REPORT

on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body
(2020/2133(INI))

Committee on Constitutional Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body
(2020/2133(INI))

The European Parliament,

– having regard to the political guidelines for the next European Commission 2019-2024, presented on 10 September 2019,
– having regard to the mission letter of 1 December 2019 of the President of the Commission to Věra Jourová, Vice-President-designate for Values and Transparency,
– having regard to its resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions¹,
– having regard to its resolution of 26 November 2020 on stocktaking of European elections²,
– having regard to the Treaty on European Union (TEU), in particular Articles 9 and 10, 13, 14, 15, 16 and 17 thereof,
– having regard to the Treaty on the Functioning of the European Union (TFEU), in particular Articles 223(2), 245 and 295 thereof,
– having regard to the Act concerning the election of the members of the European Parliament by direct universal suffrage (‘the Electoral Act’) annexed to the Council decision of 20 September 1976 as amended,
– having regard to the draft interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on a mandatory Transparency Register,
– having regard to Special Report No 13/2019 of the European Court of Auditors on the ethical frameworks of the audited EU institutions,
– having regard to the Council conclusions on the European Court of Auditors’ Special Report No 13/2019,
– having regard to its decision of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom)³,
– having regard to the European Parliament’s Rules of Procedure, in particular Rules 2, 10 and 11, 176(1), Annex I, Articles 1 to 3, 4(6), 5 and 6 and Annex II,

¹ OJ C 337, 20.9.2018, p. 120.
– having regard to the annual reports of the Advisory Committee on the Conduct of Members,

– having regard to the annual reports on the application of the Code of Conduct for the Members of the European Commission, including the opinions of the Independent Ethical Committee,

– having regard to the recommendations of the European Ombudsman in the joint inquiry into complaints 194/2017/EA, 334/2017/EA and 543/2017/EA on the European Commission’s handling of the post-mandate employment of former Commissioners, a former Commission President and the role of its ‘Ethics Committee’,

– having regard to the recommendations of the Organisation for Economic Co-operation and Development (OECD), the Council of Europe’s Group of States against Corruption (GRECO), and various NGOs,

– having regard to the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities, and in particular Articles 11, 11(a), 12, 12(a), 12(b), 13, 15, 16, 17, 19, 21(a), 22(a), 22(c), 24, 27 and 40 thereof,

– having regard to the powers and responsibilities of the Committee on Legal Affairs of the European Parliament, as set out in Annex VI to its Rules of Procedure;

– having regard to Rule 54 of its Rules of Procedure,

– having regard to the opinions of the Committee on Legal Affairs, the Committee on Budgetary Control, the Committee on Economic and Monetary Affairs and the Committee on Petitions,

– having regard to the report of the Committee on Constitutional Affairs (A9-0260/2021),

A. whereas the TEU stipulates that ‘the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies and agencies’; whereas this implies that public decisions are taken in the interest of the common good;

B. whereas the Treaties have established a system of division of powers among the institutions of the Union that assigns each institution its own role within the institutional structure of the Union and in the performance of the tasks entrusted to it;

C. whereas, while each EU institution has a right to organisational sovereignty, all EU institutions have to meet the highest standards of independence and impartiality;

D. whereas the TEU and the TFEU set out a European governance framework based on the separation of powers, laying down distinct rights and obligations for each institution;

E. whereas the independence, transparency and accountability of public institutions and their elected representatives, Commissioners and officials are of the utmost importance for promoting the trust of citizens, which is necessary for the legitimate functioning of democratic institutions;

F. whereas the ethical standards applicable to the EU institutions are in many respects ahead of those applicable to their national equivalents but they have not been enforced
in a satisfactory manner;

G. whereas the enforcement of the ethical framework could be improved;

H. whereas citizens’ trust in public institutions and decision-making processes is a pillar of any democratic government and requires exemplarity, integrity, transparency, accountability and the highest standards of ethical behaviour;

I. whereas the absence of undue influence from interest representatives, including through the provision of paid activities for Members of the European Parliament, gifts or travel invitations, the creation of expectations for future employment following the end of a Member’s mandate or an official’s termination of service, and undue use of information or contacts is key to ensure that democratic processes are not captured by private interests and that citizens rights are fully respected;

J. whereas the shortcomings of the current EU ethical framework derive largely from the fact that it relies on a self-regulatory approach, the absence of EU criminal law and insufficient resources and competences to verify information; whereas any evolution of the EU ethical framework must have a clear legal basis while respecting the separation of powers as laid down in the Treaties; whereas the creation of an independent ethics body could contribute to strengthening trust in the EU institutions and their democratic legitimacy;

K. whereas, as a consequence, cases of problematic conduct have occurred; whereas every incidence of unethical behaviour and their inadequate handling by the EU institutions endangers the trust which European citizens place in the EU institutions and have severely contributed to damaging the reputation of the European Union;

L. whereas the ‘revolving door’ phenomenon in particular is very much on the rise; whereas many Commissioners and a third of those who were Members of the European Parliament from 2014 to 2019 have been recruited by organisations entered in the European Transparency Register; whereas this entails risks of conflict of interest with the legitimate areas of competence of the Member States and the EU institutions and of confidential information being disclosed or misused, as well as risks that former staff members may use their close personal contacts and friendships with ex-colleagues for lobbying purposes;

M. whereas current ethical standard frameworks at EU level are tailored to the specificities of each EU institution, leading to different processes and levels of enforcement even of the same EU Staff Regulations in different EU institutions, agencies and bodies, thus creating a complex system which is difficult for both EU citizens and for those who have to respect the rules to understand;

N. whereas the European Court of Auditors recommended, in its Special Report No 13/2019, that in many areas there are good reasons to have harmonised approaches to handling ethical issues within the EU institutions; whereas the European Ombudsman and the European Court of Auditors warned repeatedly about major failures in the EU institutions’ prevention of conflict of interest policies; whereas both the Ombudsman and the Court of Auditors expressed specific concerns about the absence of a common EU ethical framework with clear procedures and reporting channels; whereas this problem concerns in particular the work of Member State representatives in the Council,
which needs to address high-level conflicts of interest, revolving doors and transparency rules; whereas the EU ethical rules are not aligned with the OECD Guidelines for Managing Conflict of Interest in the Public Service;

O. whereas the example of the ‘Haute Autorité pour la Transparence de la Vie Publique’ in France demonstrates that a single and independent body responsible for the monitoring, enforcement and sanctioning of ethical rules applicable to public bodies is an effective and powerful tool able to achieve a long-lasting reduction in unethical behaviour;

P. whereas the balance of powers assigned to the institutions is a fundamental guarantee afforded by the Treaties to EU citizens;

Q. whereas the Meroni doctrine developed by the Court of Justice of the European Union (CJEU) allows for the delegation of EU institutions’ competences to external bodies, including competences that are not yet exercised; whereas according to the CJEU, any delegation of competences must be limited and can only relate to clearly defined powers, the use of which must be entirely subject to the supervision of the delegating institutions and cannot concern discretionary powers involving any political judgement in order not to jeopardise the balance of powers between the institutions;

R. whereas according to the principle of conferral, institutions cannot delegate by means of an interinstitutional agreement powers which they themselves do not have, for instance where such powers are conferred by the Treaties on the Court of Auditors or have remained with the Member States;

S. whereas in their examination of potential conflicts of interest of Commissioner-designates in 2019, the members of the Committee on Legal Affairs highlighted the profound limitations of the current procedure; whereas these limitations include access to only a limited range of information, the lack of time for examination, the absence of investigative powers and the absence of support from experts; whereas Article 17(3) TEU provides that the members of the European Commission are to be chosen ‘from persons whose independence is beyond doubt’;

T. whereas the existing strict ethical framework for Commissioners needs to be further developed in order to close existing legislative gaps such as the non-existence of a Commissioners statute; underlines that this process is closely linked with parliamentary scrutiny and oversight and is of the opinion that a Commissioners statute needs to be drawn up in accordance with the ordinary legislative procedure and calls on the Commission to present a proposal;

U. whereas all lead candidates in the 2019 European elections supported the creation of an independent ethics body common to all EU institutions; whereas the President of the Commission supported it in her political guidelines;

V. whereas the freedom of mandate of the Members of the European Parliament is in the interest of the citizens they represent;

W. whereas one of Parliament’s primary functions as laid down in the TEU is to exercise political control;

X. whereas staff in the institutions are covered by the EU Staff Regulations of Officials of
the European Union and Conditions of Employment of Other Servants of the European Union;

1. Believes that a single independent EU ethics body could better ensure the consistent and full implementation of ethics standards across the EU institutions to guarantee that public decisions are taken with a view to the common good and citizens’ trust in the EU institutions; proposes the conclusion of an interinstitutional agreement (IIA) based on Article 295 TFEU to set up an independent EU ethics body for Parliament and the Commission and open to the participation of all EU institutions, agencies and bodies, and that this body also provide the participating institutions, agencies and bodies with training and active guidance;

