



**2020/2133(INI)**

20.1.2021

## **DRAFT 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

Rapporteur: Daniel Freund

Rapporteur for the opinion (\*):  
Stéphane Séjourné, Committee on Legal Affairs

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

**CONTENTS**

	<b>Page</b>
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION.....	3
EXPLANATORY STATEMENT .....	8
ANNEX: LIST OF ENTITIES OR PERSONS FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT .....	12

## 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 institutions<sup>1</sup>,
- having regard to its resolution of 26 November 2020 on stocktaking of European elections<sup>2</sup>,
- having regard to the Treaty on European Union (TEU), in particular Articles 9 and 10, 15(3) and 17(3) 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 its decision of 28 September 2005 adopting the Statute for Members of the European Parliament (2005/684/EC, Euratom)<sup>3</sup>,
- 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 thereto,
- 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,

---

<sup>1</sup> OJ C 337, 20.9.2018, p. 120.

<sup>2</sup> Texts adopted, P9\_TA(2020)0327.

<sup>3</sup> OJ L 262, 7.10.2005, p. 1.

- having regard to the recommendations of Transparency International, the Council of Europe’s Group of States against Corruption (GRECO), and the Organisation for Economic Co-operation and Development (OECD),
  - having regard to the Council conclusions on the European Court of Auditors’ Special Report No 13/2019,
  - having regard to Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities 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 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 (A9-0000/2021),
- 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 and not according to the financial power of individual actors;
  - B. whereas the ethical standards applicable to the European institutions are in many respects ahead of those applicable in their national equivalents but have not been enforced in a satisfactory manner, particularly in Parliament where, in spite of there having been at least 27 breaches of the code of conduct, no procedure has ever led to any sanction;
  - C. whereas the shortcomings of the current EU ethics framework derive largely from the fact that it relies on a self-regulatory approach and lacks adequate human and financial resources and competences to verify information;
  - D. whereas, as a consequence, multiple cases of unethical conduct and their inadequate handling by the EU institutions have harmed the trust which European citizens place in the EU institutions;
  - E. whereas the current ethics standards framework appears to be highly fragmented, with different rules in different institutions, creating a complex system which is difficult for both EU citizens and for those who have to respect the rules to understand;
  - F. 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;
  - G. whereas all lead candidates in the 2019 European elections committed to the creation of an independent ethics body common to all EU institutions; whereas the President of the Commission committed to it in her political guidelines and whereas Parliament has already supported this view;
1. Believes that a single independent EU ethics body is necessary to ensure the consistent

and full implementation of ethics standards across the EU institutions; proposes the conclusion of an interinstitutional agreement (IIA) to set up an EU Ethics Body for Parliament and the Commission open to the participation of all EU institutions, agencies and bodies; recommends that the IIA contain the following provisions:

### ***Scope and mandate***

2. Considers that the new EU Ethics Body should be delegated a list of competences to implement ethics rules for Members and staff; takes the view that this list should include by way of a minimum the competences provided for in:
  - the Statute for Members of the European Parliament: Articles 2 and 3,
  - Parliament’s Rules of Procedure: Rules 2, 10 and 11, 176(1), Annex I, Articles 1 to 3, 4(6), 5 and 6 and Annex II,
  - the Commission’s Rules of Procedure: Article 9, its Code of Conduct, Article 2 and Articles 5-11, 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 Directors-General,
  - the Staff Regulation’s Articles 11, 11(a), 12, 12(a), 12(b), 13, 15, 16, 17, 19, 21(a), 22(a), 22(c), 24, 27 and 40,
  - The IIA on a mandatory Transparency Register;
3. 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 Parliament, Commissioners and all EU staff falling under the scope of the Staff Regulation;
4. Insists that the IIA should be open to the participation of all EU institutions and bodies; believes that the IIA should allow the Ethics Body to conclude agreements with national authorities with a view to ensuring the exchange of information necessary for the performance of its tasks;

