setting out which interest representatives they have consulted, Parliament called on rapporteurs, shadow rapporteurs and committee chairs to use this tool regarding files under their responsibility.

Furthermore, Parliament’s mandate to negotiate the mandatory transparency register was coupled with an additional transparency package, which was endorsed by the Conference of Presidents on 27 June 2018. In addition to the already available option for Rapporteurs to annex a legislative footprint to their published reports, the additional package proposes to create a direct interactive link between the footprint and the Transparency Register.

Parliament finally decided in 2019 to amend its Rules of Procedure to establish a compulsory legislative footprint for rapporteurs, shadow rapporteurs and committee chairs, while leaving it optional for other MEPs.

4. European Parliament Resolution on transparency, accountability and integrity in the EU institutions

On 14 September 2017, Parliament adopted a very detailed and comprehensive resolution calling for stricter rules on transparency, integrity and accountability to be implemented across all EU institutions.

Parliament reiterated its call to make the Transparency Register as mandatory as possible. In this respect, while committing to the systematic practice of only meeting interest representatives that have registered in the Transparency Register as set out in its Rules of Procedure, it also called on the Commission to extend this rule to all relevant Commission staff (holding managerial positions). Parliament further insisted that the Council, including its preparatory bodies, join the Transparency Register as soon as possible.

Parliament also pledged for defending integrity against conflicts of interest. It therefore called upon all EU institutions and bodies, which still do not have a code of conduct to develop such a document as soon as possible. While insisting that the Council must be as accountable and transparent as the other institutions, Parliament urged it to introduce a specific code of ethics, including sanctions, addressing the risks specific to national delegates.

Parliament further raised concerns over the “revolving doors” phenomenon, which refers to the movement of politicians, decision-makers and officials between the public and private sectors. Considering that this phenomenon can be detrimental to relations between the institutions and interest representatives, Parliament proposed to strengthen the restrictions on former Commissioners by extending the ‘cooling-off period’ to three years. It furthermore requested that all EU institutions disclose, on an annual basis, in line with EU data protection rules, information about senior officials who have left the EU administration and the roles they have taken up.

Being committed to improve public access to documents in the legislative process, Parliament also called for a common interinstitutional register, including a dedicated joint database on the state of play of legislative files for which works are under way.

With a view to enhancing transparency of trade negotiations, Parliament recommended improved cooperation and information sharing throughout the whole life cycle of international agreements.

Stressing that effective whistleblower protection is a key weapon in the fight against corruption, Parliament called on the Commission to propose an EU legislative framework for their effective protection.
5. Reform of the Code of Conduct of Commissioners

Under Article 245 TFEU, the European Commission is required to ensure that Commissioners comply with their duty to act with integrity and discretion, including after their mandates as Commissioners end. For this purpose, Members of the European Commission have been bound by a code of conduct in force since 2011. However, in view of the growing distance between citizens and institutions, Parliament voiced several concerns as regards key transparency components, such as conflict of interests, cooling-off period and the declaration of financial interests. It, therefore, called for stricter rules governing the activities of Commissioners both during and after their mandates.

On the occasion of his 2017 State of the Union address, Commission President Juncker announced a new Code of Conduct for Members of the European Commission setting clearer rules and higher ethical standards as well as introducing greater transparency.

The new Code of Conduct entered into force in February 2018 and introduces a number of novelties. Firstly, in response to the growing concerns over revolving door cases, the new Code extends the "cooling-off" period from currently 18 months to two years for former Commissioners and to three years for the President of the Commission (although Parliament requested the extension to three years for all Commissioners). During the cooling-off period former Commissioners need to inform the Commission of their intention to engage in new occupations and are also subject to restrictions as regards certain activities, such as lobbying members or officials of the Commission. Secondly, new measures are taken to prevent conflicts of interest. The new Code includes a definition of conflict of interest and requires that Commissioners avoid situations of conflict of interest as well as situations that might be seen this way.

In addition, the new Code sets out higher transparency standards as well as stricter rules for the declaration of financial interests. Commissioners now need to declare investments above €10,000 irrespective of whether there could be a conflict of interest and their travel expenses are published every two months.