**Principles**

2. Considers that the provisions of this IIA must respect the following provisions and principles:

- the principle of sound financial management, ensuring the efficient and effective management of Union resources,
- the principles of conferral and separation of powers,
- the freedom to choose an occupation and the right to engage in work as stipulated by Article 15 of the Charter of Fundamental Rights of the European Union,
- rule of law and fundamental European principles such as the presumption of innocence, the right to be heard, and the principles of legality and proportionality,
- the Statute of Members and notably the freedom of mandate enshrined in Article 2 thereof,
- no duplication or interference with the work of the European Anti-Fraud Office (OLAF), the European Public Prosecutor's Office (EPPO), the European Ombudsman, the European Court of Auditors or the CJEU,
- the European Parliament’s right of inquiry as enshrined in Article 226 TFEU;

3. Believes that in the scope of its duties, including regarding monitoring and investigating, the body should rely on the existing powers of institutions to ask their members for information or on the agreement of national authorities to share information; underlines that Parliament’s President, the Commission’s College or the respective authority of a participating institution will remain in charge of the final decision-making power until a possible revision of the rules;

4. Considers that the procedure followed by the independent EU ethics body should ensure the appropriate level of transparency while protecting procedural guarantees as stipulated in the European Charter of Fundamental Rights, and that the IIA should include procedural rules and an adequate data protection protocol, referring to the existing *acquis* of principles of the existing EU ethics bodies, as well as to the EU’s common values (Article 2 TEU), the rights of the concerned individual to be heard and to appeal, the obligation to collaborate, and publication requirements;
Scope and mandate

5. Considers that the new EU ethics body should be delegated a list of agreed tasks to propose and advise on ethical rules for Commissioners, Members of the European Parliament and staff of the participating institutions before, during and in some cases after their term of office or service in line with the applicable rules, including:

(a) the Statute for Members of the European Parliament (Articles 2 and 3),

(b) Parliament’s Rules of Procedure (Rules 2, 10 (5, 6 and 7) and 11, 176(1), Annex I (Articles 1 to 8), and Annex II),

(c) the Commission’s Rules of Procedure (Article 9), its Code of Conduct (Articles 2 to 13 and Annex II), and its Decision of 25 November 2014 on the publication of information on meetings held between members of the Commission and organisations or self-employed individuals, and the same decision for its Directors-General,

(d) the Staff Regulations’ Articles 11, 11(a), 12, 12(a), 12(b), 13, 15, 16, 17, 19, 21(a), 22, 22(a), 22(c), 24, 26, 27, 40, 43, 86, 90, 91a and Annex IX, applying mutatis mutandis to all staff employed by the agencies if signatories of the IIA,

(e) the IIA on a mandatory Transparency Register;

6. Believes that the members and staff of the participating institutions should be covered by the agreement before, during and after the term of office or service in line with the applicable rules; considers that this should apply to Members of the European Parliament, Commissioners and all EU staff falling under the scope of the Staff Regulations;

7. Recalls that with regard to individuals covered by the Staff Regulations, the competence could be delegated to the independent EU ethics body by making use of the enabling clauses in Articles 2(2) or 9(1), or both, and would concern the monitoring and enforcement of the ethical obligations while other professional obligations would continue to be enforced by the appointing authorities;

8. Insists that the IIA should be open to the participation of all EU institutions and bodies; and points out that the co-legislators may decide to bind agencies through their founding regulations; believes that the IIA should allow the ethics body to exchange information with national authorities where necessary for the performance of its tasks, while treating such information with the same confidentiality as the originating authority, for example tax information, land registers and data held by national ethics bodies, and to explore best practices and peer reviews; considers that, without prejudice to the general principles set out in paragraph 2, and where it is relevant for the performance of its duties, the independent ethics body should have the possibility to engage in cooperation and information exchange with relevant EU bodies such as OLAF, EPPO, the Ombudsman and the European Court of Auditors, within their respective mandates;

Competences and powers

9. Considers that, without prejudice to the balance between the institutions as established
by the Treaties, all the participating institutions should entrust, within the framework of their respective procedural autonomy, the EU ethics body with, on the one hand, a preventive role via awareness-raising and ethical guidance, and, on the other hand, a compliance and advisory role with the ability to issue recommendations on ethical matters, including conflicts of interest; considers that the decision-making powers should remain within the respective institution until the EU ethics body is entrusted with decision-making powers on a proper legal basis; recalls that the tasks of the EU ethics body would be limited to the agreed list of tasks delegated by the participating institutions and would therefore be without prejudice to and in full respect of the competences of OLAF, EPPO and national jurisdictions related to any breach of laws falling under their competences; stresses that in order to monitor integrity, Parliament should regularly commission studies that define integrity with a set of well-defined objectives and performance indicators and report on the progress made;

10. Considers that this monitoring capacity should include, among other aspects, the possibility to check the veracity of the declaration of financial interests, which should be submitted by covered individuals directly to the EU ethics body, in addition to Parliament with respect to Commissioners-designate, to ensure that they arrive the fastest way possible to all those responsible for democratic and/or public scrutiny as stipulated by the applicable rules, the handling of conflicts of interest, rules related to lobbying activities, checks on transparency obligations, including in the legislative procedure, and the verification of compliance with revolving door rules and more generally verification of compliance with all provisions of codes of conduct and applicable rules on transparency, ethics and integrity;

11. Notes that within the EU institutions different legislative and other provisions aimed at preventing conflicts of interest contain varying definitions of the term ‘conflict of interest’; notes that a definition has a contextual and an evolving nature and that full transparency does not necessarily guarantee the absence of any conflict of interest, nor does it guarantee that public trust will be won or increased; notes that the enforcement of ethical rules and public accountability for conflicts of interest are a precondition for citizens’ trust in public institutions;

12. Recalls the importance of distinguishing between a conflict of interest arising during the exercise of a function and one arising after, and between acts that authorised if declared and acts that are not authorised at all;

13. Points out that the European Parliament established the Advisory Committee on the Conduct of Members as the body responsible for giving Members guidance on the interpretation and implementation of the Code of Conduct; notes further that the Advisory Committee also assesses alleged breaches of the Code of Conduct and advises the President on possible action to be taken; considers that the European Parliament should lead by example with regard to rules on ethics and their enforcement;

14. Takes the view that the EU ethics body could also be given authority over the obligations imposed by the Transparency Register, and should envisage a better protection of whistleblowers and better management of conflicts of interest in the case of corruption and fraud cases;

15. Considers that the EU ethics body should be given the task of developing an EU public
portal with relevant information on ethical rules, reports on best practices, studies, and statistics, as well as a database containing the declarations of financial interests of all the participating institutions;

16. Insists that the independent EU ethics body should have the right to start an investigation on its own initiative and to conduct on-the-spot and records-based investigations based on the information it has collected or that it has received from third parties, such as journalists, the media, NGOs, whistleblowers, civil society or the European Ombudsman; insists that any third party referring in good faith a matter to the independent ethics body must be protected and their identity kept anonymous; considers that when it starts an investigation on its own initiative the body must notify, by confidential message, the person concerned and the authority responsible for applying sanctions in the respective institutions; believes that in such a case, the respective authority of this institution, agency or body can demand that an explanation be provided by the body;

17. Stresses that requesting tax documents and bank records are interventions in private law, for which there must be serious allegations that fall within the competence of OLAF;

18. Stresses the need for the body to protect whistleblowers, in particular European public officials, so that they can express their concerns about possible violations of rules without fear of reprisals; suggests, in this connection, that the body should supervise the internal and confidential complaint mechanisms under the Staff Regulations of Officials of the European Union and Conditions of Employment of Other Servants; stresses that only a safe and protective working environment will enable public officials to express their concerns and thereby help to make the work of the independent ethics body effective;

19. Believes that in order to be fully effective, the body would merge the functions of existing organs responsible for ethics; considers that the body should advise Members of the European Parliament or Commissioners when they ask for guidance on ethical issues; considers that the body should issue recommendations for sanctions to the Appointing Authority in dealing with ethical obligations for staff, and that in relation to Members of the European Parliament or Commissioners, the body should issue recommendations to the responsible authorities of the respective participating institutions; recommends that the ethics body issue recommendations that can serve as precedents in identical or similar cases; considers that this will ensure efficiency, consistency and predictably and significantly reduce the workload, especially for staff matters in the event of numerous similar cases;

20. Considers that the EU ethics body should promote integrity and be entrusted with advisory tasks in order to provide reliable and trustworthy advice to any individual and/or institution covered by its scope who wishes to request interpretation of an ethical standard in relation to appropriate conduct in a specific case; considers that, in order to ensure consistent application of the ethical standards and predictability, advice should be binding for the independent EU ethics body in its position on the same matter;

21. Recalls that the confirmation by the Committee on Legal Affairs of the absence of any conflict of interest is an essential precondition for the appointment of Commissioners-
designate and that the Committee on Legal Affairs possesses clear powers to reject Commissioners-designate if a conflict of interest has been established;

22. Recalls that Parliament may withdraw confidence in an individual Member of the Commission, after which the President of the Commission must either require the resignation of that Member or explain their refusal to do so before Parliament in the following part-session, in line with point 5 of the Interinstitutional Agreement of 20 November 2010;