### ***Competences and powers***

5. Considers that the participating institutions should entrust the EU Ethics Body with monitoring powers over ethics standards, as well as advisory, investigative and enforcement powers;
6. Considers that this monitoring capacity should include the verification of the veracity of the declaration of financial interests, the handling of conflicts of interest, checks on transparency obligations and the verification of compliance with revolving doors rules;
7. Takes the view that the EU Ethics Body could also be given authority over the obligations imposed by the Transparency Register;
8. Considers that the EU Ethics Body should have the power to initiate procedures and to conduct investigations based on the information it has collected or that it has received

from third parties;

9. Believes that in relation to its enforcement powers, the body could take over from the Appointing Authority in dealing with staff ethics obligations, and that in relation to Members of Parliament or Commissioners, the body could be granted enforcement powers within the limits of the provisions contained in the Treaties, and without prejudice to any additional mechanisms provided for in Parliament's Rules of Procedure, in particular concerning termination of office;
10. Considers that the EU Ethics Body should be entrusted with advisory tasks in order to provide advice to any individual covered by its scope who wishes to request interpretation of an ethical standard in relation to appropriate conduct in a specific case;
11. Believes that the decision on the absence of conflicts of interest of Commissioners-designate should remain a competence of Parliament's Committee on Legal Affairs, while the EU Ethics Body should support the process with the publication of its analysis of each individual case and make its investigative capacities available;

### ***Composition***

12. 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 Presidents of the Court of Justice of the European Union (CJEU), the Court of Auditors and former EU Ombudsmen;
13. 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;
14. Suggests that each institution choose these members in particular from among former judges of the CJEU, former or current members of 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;
15. Insists that the college be supported by a secretariat with the human, material and financial resources commensurate with its mandate and tasks;

### ***Procedures***

16. Proposes a two-step approach whereby, in the event that the EU Ethics Body becomes aware of a breach or possible breach of ethics rules, it first recommends actions to put an end to the breach; considers that this first preventive step should ensure confidentiality and the right of the person to be heard; suggests that in the event that the individual concerned refuses to take the appropriate actions, the EU Ethics Body should make relevant information about the case publicly available and decide, if appropriate, on sanctions; considers that this two-step approach should apply provided that there are no reasonable grounds to believe that the individual acted in bad faith and recommends

that intentional breach, gross negligence, the concealment of evidence and non-compliance with the obligation to cooperate should be, as such, subject to sanctions, even when the breach itself has ceased;

***General and final provisions***

17. Is of the opinion that the EU Ethics Body should publish an annual report containing both information about the fulfilment of its tasks and, where appropriate, recommendations for improving ethics standards;
18. Insists that the decisions of the EU Ethics Body should be legally binding, reviewable before the CJEU and subject to possible complaints to the EU Ombudsman;
19. 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 and not captured by private interests, integrity of public officials, these are key features of any functioning democratic system.

It requires irreproachable 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, these rules remain in reality poorly enforced.

As a result, multiple cases of unethical behaviours in the recent years have been insufficiently handled by the EU institutions, thus contributing to damaging the reputation of the European Union and showing that the EU ethics oversight system falls short of the expected impacts.

The revolving door cases of José Manuel Barroso, Neelie Kroes or Günther Oettinger are not isolated cases. A recent report from Corporate Europe Observatory shows that revolving doors rules are often poorly implemented. In 2019 the EU Commission rejected only 3 out of 363 requests from ex-EU officials for permission to take up a follow-on job.

The European Parliament is another example of rules not being properly enforced. The introduction of the Code of Conduct for Members of the European Parliament in January 2012 came in response to previous scandals. However, reality shows that this code fails to be rightly implemented. In fact, despite 27 documented breaches of the code of conduct dealt with by the Advisory committee, no procedure ever led to a sanction.