As regards the enforcement of the new rules, the Code establishes a reinforced Independent Ethical Committee, responsible for giving advice on all ethical issues and making recommendations related to the application of the Code.

Finally, an important novelty introduced by the new Code of Conduct will allow Commissioners to be candidates to European Parliament elections without having to take a leave of absence, although they are prohibited from using official resources for their campaigns.

The amendments to the Code of Conduct of Commissioners were welcomed by the European Ombudsman, who carried out several inquiries on problematic revolving doors cases, including on former Commission President Barroso. In her decision on this case, she made a number of suggestions for further improving the role and functioning of the ethical committee.

6. Political parties funding

In order to increase visibility, transparency and accountability of European political parties and their affiliated political foundations, Parliament and the Council adopted on 22 October 2014 a Regulation on the statute and funding of European political parties and European political foundations. It provides that political parties and foundations satisfying a number of conditions can become European legal entities by registering at European level, and thereby enhances their access to European financial support. The Regulation also created an independent Authority for European political parties and foundations with the role of registering and controlling European political parties and foundations.

Following a number of cases resulting from inappropriate use of funding, Parliament called for the revision of the Regulation. In response to the concerns and suggestions expressed by Parliament, in September 2017, the Commission presented a proposal aiming at targeted amendments to close the loopholes. Parliament and Council reached an agreement swiftly and the amended Regulation was adopted and entered into force in May 2018 well ahead of the 2019 European elections.
A number of changes have been introduced to increase transparency including by ending individual sponsorship of party registration, changing rules on distribution of EU budget funds, setting the share distributed equally between parties at 10%, and lowering co-financing requirements.
REFERENCES

European Parliament, EPRS, Revolving doors in the EU and US, Briefing, July 2018


European Parliament, EPRS, Public consultation on the Transparency Register: towards a mandatory Transparency Register for lobbyists, At a glance, April 2016

European Parliament, EPRS, EU Transparency Register, Briefing, May 2016


European Parliament, EPRS, Transparency of lobbying at EU level, Briefing, December, 2015

ENDNOTES

1 European Commission Decisions of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals, C(2014) 9051 final; and between Director-Generals of the Commission and organisations or self-employed individuals C(2014) 9048 final.

2 European Parliament resolution of 18 April 2018 on the integrity policy of the Commission, in particular the appointment of the Secretary-General of the European Commission (2018/2624(RSP)).


5 Joined Cases C-39/05 P and C-52/05 P Kingdom of Sweden and Maurizio Turco v the Council; Case T-540/15, De Capitani v European Parliament.


7 European Parliament resolution of 28 April 2016 on public access to documents (Rule 116(7)) for the years 2014-2015 (2015/2287(INI)).


12 European Parliament decision of 31 January 2019 on amendments to Parliament’s Rules of Procedure affecting Chapters 1 and 4 of Title I; Chapter 3 of Title V; Chapters 4 and 5 of Title VII; Chapter 1 of Title VIII; Title XII; Title XIV and Annex II (2018/2170(REG)).


14 European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI)).

15 European Parliament decision of 31 January 2019 on amendments to Parliament’s Rules of Procedure affecting Chapters 1 and 4 of Title I; Chapter 3 of Title V; Chapters 4 and 5 of Title VII; Chapter 1 of Title VIII; Title XII; Title XIV and Annex II (2018/2170(REG)).

16 European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI)).

17 European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI)); European Parliament resolution of 1 December 2016 on Commissioners’ declarations of interests – guidelines (2016/2080(INI)).


23 European Parliament resolution of 15 June 2017 on the funding of political parties and political foundations at European level (2017/2733(RSP)).


Disclaimer and Copyright

The content of this document is the sole responsibility of the author and any opinions expressed therein do not necessarily represent the official position of the European Parliament. It is addressed to the Members and staff of the EP for their parliamentary work. Reproduction and translation for non-commercial purposes are authorised, provided the source is acknowledged and the European Parliament is given prior notice and sent a copy.


Contact: poldep-citizens@europarl.europa.eu

This document is available on the Internet at: www.europarl.europa.eu/supporting-analyses