23. Is of the opinion that the examination of the declarations submitted by Commissioners-designate with a view to inferring a conflict of interest is of fundamental institutional and democratic importance and should be undertaken with the utmost attention, commitment and sense of responsibility, by means of a fully objective, democratic and independent interpretation; believes that the rules on the examination of potential conflicts of interest should also apply to the declaration of the President-elect of the European Commission;

24. Underlines that the decision on conflicts of interest of Commissioners-designate prior to hearings remains a democratic and institutional competence of Parliament’s Committee on Legal Affairs; stresses in this regard that the future independent EU ethics body should be given appropriate investigative powers, as well as the power to request and have access to administrative documents, in order to allow it to carry out well-reasoned and well-documented assessments; stresses the need for full compliance with the rules on confidentiality, privacy and personal data protection in verifying the implications of a conflict of interest; is of the opinion that the Committee on Legal Affairs should be given more time and that, while fully keeping its competence on the matter, the Committee on Legal Affairs should decide on the existence of a conflict of interest of Commissioners-designate after having received non-binding, precise and reasoned recommendations by the independent EU ethics body, which would have the effect of strengthening its action; considers that the Committee on Legal Affairs should ultimately hold a debate on the recommendations issued by the independent EU ethics body; considers that the recommendations should be published along with the declarations of financial interests of Commissioners-designate; considers that, beyond the scrutiny of the declarations of Commissioners-designate by the Committee on Legal Affairs, the examination of conflicts of interest should be carried out, in general, prior to, during and after public office or employment, for all Union institutions, bodies, offices, and agencies; further believes that it should be provided with sufficient resources, tools and skills to cross-check and locate necessary information, as well as to ask for complementary information where necessary;

Composition

25. Believes that the ethics body should be composed of nine members, three selected by the Commission, three elected by Parliament, and three assigned de jure from among the former judges of the CJEU, the Court of Auditors and former EU Ombudsmen; believes that where staff matters are concerned, staff representatives from the institution of the person concerned should be included; points out that Annex II to the Staff Regulations should be amended accordingly;

26. Considers that its members must be independent, chosen on the basis of their
competence, experience and professional qualities, as well as their personal integrity, have an impeccable record of ethical behaviour and provide a declaration of the absence of conflicts of interest; is of the opinion that the composition of the body should be gender-balanced; underlines that all members must be independent in the performance of their duties; considers that the members should be chosen for a period of six years and be renewed by a third every two years;

27. Calls for an ethics officer to take charge of the verification of candidates’ declarations; considers that the members should work in a spirit of collaboration and consistency in their analyses and recommendations; calls for a guarantee of gender balance in the composition of the body;

28. Considers that the composition of the ethics body should be accompanied by a framework for the exercise of the mandate, as well as a procedure to end the mandate;

29. Suggests, in order to ensure broad support, that Parliament elect the members of the body with the support of a large majority, possibly similar to the procedure for members of the Authority for European Political Parties and European Political Foundations or decisions regarding the Sakharov Prize;

30. Suggests that each institution choose these members in particular from among former judges of the CJEU, former presidents of OLAF and the Court of Auditors, former or current members of the highest courts of Member States, former Members of the European Parliament, former staff of the participating institutions and bodies, former EU Ombudsmen, and members of the ethics authorities in Member States; suggests further that the body elect a President and two Vice-Presidents from among its members; stresses that this is without prejudice to the right of staff to self-organise their representatives when staff matters are concerned;

31. Stresses the need to ensure diversity in the members’ backgrounds and independent expertise; suggests limiting the participation of former MEPs and Commissioners to a third of the composition of the body;

32. Recommends that the college be supported by a secretariat with the human, material and financial resources commensurate with its mandate and tasks, including an ethics officer, responsible for ethical training and offering advice within the independent EU ethics body; considers that the pooling of budgets and personnel currently allocated to the various EU ethics bodies when merging them would improve efficiency in the use of resources and might reduce costs;

Procedures

33. Believes that the creation of an EU ethics body should contribute to building an institutional culture fundamentally based on prevention, support and transparency; proposes, to this end, a two-step approach whereby, in the event that the EU ethics body becomes aware of a breach or possible breach of ethical rules, it first recommends, by a deadline, actions to put an end to the breach; considers that this first preventive step should ensure confidentiality and secrecy and the right of the person to be heard and to refute the accusations; suggests that in the event that the individual concerned refuses to take the appropriate actions and the breach persists, the EU ethics body should make a reasoned recommendation for sanctions measures and transmit all relevant information.
34. Believes that at the end of this period the reasoned recommendation of the independent ethics body, without prejudice to the General Data Protection Regulation and personal rights, should be made public, together with the decision of the competent authority who should provide an explanation if the recommendations are not fully followed; considers as a first measure that the publication or forwarding of recommendations and decisions could constitute a sanction in itself; stresses that such a body cannot replace the CJEU; suggest that, in exceptional cases, when the competent authority duly justifies that more time is needed to investigate the case, it can ask the ethics body to extend its deadline for making a decision by up to 20 working days; considers that this two-step approach should apply whenever there are no reasonable grounds to believe that the individual acted in bad faith, and recommends that any intentional breach, gross negligence, concealment of evidence, non-compliance or non-cooperation should be considered aggravating factors with respect to recommendations for sanctions, even when the breach itself has ceased;

35. Calls for clear provisions giving the person concerned a right of appeal against any such decision taken by the President in full respect of the basic principles of rule of law;

36. Believes that as a general rule, the EU ethics body should decide by a simple majority of its members;

37. Insists that the procedures laid down in the Treaties must be applied, such as the transfer of investigations by the European Court of Auditors to OLAF and to the CJEU;

**General provisions**

38. Believes that the EU ethics body should conduct studies and compile annual statistics on financial interest declarations, revolving door cases and other relevant information and should publish an annual report containing information about the fulfilment of its tasks and, where appropriate, recommendations for improving ethical standards, which is to be presented to Parliament; recommends that the annual report include the number of cases that were investigated, the institutions the individuals were coming from, the type of breaches concerned, the time the procedures took, the timeframe in which the breach was ended, the proportion of sanctions decided and the recommendations;

39. Believes that a review clause should be included in the IIA ensuring that two years after its establishment, at the latest, participating institutions are able to adopt an assessment of its activities, including an analysis of the functioning of the rules and procedures and the experience acquired in applying them; stresses, in particular, that this review clause should focus on the assessment of the effectiveness of the implementation of the mandate of the EU ethics body, and that Parliament’s assessment should take into account input from the ethics body itself;

40. Considers that the new EU ethics body should have competence to contribute by way of proposals to the development and periodic update of a common ethical framework for the EU institutions, including common rules and a common model for declarations of financial interests in a machine-readable format and a proposal to amend its competences and to present it to the European Parliament; considers that the ethical
standards of all the institutions, agencies and bodies should be harmonised as soon as possible; is of the opinion that a Commissioners statute needs to be drawn up in accordance with the ordinary legislative procedure;

41. Suggests that the independent ethics body should work on establishing a common definition of conflict of interest for the EU institutions on the basis of the highest standards; stresses that many Member States have demanding rules; notes the OECD definition of conflict of interest: ‘when an individual or a corporation (either private or governmental) is in a position to exploit his or their own profession or official capacity in some way for personal or corporate benefit’;

42. Calls for full transparency regarding all meetings organised by and involving the ethics body with private actors and their representatives, including both for-profit and non-profit organisations;

43. Insists that, without prejudice to Parliament’s competences referred to in paragraph 24, the recommendations of the EU ethics body should be properly justified, well documented and available for the member or member of staff and the institution concerned; believes that the participating institutions should commit to fully cooperate in all procedures falling under the scope of the agreed IIA, and in particular to communicate to the independent EU ethics body all information and documents necessary for the proper scrutiny of ethical rules; points out that the activities of the ethics body would be subject to possible complaints to the EU Ombudsman, and that the participating institutions’ decisions based on the recommendations would continue to be reviewable before the CJEU;

44. Believes that the improvement of integrity, transparency and accountability as well as the highest standards of ethical behaviour in the EU institutions and EU decision-making processes should be part of the topics discussed in the framework of the Conference on the Future of Europe; stresses that this is an opportunity for EU citizens to debate Treaty revision and that this would ensure a clear legal basis to introduce such an independent EU ethics body for all institutions through the ordinary legislative procedure;

45. Calls for the independent ethics body to lead by example on transparency by publishing all recommendations, annual reports, decisions and spending in a machine-readable open data format available to all citizens, and in accordance with the applicable data protection rules; strongly recommends that any software developed for upholding the ethical standards in EU public administration should be made available under a free and open-source software licence and should be shared with any institution in Europe wishing to use it; calls for close cooperation with the European Data Protection Supervisor in this regard;

46. Calls on the Member States to ensure that criminal cases related to breaches of integrity rules, especially those involving Members of the European Parliament and national politicians playing a role in EU policy-making, are dealt with in an efficient manner and without undue delay;
47. Regrets, with concern, that there has been a lack of consideration of prevention and enforcement measures to avoid conflicts of interest in the Commission’s procedure on public tenders;