The main reason why, despite high standards, breaches of rules remain mostly unsanctioned, is the fact **the EU ethics oversight system solely relies on a self-regulatory approach**. Each institution designs its own rules and organises their enforcement internally which has proven to be highly detrimental to their implementation.

**The ethics rules are also very fragmented**, with different rules and different procedures applicable to the different institutions (the fact that the European Action Service did not apply the staff regulation for over 6 years after its entry into force is a compelling example of this fragmentation), which reduces their transparency and their understanding by citizens and, most importantly, by the individuals who are expected to follow them..

Finally, the **current system lacks adequate human and financial resources and competences** 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 and binding decisions, an EU ethics body would guarantee that public decisions are not captured by private interests



but driven solely by democratic processes, taken in light of the common good and would help regaining and maintaining citizens' trust in the European institutions.

This solution has also proven its effectiveness. Indeed, independent ethic authorities in France and Canada have demonstrated that a single and independent body responsible for the monitoring, enforcement and sanctioning of ethics rules applicable to public bodies is a powerful tool able to achieve a long-lasting reduction of unethical behaviour.

In the 2019 European elections, all lead-candidates signed a pledge initiated by Transparency International and committed to 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:**

**As specified in the report**, according to the *Meroni doctrine*, developed by the Court of Justice of the European Union, it is possible for institutions to delegate their competences to external bodies, even when these competences are not exercised yet, as long as the delegation is precise and remains in the remit of current existing competences.

Following this doctrine, 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, investigative and enforcement** powers.

This model is legally sound as all the competences this body would have already exist and are in the hands of the institutions concerned.

When it comes to the **monitoring** of ethics standards, the Rapporteur suggests that this include, among others, the verification of the veracity of the declaration of interests, through inter alia a centralised collection of data, handling of conflicts of interests, checks of transparency obligations, verification of revolving doors rules, and generally verification of compliance with all provisions of codes of conduct and applicable transparency, ethics and integrity rules.

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.

When it comes to investigative powers, the Rapporteur insists that the Independent EU Ethics Body should have the power to **initiate procedures**, including based on information received from third parties and to conduct **investigations**, in close cooperation with all competent authorities and bodies where appropriate.

Finally, in order to be fully efficient, the Independent EU Ethics Body should have partial **enforcement** powers.

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

**As far as the personal scope is concerned, the Rapporteur suggests that Commissioners, Members of the Parliament and all the staff covered by the staff regulation** working for the participating institutions would be covered, before, during and after their term of office or service, in line with applicable rules, notably revolving doors and conflicts of interests rules.

Finally, the decisions of the Independent EU Ethics Body should be legally binding for the recipient member, staff and institution and 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 decide, if appropriate, on sanctions.

In order to avoid a situation where intentional breaches could remain unsanctioned and only resolved if discovered, the Rapporteur suggests that this two steps approach applies only provided that there is no reasonable grounds to believe that the individual acted in bad faith. On the contrary, in case of intentional breach, gross negligence, dissimulation of evidence and non-compliance with cooperation obligations should be, as such, subject to sanctions even when the breach has ceased.

### **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:

<b>Entity and/or person</b>
Transparency International (TI EU) 1.12.2020
Corporate Europe Observatory 1.12.2020
Access Info Europe 1.12.2020
The Good Lobby 1.12.2020
Europe's Media Lab 19.11.2020
Transparency International Berlin-Brandenburg 17.11.2020
Markus Frischhut, MCI Management Center Innsbruck
Transparency International Ireland 5.03.2020
Transparency International Ireland 12.05.2020
Haute Autorité pour la Transparence de la Vie Publique
Canadian Ethics Commissioner
Society of European Affairs Professionals (SEAP) 20.05.2020
Bundesverband der Deutschen Industrie e.V. (BDI) 7.02.2020
Alberto Alemanno, HEC Paris
European Commission's Unit Ethics, Good Administration & Relations with the European ombudsman (SG.DSG1.C.2)
European Parliament's Advisory Committee on the Code of Conduct for Members