



2020/2133(INI)

25.2.2021

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

PA_NonLeg

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 20 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;
7. 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;
8. 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

¹ OJ L 304, 20.10.2010, p. 47.

Members of Parliament and high-ranking EU officials;

9. 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;
10. 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;
11. 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

Date adopted	22.2.2021
Result of final vote	+: 19 -: 2 0: 3
Members present for the final vote	Manon Aubry, Gunnar Beck, Geoffroy Didier, Pascal Durand, Angel Dzhambazki, Ibán García Del Blanco, Jean-Paul Garraud, Esteban González Pons, Mislav Kolakušić, Gilles Lebreton, Karen Melchior, Jiří Pospíšil, Franco Roberti, Marcos Ros Sempere, Ernő Schaller-Baross, Stéphane Séjourné, Raffaele Stancanelli, Marie Toussaint, Adrián Vázquez Lázara, Axel Voss, Marion Walsmann, Tiemo Wölken, Lara Wolters, Javier Zarzalejos
Substitutes present for the final vote	Andrzej Halicki, Javier Nart, Emil Radev

FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

19	+
PPE	Geoffroy Didier, Esteban González Pons, Jiří Pospíšil, Axel Voss, Javier Zarzalejos
S&D	Ibán García Del Blanco, Franco Roberti, Marcos Ros Sempere, Tiemo Wölken, Lara Wolters
Renew	Pascal Durand, Karen Melchior, Stéphane Séjourné, Adrián Vázquez Lázara
ID	Jean-Paul Garraud, Gilles Lebreton
Verts/ALE	Marie Toussaint
The Left	Manon Aubry
NI	Mislav Kolakušić

2	-
ECR	Angel Dzhambazki, Raffaele Stancanelli

3	0
ID	Gunnar Beck
PPE	Ernő Schaller-Baross, Marion Walsmann

Key to symbols:

+ : in favour

- : against

0 : abstention