48. Notes that the application of the existing rules to Commissioners, Members of the European Parliament and EU officials has shown too many weaknesses; recalls that, according to a report by Transparency International EU, in early 2017, more than 50% of former Commissioners and 30% of former Members of the European Parliament who had left politics were working for organisations registered in the EU Transparency Register; stresses, in particular for elected Members, the need for transparency and accountability on personal and financial commitments; underlines that transparency and integrity issues at EU and national level are strongly interlinked; supports, therefore, the work of the Council of Europe’s Group of States against Corruption (GRECO), and calls on the Member States to implement its recommendations, specifically those regarding the creation of a strict code of conduct for national politicians and the introduction of rules for post-public employment;

49. Calls for a strengthening of the existing regulatory and enforcement framework for both pre-public and post-public employment conflicts of interest, in order to establish appropriate, clear, binding and proportionate boundaries between the public sector and the private and non-profit sectors and thus to improve the credibility of EU decision-making in the eyes of the wider public;

50. Highlights that post-public employment and revolving door conflict of interest situations are recurring concerns of a systematic nature and a problem common to institutions, bodies, offices and agencies across the EU; recommends the adoption of harmonised and adequate cooling-off periods by all EU institutions and that their enforcement be strengthened; considers that conflict of interest situations could jeopardise the integrity of the EU institutions and agencies, thereby damaging citizens’ trust in them; underlines the need to align and enforce the relevant EU legislation and codes of conduct, including with a view to requiring full transparency on the employment or projects taken up by high-ranking EU officials after leaving public office and on any side activities carried out by Members of the European Parliament; is of the opinion that the rules with regard to the prevention of conflicts of interest after public office or employment should be applicable within a reasonable time frame while respecting rules on appropriate compensation; stresses the need to learn from best practices in Member States which already have national ethical authorities with relevant expertise in place; underlines that different national practices exist in relation to the enforcement of ethical standards; notes that in some Member States elected representatives are required to refrain from voting on issues in which they have a personal interest and accordingly asks MEPs to refrain from being rapporteurs in similar cases; recalls, in this context, the provisions laid down in Articles 2 and 3 in the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest;

51. Underlines that the European Ombudsman has been handling conflicts of interest complaints in the absence of a mechanism dedicated to this task on top of her other missions, and without having the proper means and power to enforce her decisions;

52. Stresses that an independent EU ethics body will not be sufficient in itself to efficiently
address conflict of interest situations within the EU institutions and agencies; considers that the review of the EU ethics and integrity rules could include measures such as extending notification and cooling-off periods for senior officials on a proportionate case-by-case basis, while ensuring equal treatment in line with Article 15 of the Charter of Fundamental Rights of the European Union, the strengthening of Directive 2014/24/EU on public procurement, mandatory divestment of interests in undertakings that are subject to the authority of the institution to which an official has been newly appointed or which have dealings with that institution, mandatory recusal when dealing with matters that affect a former private sector employer, or bans on individual stock ownership by Commissioners and senior officials of EU institutions and agencies while in office; reiterates its call on the Commission to consider proposing a review of the relevant legal framework;

53. Is of the view that, if based on an objective procedure with clear criteria, longer ‘cooling-off’ periods for senior officials who leave an agency or institution are justified legal measures to protect the public interest and the integrity of public bodies;

54. Expresses its concerns about the appointment procedures for senior EU officials, the handling of Commissioners’ conflicts of interest and breaches of the Code of Conduct for Members of the European Parliament, and about checks on transparency obligations and the verification of compliance with revolving door rules;

55. Considers that the EU institutions should apply the highest ethical standards to prevent any cases of revolving doors or conflicts of interest, including with regard to the appointments to senior positions in the EU institutions and agencies;

56. Considers that the procedures for selecting candidates for senior positions should be carried out on the basis of fully objective criteria and be fully transparent for the general public; highlights that there should be a framework in place for questions and objections, along with open follow-up procedures and the power to cancel decisions that are proven to be of inadequate transparency and integrity; stresses that the procedures should be regularly evaluated in order to monitor their effectiveness and apply improvements where necessary;

57. Stresses that Parliament must play a key role in the process of enhancing the current EU ethics oversight system applicable across all EU institutions, agencies and bodies, in order to increase public trust in the EU decision-making processes;

58. Instructs its President to forward this resolution to the Council and the Commission.
EXPLANATORY STATEMENT

The need for an EU Ethics Body

Equal rights of citizens, citizens’ trust in public institutions and democratic processes, strong guarantees that public decisions are taken in the general interest, based on elections’ results and political majorities, integrity of public officials, these are key features of any functioning democratic system.

It requires irproachable and fully enforced ethics rules applicable to public institutions and officials and to decision-making processes.

In the EU, we do have ethics standards that are in many ways ahead of national and regional rules. Unfortunately, the EU ethics oversight system solely relies on a self-regulatory approach. Each institution designs its own rules and organises their enforcement internally which means the enforcement of ethical rules is not strictly separated from political processes.

Finally, the current system’s human and financial resources and competences limits its ability to verify information and investigate cases of potential breaches.

This is why a single and independent EU ethics body is a necessary step to ensure consistent and full implementation of ethics standards across the EU institutions. Equipped with sufficient competences and resources, designed to provide independent analysis , an EU ethics body would guarantee that public decisions are driven solely by democratic processes, taken in light of the common good and would help regaining and maintaining citizens’ trust in the European institutions.

In the 2019 European elections, all lead-candidates supported the creation of an Independent Ethics Body common to all EU institutions. The Commission President promised such an independent ethics authority before her election and subsequently entrusted Vice-President Věra Jourová with its establishment. The European Parliament has also recently supported this view in its resolution on the stocktaking of the 2019 European elections.

This report aims at starting the work of designing a model that could be acceptable to all EU institutions while providing the necessary conditions for fulfilling its tasks.

The model proposed by the Rapporteur:

• Legal basis

To create this Independent EU Ethics Body, the Rapporteur proposes the conclusion of an inter-institutional agreement between the participating institutions, based on Article 295 of the TFEU, starting at least with the Parliament and the Commission and open to the participation of all institutions, agencies and bodies willing to join at any point in time.

The choice of this legal basis results from a thorough assessment of different options that could have been envisaged, like the empowerment of existing structures like OLAF, the EU Ombudsman or the Court of auditors or the use of a different legal basis (like 298 TFEU or 352 TFEU).
From a procedural point of view, as well as from a scope and competences perspective, none of these alternative options seems to be satisfactory.

Therefore, the Rapporteur believes that the use of an IIA, based on Article 295 TFEU, is both from a legal but also practical point of view the best way to establish an Independent EU Ethics Body capable of addressing some of today’s shortcomings and ensure the EU ethics oversight system works.

- **Competences**:

Following the Meroni, the Rapporteur suggests that the Independent EU Ethics Body would be charged with the competences to monitor the implementation of ethics standards applicable to the participating institutions as well as with advisory, and investigative powers.

This model would not depend on additional powers as all the competences this body would have already exist and are in the hands of the institutions concerned.

When it comes to advisory tasks, the Rapporteur suggests entrusting the Independent EU Ethics Body with the task of providing advice to any individual covered by its scope who would seek interpretation of an ethical standard in relation to a given conduct.

The Rapporteur also indicates that the Independent EU Ethics Body could be given authority over the EU Transparency Register.

Finally, the decisions of the Independent EU Ethics Body should be subject to possible complaints to the EU Ombudsman, as well as subject to legal review by the Court of Justice of the EU;

- **Composition**:

In order to ensure efficiency and integrity of the newly created body, the Rapporteur proposes that the Independent EU Ethics Body would be composed of 9 independent members, among which 3 shall be chosen by Commission, 3 shall be elected by Parliament and 3 shall be de jure members from former presidents of the European Court of Justice, the Court of Auditors and the Ombudsman.

The members would be chosen by each institution on the basis of their competence, experience and professional qualities as well as their personal integrity. They should have an impeccable record of ethical behaviour and be free from any conflict of interest. These independent members could notably be chosen among former judges of the ECJ, former or current members of the highest courts of Member States, former Members of the European Parliament, former staff of participating institutions and bodies, former EU Ombudsmans, members of ethics authorities in Member States. The body could elect a President and two Vice-Presidents from among its members.

The Rapporteur also insists that the composition of the Independent EU Ethics Body should be gender balanced.

The Independent EU Ethics Body would be assisted by a secretariat with the human and financial resources commensurate to its tasks. The rapporteur believes that pooling current resources in charge of ethics oversight from the participating institutions could allow the
institutions to increase the efficiency of the use of their respective resources.

- **Efficient procedures and the right balance between confidentiality rules and transparency requirements**

In order to strive for the right balance between confidentiality of certain information and transparency, the Rapporteur suggests that the Independent EU Ethics Body could apply, in case of breach or potential breach, a two-steps approach.

In this approach, in case the body becomes aware of a breach or possible breach of ethics rules, it could first recommend actions to put an end to the breach. This preventive step should ensure confidentiality and the right for the person to be heard. It would resolve situations where individuals, in good faith and by mistake, found themselves in breach of applicable ethics rules and implemented the recommendations of the EU ethics body to put an end to the breach.

In case individuals refuse to take the appropriate actions, the Independent EU Ethics Body should make relevant information about the case publicly available and recommend, if appropriate, on sanctions.

**Conclusion:**

The Rapporteur believes that his proposed model strikes the right balance between efficiency of the body, which will be entrusted with appropriate competences and feasibility of the project, which is legally sound and can only rely on the good will of the EU institutions.

When agreed, this inter-institutional agreement will allow the EU to equip itself with a fully-fledged mechanism to ensure ethical standards are fully adhered to and the values and principles that they express are respected in the daily life of our Union.
ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the draft report:

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<tr>
<th>Entity and/or person</th>
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<td>Transparency International (TI EU)</td>
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<td>Society of European Affairs Professionals (SEAP)</td>
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<td>Bundesverband der Deutschen Industrie e.V. (BDI)</td>
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<td>Alberto Alemanno, HEC Paris</td>
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<td>European Commission’s Unit Ethics, Good Administration &amp; Relations with the European ombudsman (SG.DSG1.C.2)</td>
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OPINION OF THE COMMITTEE ON LEGAL AFFAIRS

for the Committee on Constitutional Affairs

on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body

(2020/2133(INI))

Rapporteur for opinion (*): Stéphane Séjourné

(*) Associated committee – Rule 57 of the Rules of Procedure

SUGGESTIONS

The Committee on Legal Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Notes that within the EU institutions different legislative and other provisions aimed at preventing conflicts of interest contain varying definitions of the term ‘conflict of interest’; believes therefore that the term should be uniformly understood to mean a conflict between the public duty – implying professional and official accountability – and private interests of a public official, in which the public official or public decision maker has private-capacity interests which could improperly influence the performance of the activities and decisions falling under their responsibility; notes, however, that a definition of this kind has a contextual and an evolving nature and that full transparency does not necessarily guarantee the absence of any conflict of interest, nor does it guarantee that public trust will be won or increased; notes that the enforcement of ethical rules and public accountability for conflicts of interest are a precondition for citizens’ trust in public institutions;

2. Notes the multitude of existing legal approaches to the meaning and applicability of the concept of conflict of interest; draws attention to the pressing concern of the EU institutions to enhance the effectiveness of standards and rules governing ethics and transparency; notes, furthermore, that the European institutions have a fragmented approach to the prevention of conflicts of interest and that each institution applies its own rules; considers that the establishment of an independent EU ethics body could contribute to a harmonised interpretation of existing rules and to strengthening their implementation; points out that the European Parliament has established the Advisory Committee on the Conduct of Members as the body responsible for giving Members guidance on the interpretation and implementation of the Code of Conduct; notes further that the Advisory Committee also assesses alleged breaches of the Code of Conduct and
advises the President on possible action to be taken; considers that the European Parliament should lead by example with regard to rules on ethics and their enforcement;

3. Recalls that the Committee on Legal Affairs is the committee responsible for the examination of potential conflicts of interest of Commissioners-designate, for the Statute for Members and the Staff Regulations of the European Union and for privileges and immunities and the verification of Members’ credentials, as stipulated in Annex VI to the Rules of Procedure of the European Parliament; recalls that the confirmation by the Committee on Legal Affairs of the absence of any conflict of interests is an essential precondition for the appointment of Commissioners-designate and that the Committee on Legal Affairs possesses clear powers to reject Commissioners-designate if a conflict of interest has been established; underlines that this provision should be read in conjunction with the ethical standards set out in Article 17(3) of the Treaty on the European Union, which provides that the Members of the European Commission must be chosen ‘from persons whose independence is beyond doubt’;

4. Recalls that Parliament may withdraw confidence in an individual Member of the Commission, after which the President of the Commission must either require the resignation of that Member or explain their refusal to do so before Parliament in the following part-session, in line with point 5 of the Interinstitutional Agreement of 20 November 20101;

5. Notes that during the examination of the potential conflicts of interest of Commissioners-designate in 2019, members of the Committee on Legal Affairs underlined the profound limitations of the current procedure; further notes that these limitations include access to only a limited range of information, the lack of time for examination, the absence of investigative powers and the absence of support from experts; is of the opinion that the examination of the declarations submitted by Commissioners-designate with a view to inferring a conflict of interest is of fundamental institutional and democratic importance and should be undertaken with the utmost attention, commitment and sense of responsibility, by means of fully objective, democratic and independent interpretation; believes that the rules on the examination of potential conflicts of interest should also apply to the declaration of the President-elect of the European Commission;

6. Is also of the opinion that for this examination to be complete and accurate, and for the possibility of a conflict of interest to be excluded, information and documents beyond the declaration of financial interests of Commissioners-designate in its current form can often be essential and that it should be possible to verify systematically whether information is complete, accurate and up-to-date; stresses in this regard that the future independent EU ethics body should be given appropriate investigative powers, as well as the power to request and have access to administrative documents, in order to allow it to carry out well-reasoned and well-documented assessments; stresses that the independent EU ethics body should be able to impose sanctions for unjustified delays or for refusal to provide information; stresses the need for full compliance with the rules on confidentiality, privacy and personal data protection in verifying the implications of a conflict of interest;

Believes therefore that the Committee on Legal Affairs, in cooperation with the independent EU ethics body, should be given sufficient time to evaluate possible conflicts of interest; further believes that it should be provided with sufficient resources, tools and skills to cross-check and locate necessary information, as well as to ask for complementary information where necessary;

Considers that, given the sophisticated and complex nature of this responsibility, the examination and establishment of a possible conflict of interest of Commissioners-designate by the European Parliament should be democratic and performed in an independent and systematic way with the assistance of an independent EU ethics body with the relevant expertise and experience; considers that the future independent EU ethics body should perform its tasks with the highest degree of independence in relation to its composition, its budget and its appropriate investigative powers; calls on the Commission and all participating institutions to allocate to the future independent EU ethics body sufficient staff and resources for a professional case-by-case assessment by experts of potential conflicts of interest, in particular of Commissioners, and possibly of Members of Parliament and high-ranking EU officials;

Highlights that post-public employment and ‘revolving door’ conflict of interest situations are recurring concerns of a systematic nature and a problem common to institutions, bodies, offices and agencies across the EU; recommends the adoption of harmonised and adequate cooling-off periods by all EU institutions and that their enforcement be strengthened; considers that conflict of interest situations could jeopardise the integrity of the EU institutions and agencies, thereby damaging citizens’ trust in them; underlines the need to align and enforce the relevant EU legislation and codes of conduct, including with a view to requiring full transparency on the employment or projects taken up by high-ranking EU officials after leaving public office and on any side activities carried out by Members of the European Parliament; is of the opinion that the rules with regard to the prevention of conflicts of interest after public office or employment should be applicable within a reasonable time frame while respecting rules on appropriate compensation; stresses the need to learn from best practices in Member States which already have national ethical authorities with relevant expertise in place; underlines that different national practices exist in relation to the enforcement of ethical standards; notes that in some Member States elected representatives are required to refrain from voting on issues in which they have a personal interest and accordingly asks MEPs to refrain from being rapporteurs in similar cases; recalls, in this context, the provisions laid down in Articles 2 and 3 in the Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest;

Questions the recent approval by the Commission of former Commissioner Oettinger’s employment by the international consulting firm Kekst CNC, a consultancy firm whose biggest EU-lobbying client is Philip Morris International, Mr Oettinger’s 10th post-Commissioner position which has been approved in less than a year;

Considers that for proper expertise to be acquired, the independent EU ethics body should have a permanent, independent and collegiate structure, and that the members of this body could include either persons in specific positions providing a guarantee of professionalism and independence, such as the position of former Presidents or former judges of the Court of Justice of the European Union (CJEU), or be based on the
nomination or election of experts by each EU institution and relevant bodies such as the European Ombudsman, OLAF or the European Court of Auditors; further considers that the composition of the independent EU ethics body must ensure gender equality and offer guarantees in terms of independence, impartiality, integrity, probity and experience;

12. Underlines, however, that the assessment of the independence of Commissioners-designate remains a democratic and institutional competence of the European Parliament; recommends therefore that, while fully keeping its competence on the matter, the Committee on Legal Affairs decide on the existence of a conflict of interest of Commissioners-designate after having received non-binding, public, precise and motivated recommendations by such an independent expert advisory body, which would have the effect of strengthening its action; considers that the Committee on Legal Affairs should ultimately hold a debate on the recommendations issued by the independent EU ethics body; considers that, beyond the scrutiny of the declarations of Commissioners-designate by the Committee on Legal Affairs, the examination of conflicts of interest should be carried out, in general prior to, during and after public office or employment, for all Union institutions, bodies, offices, and agencies;

13. Believes that, in parallel with its advisory functions in relation to potential conflicts of interest of Commissioners-designate, the independent EU ethics body should also be entrusted with a broader support role in examining conflicts of interest within the European institutions and agencies in general, playing, in a complementary and balanced way, on the one hand, a preventive role via awareness raising and ethical guidance powers, and, on the other hand, a compliance and enforcement role as regards conflicts of interest; suggests that the independent EU ethics body should support and ensure a coherent implementation of the respective rules and aim for the highest ethical standards, thereby increasing public trust and raising the level of transparency and integrity among Members and staff of EU institutions; recommends that the future independent ethics body work towards the harmonisation of ethical standards while taking into account the specific nature and challenges of each institution;

14. Considers that an institutional culture fundamentally based on prevention, support and transparency requires close cooperation with the various bodies and institutions subject to oversight; considers that, in due course, the internal administrative services responsible for ethical issues could be transformed into contact points responsible for relations with the European ethics body; stresses that the independent EU ethics body should be given the possibility to start investigations on its own initiative; considers that the main tasks of consultation, prevention and support of the future independent EU ethics body could be accompanied by allowing for the possibility for it to put forward enforcement measures as a last resort, in order to ensure that its recommendations and decisions are followed up; considers that the publication or forwarding of recommendations and decisions could constitute a sanction in itself; stresses that such a body should not replace the CJEU;

15. Confirms that the ethics body should be able to take on concerns by stakeholders, including by whistle-blowers;

16. Recommends the creation of an internal and confidential complaints mechanism for European public officials to raise concerns about potential breaches of the existing rules
without fearing retaliation;

17. Stresses that the fight against fraud, corruption, maladministration or the misuse of public funds are distinct from, although sometimes related to, the monitoring of ethical issues in the EU institutions; consequently underlines that the creation of an independent ethics body must not lead to the elimination of or undue restrictions being placed on other existing bodies that supervise the good administration of the European Union.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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<td>Substitutes present for the final vote</td>
<td>Andrzej Halicki, Javier Nart, Emil Radev</td>
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## FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention
1.6.2021

OPINION OF THE COMMITTEE ON BUDGETARY CONTROL

for the Committee on Constitutional Affairs

on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body

(2020/2133(INI))

Rapporteur for opinion: Mikuláš Peksa

SUGGESTIONS

The Committee on Budgetary Control calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Stresses that transparency, accountability, professionalism and integrity are key components in promoting ethics principles within the EU, and are essential to protecting the EU budget from fraud and corruption, as well as to maintaining the EU’s democratic legitimacy and public trust in it; points out that the Organisation for Economic Cooperation and Development defines public integrity as the alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector; recalls that unethical behaviours can significantly damage the EU’s financial interests and decision-making process, may result in reputational damage for its institutions, and constitute a serious threat to democracy, the rule of law and the public interest, which is why such behaviour should be prevented and condemned;

2. Recalls that in its special report 13/2019 on the ethical frameworks of EU institutions in 2019, the European Court of Auditors (ECA) concluded that the institutions audited had established adequate ethical frameworks for both staff and Members, but identified some weaknesses in this regard; recommends improvements through harmonisation, awareness-raising and strengthening of EU ethics rules; shares the ECA’s concerns about the absence of a common EU ethical framework governing the work of Member State representatives in the Council, the lack of overall ethics strategies in Parliament and the Council, the unreliable procedures for verifying declarations of interest, the limited scrutiny of these declarations and the incomplete policies in other areas concerning the current ethical frameworks;

3. Highlights that the ECA states that there should be effective institutional frameworks, and clear procedures and channels in place for facilitating the reporting of wrongdoing and corruption, as well as that whistle-blowers acting in good faith must be protected
from retaliation;

4. Emphasises that the current ethics frameworks, which at EU level are tailored to the specificities of each EU institution, and the lack of oversight over them have prevented the proper implementation of codes of conduct in EU institutions; highlights that the ECA identified many areas where it is advisable to implement a more harmonised approach to the handling of ethical issues; believes that the current self-regulatory approach is not fit for purpose and cannot guarantee integrity, and that it therefore should be reviewed in the interests of a greater effectiveness; believes that a more harmonised approach in important areas, such as whistle-blower protection is needed, including to fill current legislative gaps such as the lack of a Commissioner’s statute; highlights that public officials might not be in a position to self-assess ethical situations or conflicts of interest, and that this assessment should fall under the remit of a specialised independent third party; recalls that the ECA states that the ethical frameworks cannot be effective without appropriate supervisory systems that should reflect levels of risk and take into account officials’ administrative tasks; acknowledges the differences in the nature of the institutions, and specifically the legally guaranteed independence of judges of the Court of Justice of the European Union (CJEU), the members of ECA, and of Members of the European Parliament, national Parliaments or national governments; underlines the need to enhance the integrity of EU institutions and strengthen public trust;

5. Encourages the creation of an independent ethics body (IEB) in order to align rules across EU institutions, agencies, offices and bodies; welcomes that the Commission made this a priority and is committed to supporting the IEB’s effort to establish a common ethical framework at EU level; calls on all EU institutions, bodies, offices and agencies to cooperate and coordinate in identifying areas where their respective ethical frameworks can be more closely aligned and harmonised; considers it imperative for the legislative to exercise scrutiny over the executive, as any reversal of the roles and powers of the legislative and executive would otherwise endanger the independence of the free mandate of elected Members of Parliament; points out that improving and harmonising the current ethics frameworks and their effective implementation should not rely exclusively upon the creation of the IEB, and must be respectful of the particularities of each institution, the principle of the separation of powers, as well as the institutional balance and democratic roles established by the Treaties; considers it to be of utmost importance, prior to the drafting of a legislative proposal to create an IEB, to perform a thorough cost-benefit analysis and an impact assessment; highlights that the objective is to protect the EU budget from unethical behaviours while maintaining the highest standards of ethics and integrity among a diverse and large number of EU institutions and bodies;

6. Sees high potential for oversight on administrative decision-making competences based on a new harmonised ethics framework, which nevertheless should include common rules on the content and publication of declarations of interests in line with the principles of proportionality and in full respect of data protection rules; avoidance of conflicts of interests and revolving doors; acceptance of gifts and entertainment; protection of whistle-blowers and victims of harassment; transparency of lobby meetings, public procurements and meeting calendars of senior staff; usage of transparent bank accounts for public funds, while taking into consideration the different work performed by the institutions, as well as the risks and challenges inherent to their
members’ specific duties;

7. Considers that establishing the new ethics body should result in the individual EU institutions taking a horizontal approach to disadvantaged persons, enabling compliance with the principles of equality of opportunity and treatment to be guaranteed by all the institutions; stresses that the IEB’s main priorities must include ensuring equal rights for persons with disabilities and other disadvantaged persons in the functioning and work of the EU institutions;

8. Believes that giving the IEB competence over the current internal ethics functions of the EU institutions provides the opportunity to concentrate expertise, create synergies and hence improve the implementation of ethics rules, requiring public officials to always act for the good of society through the sound management of public funds and legal, fair and transparent decision making; is confident that this transfer of competence could lead to considerable savings for the EU budget; recalls that under the Treaties, the CJEU is the supreme judicial body of the EU (Article 19 of the Treaty on European Union), and that there can be no higher judicial decision-making authority above it;

9. Emphasises the need to respect and uphold the rule of law and to ensure that the common ethical framework is soundly based on the fundamental legal basis of the Treaties and the respect for the rule of law in its implementation; underlines that the IEB should be given its mandate by the authority currently in charge of engaging in prevention, monitoring, investigation and support of enforcement of a more common ethical framework, as well as providing knowledge and guidance, in order to protect the EU’s financial interests; underlines that the IEB should be able to recommend disciplinary measures and propose financial sanctions in order to avoid abuse of the EU budget linked to unethical behaviour; calls for the IEB, where applicable, to assess the implementation and compliance of ethics rules by the EU institutions, and publish an annual report on its findings with recommendations to be presented to Parliament, the Commission and all other participating institutions; stresses that the IEB must increase staff awareness of the ethical framework provisions and the ethical culture in the EU institutions;

10. Warns that transferring tasks to the IEB beyond those currently exercised by the institutions could create a serious breach of the Treaties;

11. Calls for the IEB to lead by example on transparency by publishing all recommendations, annual reports, decisions and spending in a machine-readable open data format available to all citizens, and in accordance with the applicable data-protection rules; strongly recommends that any software developed for upholding the ethical standards in EU public administration should be made available under a free and open-source software licence and should be shared with any institution in Europe wishing to use it; calls for close cooperation with the European Data Protection Supervisor on this regard;

12. Encourages the signature of an interinstitutional agreement (IIA) between the EU institutions to set up the IEB; emphasises the importance of the Council, including the Member States’ representatives working in the Council, joining the IIA in view of the ECA’s and European Ombudsman’s repeated requests to enhance the institution’s working ethics and transparency for the benefit of EU citizens; recalls Council’s
obligation to deal with high-level conflicts of interest, revolving doors and lobby transparency rules; calls for clear provisions giving the person concerned a right of appeal against any recommendations concerning them in full respect of the basic principles of the rule of law; underlines that the creation of a new advisory ethics body for Parliament should avoid duplication of work and overlapping competences;

13. Stresses the importance of a clear division of tasks and enhanced cooperation, if applicable, between the IEB and relevant EU bodies such as the European Anti-Fraud Office (OLAF), the European Public Prosecutor’s Office (EPPO), the European Ombudsman, the ECA and others within their respective mandates, and of this cooperation generating a steady information exchange; notes that, in order to maintain a high level of citizens’ trust and acceptance for a new EU body, the establishment of the IEB should be justified in terms of opportuneness and efficiency;
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention
20.11.2020

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Constitutional Affairs

on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body (2020/2133(INI))

Rapporteur for opinion: Derk Jan Eppink

SUGGESTIONS

The Committee on Economic and Monetary Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Recalls its resolution of 16 January 2020 on institutions and bodies of the Economic and Monetary Union: preventing post-public employment conflicts of interest¹, in particular its support for the proposal of the President of the Commission to create an independent EU ethics body common to all EU institutions, which would take decisions related to conflicts of interest;

2. Highlights that post-public employment and ‘revolving door’ conflict of interest situations are recurring concerns and a problem common to institutions, bodies, offices and agencies across the EU; considers that conflict of interest situations jeopardise the enforcement of high ethical standards in the EU institutions and agencies, thus compromising their integrity and damaging citizens’ trust in them;

3. Points out that the inherent complexities in financial regulatory policies, the information asymmetries between financial market players and public officials, and the lack of a harmonised framework of rules regarding conflicts of interest within the EU institutions and agencies make supervisors and regulators particularly susceptible to regulatory capture by the financial sector;

4. Stresses with concern the appointment of the former Executive Director of the European Banking Authority (EBA) as Chief Executive Officer of a financial lobby organisation, where, following an inquiry, the European Ombudsman found that the EBA should not have allowed the job move and that insufficient internal safeguards had been put in place to immediately protect confidential information once the planned move became clear; notes that this post-public employment with no cooling-off period contravenes EU Staff Regulations and constitutes not only a risk to the reputation and independence

¹ Texts adopted, P9_TA(2020)0017).
of the EBA, but to all Union institutions; welcomes, in this context, the measures implemented by the EBA following the recommendations of the Ombudsman;

5. Regrets, furthermore, with concern, that there has been a lack of consideration and of prevention and enforcement measures to avoid conflicts of interest in the Commission’s procedure on public tenders;

6. Notes that the application of the existing rules to Commissioners, Members of the European Parliament and EU officials has shown too many weaknesses; recalls that, according to a report by Transparency International EU, in early 2017, more than 50 % of former Commissioners and 30 % of former Members of the European Parliament who had left politics were working for organisations registered in the EU Transparency Register; stresses, in particular for elected Members, the necessity of transparency and accountability on personal and financial commitments; underlines that transparency and integrity issues at EU and national level are strongly interconnected; supports, therefore, the work of the Council of Europe’s Group of States against Corruption (GRECO), and calls on Member States to implement its recommendations, specifically those regarding the creation of a strict code of conduct for national politicians and the introduction of rules for post-public employment;

7. Recalls the repeated warnings from the European Ombudsman and the European Court of Auditors about major failures in the EU institutions’ prevention of conflict of interest policies; points out the lack of alignment of the EU ethics rules with the Organisation for Economic Co-operation and Development (OECD) Guidelines for Managing Conflict of Interest in the Public Service, which recommend identifying a central function responsible for the development and maintenance of conflict of interest policies and procedures; considers that the current legal framework for ethics and integrity in the EU institutions and agencies is highly fragmented, not fit for purpose, and in need of a thorough review with a view to strengthening independence and investigative powers;

8. Calls for a strengthening of the existing regulatory and enforcement framework for both pre-public and post-public employment conflicts of interest, in order to establish appropriate, clear, binding and proportionate boundaries between the public sector and the private and non-profit sectors and thus to improve the credibility of EU decision-making in the eyes of the wider public; welcomes in this regard the work done by the OECD, the European Court of Auditors, GRECO and the European Ombudsman;

9. Welcomes the additional transparency measures announced by the President of the European Central Bank (ECB) Christine Lagarde regarding the publication of the ECB Ethics Committee’s opinions for cases of conflict of interest and post-mandate gainful employment by the members of the ECB’s Executive Board, Governing Council and Supervisory Board; calls on the European Supervisory Authorities (ESAs) to adopt a similar approach and publish the relevant documents produced by their internal bodies in charge of conflicts of interest and post-mandate gainful employment;

10. Calls for the creation of an independent EU ethics body with the responsibility of ensuring the uniform application of ethics rules in all the EU institutions by carrying out oversight of conflicts of interest, ‘revolving doors’ and lobby transparency for all EU institutions and agencies;
11. Underlines that the European Ombudsman has been handling conflicts of interest complaints in the absence of a mechanism dedicated to this task on top of her other missions, and without having the proper means and power to enforce her decisions;

12. Points out that the new EU ethics body should be independent in terms of structure, governance and budget; underlines that the discussions on the exact composition and mandate of the ethics body should take due account of the opinion of civil society organisations;

13. Recommends that the EU ethics body be set up in a timely manner, so as to avoid cases of ‘revolving doors’ and conflicts of interest already recurring in the near future;

14. Underlines that this body should work in close cooperation with internal ethics committees in the EU institutions, the Transparency Register secretariat, the European Anti-Fraud Office and the European Ombudsman;

15. Takes the view that, in order to carry out adequately the definition, oversight and enforcement of the EU ethics and integrity rules within the EU institutions and agencies, including the lobbying rules and transparency, the designated independent EU ethics body should have appropriate human and financial resources, a carefully chosen composition ensuring its independence from political considerations and other interests, and a broad mandate empowering it with preventive, monitoring, investigative and sanctioning competences, powers, tasks and duties, including:

– monitoring pro-actively and sanctioning breaches of ethics and integrity rules within the EU institutions and agencies;

– enforcing strict rules on pre-public and post-public employment, ‘revolving door’ and conflict of interest situations for all staff of the EU institutions and agencies, Members of the European Parliament and European Commissioners, including overseeing cooling-off periods and revising authorisations of a job move if it finds that a specific move constitutes a conflict of interest, and making binding recommendations in this regard;

– technically and impartially reviewing secondary positions held by EU politicians and declarations of financial interests, including verifying whether imposed lobbying bans and control conditions are being maintained;

– taking on an active role regarding complaints by designated entities, including whistle-blowers;

– issuing administrative sanctions subject to possibilities for appeal and judicial review without interfering with the Treaties;

– supervising the proper functioning and independence of the Commission’s decision-making process, including the creation and operations of Commission expert groups and similar entities;

– giving advice on request and issuing annual reports about its work, including recommendations on its own initiative on how to further develop the EU ethics system;
– monitoring conditions and lobby bans imposed on EU staff;

– keeping an online ethics record at European level, thus providing access to key transparency documents;

16. Stresses that an EU independent ethics body will not be sufficient in itself to efficiently address conflict of interest situations within the EU institutions and agencies; considers that the review of the EU ethics and integrity rules could include measures such as extending notification and cooling-off periods of senior officials on a proportionate case-by-case basis, while ensuring equal treatment in line with Article 15 of the Charter of Fundamental Rights of the European Union, the strengthening of Directive 2014/24/EU on public procurement, mandatory divestment of interests in undertakings that are subject to the authority of the institution to which an official has been newly appointed or which have dealings with that institution, mandatory recusal when dealing with matters that affect a former private sector employer, or bans on individual stock ownership by Commissioners and senior officials of EU institutions and agencies while in office; reiterates its call on the Commission to consider proposing a review of the relevant legal framework;

17. Recognises the need to strike a delicate balance, on a case-by-case basis, between regulating conflicts of interest, introducing strong measures which mitigate limitations to the individual right to economic freedom, such as posting information to job applicants about the conflict of interest system and any future employment restrictions, securing the unobstructed exercise of parliamentary and other institutional duties, and maintaining a dynamic labour market with mobility between the public sector and the private and non-profit sectors;

18. Is of the view that, if based on an objective procedure with clear criteria, longer ‘cooling-off’ periods for senior officials who leave an agency or institution are justified legal measures to protect the public interest and integrity of public bodies; considers that any prohibition of a professional move might, where appropriate, require a temporary allowance to be granted to bridge the intervening period before finding an appropriate job.

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# Information on Adoption in Committee Asked for Opinion

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**Key to symbols:**
+ : in favour
- : against
0 : abstention
13.4.2021

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Constitutional Affairs

on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body
(2020/2133(INI))

Rapporteur for opinion: Radan Kanev

SUGGESTIONS

The Committee on Petitions calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Welcomes the commitment made by the European Commission before Parliament to establish an independent EU ethics body;

2. Highlights that all EU institutions should abide by high standards of ethics and transparency, and calls on all EU institutions to conclude an agreement on establishing a common ethical framework to reflect these standards; emphasises that high standards of transparency and integrity in all EU institutions are essential to enabling citizens to fully exercise their democratic right to participate in the EU’s decision-making process, and thus to enhancing the democratic legitimacy and credibility of the Union while strengthening confidence in the European integration process; points out in this regard that citizens’ trust in political institutions is a key founding element of representative democracies; recalls that in the Commission’s Political Guidelines for the 2019–2024 term, the President of the Commission committed to working for the creation of an independent ethics body common to all EU institutions, and stressed that if citizens were to have faith in the EU, its institutions should be open and beyond reproach on ethics, transparency and integrity; recalls that the right to petition must be enhanced, providing citizens with the best support in order to enter into and maintain a direct dialogue with representatives from the EU institutions with a view to solving problems affecting them, thus contributing to improving openness, inclusiveness, responsiveness and accountability while bridging the gap between citizens and EU institutions; notes in this regard that the home pages dealing with petitions and claims should also be fully accessible to people with disabilities;

3. Underlines citizens’ particular interest in transparency and integrity in the functioning of the EU institutions, as shown by a number of petitions received by the Committee on
Petitions that call for full transparency in, inter alia, Council decision-making and its contacts with lobbyists; expresses its concerns about the appointment procedures for senior EU officials, the handling of Commissioners’ conflicts of interest and breaches of MEPs’ code of conduct, and about checks on transparency obligations and the verification of compliance with revolving doors rules; underlines also that, as in previous years, the majority of inquiries closed by the European Ombudsman in 2019 concerned transparency and accountability, including public access to information and documents;

4. Considers, as the committee most directly engaged with public opinion and the public response to the institutions’ transparency and integrity, that a democratic approach and political responsibility, coupled with the highest standards of ethics, transparency and accountability, are key elements of any constitutional democracy’s control mechanism, and therefore also in the EU; stresses the need for further strengthening democratic accountability mechanisms at EU level; encourages, in this regard, the establishment of a common ethical framework for all EU institutions and of an EU ethics body which should operate in a depoliticised and independent way, in parallel to the political control mechanisms enshrined in the Treaties, in order to further strengthen and guarantee the highest standards of accountability, transparency and integrity at EU level, to ensure that public decisions are taken in the general interest, and thus to increase citizens’ trust in the EU institutions;

5. Recalls that Parliament, as the only directly elected representative institution of EU citizens, should continue its important task of oversight of the political evaluation of the Commission and other institutions, as well as to ensure the suitability of certain candidates for senior positions; stresses that Parliament must play a key role in the process of enhancing the current EU ethics oversight system applicable across all EU Institutions, agencies and bodies, in order to increase public trust in the EU decision-making processes; suggests that Parliament nominates candidates for a future independent EU ethics body;

6. Stresses that a high level of transparency in the legislative process is essential to enabling citizens to hold their elected representatives and governments accountable; reiterates, therefore, its call on the Council to align its working methods with the standards of a parliamentary and participatory democracy required under the Treaties, and to improve its rules and practices on transparency in its legislative process in line with the recommendations of the European Court of Auditors and the European Ombudsman, which were overwhelmingly supported by Parliament in its resolution of 17 January 2019 on the Ombudsman’s strategic inquiry OI/2/2017 on the transparency of legislative discussions in the preparatory bodies of the Council of the EU, which was based on the joint report of the Committee on Constitutional Affairs and the Committee on Petitions; recalls that communications within the EU institutions must also be accessible for people with disabilities;

7. Considers it essential to make the transparency register mandatory for all EU

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4 OJ C 411, 27.11.2020, p. 149.
institutions and agencies in order to facilitate public scrutiny and enable individual citizens and other interest groups to monitor the activities of lobbyists and their impact on decisions and legislation;

8. Stresses that the current self-regulatory ethical framework has proven insufficient, has led to a fragmented approach and to ethical standards differing between EU institutions; highlights that over recent years multiple cases of unethical behaviour and breaches of the rules have remained unsanctioned, confirming that the current EU ethics oversight system continues to be affected by severe shortcomings and inconsistencies; believes it is extremely important to identify and address the weaknesses in the current procedures; underlines, in this regard, that upgrading the current fragmented procedures based on a self-regulatory approach by introducing a more effective EU ethics oversight system with the creation of a single independent EU ethics body is paramount to ensuring a consistent and full implementation of ethical standards, as well for the implementation of the principle of equal opportunities and equal treatment throughout the EU institutions; stresses, furthermore, that this ethics body should take over the role of the ethics committees currently operating in the different EU institutions and agencies, and work towards the harmonisation of the different interpretations of norms and terms, such as ‘conflict of interest’, to avoid divergences, ensure clarity and thus increase citizens’ trust in the functioning of the EU institutions;

9. Underlines the need to review and align relevant EU legislation and codes of conduct, requiring full transparency on positions or projects taken up by high-ranking and senior officials of EU institutions and agencies or MEPs, including after leaving public office; underlines, in this respect, that certain public officials self-declare themselves out of conflicts of interest, and provide self-assessments on respect for ethical standards; highlights, however, that self-declaring and self-assessment are not sufficient, and that additional scrutiny is therefore needed; underlines that this task should fall under the competence of an independent specialised third party, in the form of an independent ethics body (IEB) for all the EU institutions, agencies, bodies and offices.

10. Considers that the EU institutions should apply the highest ethical standards to prevent any cases of revolving doors and conflicts of interest, including with regard to the appointments to senior positions in the EU institutions and agencies; expresses its concern that any such cases, even if legally permissible, are significantly undermining the overall credibility of the EU institutions, and are often used in anti-European propaganda as a means of generating Euroscepticism among the public; calls for the establishment of an IEB for all EU institutions that would oversee the implementation of a future common ethical framework, and have competence over the common rules on the content and publication of declarations of interests, avoidance of conflicts of interest and revolving doors, receipt of gifts and hospitality, protection of whistle-blowers and victims of harassment, transparency of lobby meetings, public procurement and meeting calendars of senior staff, and use of transparent bank accounts for public funds;

11. Considers that the procedures for selecting candidates for senior positions should be carried out on the basis of fully objective criteria and be fully transparent for the general public; highlights that there should be a framework in place for questions and objections, along with open follow-up procedures and the power to cancel decisions that are proven to be of inadequate transparency and integrity; stresses that the procedures should be regularly evaluated in order to monitor their effectiveness and apply
improvements where necessary.

12. Notes that some EU Member States already have a high level of transparency requirements for their elected and appointed officials on conflicts of interest, sources of income and family assets; considers that it is imperative for the EU institutions to standardise their procedures, and apply the same high ethical and integrity standards.

13. Underlines the important role that the European Ombudsman plays in ensuring the highest standards of transparency and integrity in the EU institutions; stresses the Ombudsman’s key role in monitoring the proper functioning of European public administration, which should continue after the establishment of an IEB; considers it necessary, in this regard, to safeguard and if needed strengthen the role of the Ombudsman as the first body that citizens can turn to when raising concerns about the institutions; calls on the Committee on Constitutional Affairs to consider and to take fully into account all shortcomings of, and gaps in, the current EU ethics framework, as also confirmed in the inquiries conducted by the European Ombudsman, when working on strengthening ethical rules and their enforcement by establishing a single IEB; suggests the conclusion of an EU interinstitutional agreement to set up an IEB for Parliament and the Commission, open to the participation of all EU institutions, agencies and bodies with a view to improving all related aspects; recommends that this body receives a clear mandate and operates at a technical level with a permanent, independent, impartial, collegiate and gender-balanced structure;

14. Recommends that the single IEB consists of members selected by the Commission and elected by Parliament, and that candidates may be selected from, among others: former Presidents of the Court of Justice of the European Union (CJEU), the Court of Auditors, former EU Ombudsmen, former MEPs; recommends that candidates are chosen on the basis of their integrity, competence, experience and absence of conflicts of interest; recommends that the current or former political roles of candidates should be thoroughly analysed during the selection process, given the role of this body and the high level of impartiality needed; underlines that a majority of members with a political background should be fully avoided; demands a gender-balanced composition of the IEB; is convinced that the IEB must be given monitoring and advisory powers over ethical standards; underlines that further debate is needed about the powers of the IEB so as to respect the role of existing bodies and the Union institutions’ rights and obligations as laid down in the Treaties; calls, therefore, on the Committee on Constitutional Affairs to consider the possible structure, election procedure and competences of the IEB;

15. Believes that the IEB must be provided with adequate human and financial resources in order for it to effectively fulfil its tasks; highlights the need for the IEB to monitor and conduct systematic checks to ensure that the EU institutions and any third parties working with the EU institutions, including those listed in the Transparency Registry, continuously abide by transparency criteria over time; suggests that the IEB should include mechanisms for the internal management of complaints within the EU institutions, so that concerns about potential breaches may be notified confidentially and looked into discreetly.
INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| Substitutes present for the final vote | Anne-Sophie Pelletier, Ramona Strugariu, Rainer Wieland |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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**Key to symbols:**
+: in favour
-: against
0: abstention
## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

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<th>Date adopted</th>
<th>14.7.2021</th>
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| Result of final vote | +: 18  
|                     | --: 8   
|                     | 0: 1    |

### Members present for the final vote

### Substitutes present for the final vote
Gilles Boyer
### FINAL VOTE BY ROLL CALL

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