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#### **NOTE DE TRANSMISSION**

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Origine:	Commission européenne
Date de réception:	18 mars 2022
Destinataire:	Présidence française du Conseil de l'Union européenne
Objet:	Lettre de la Présidente Von der Leyen au sujet d'un organisme européen indépendant chargé des questions d'éthique

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Les délégations trouveront ci-joint une lettre de la Présidente de la Commission européenne, Ursula Von der Leyen, à la présidence française du Conseil de l'Union européenne, au sujet de la résolution du Parlement européen sur la création d'un organisme européen indépendant chargé des questions d'éthique, avec deux annexes.

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EUROPEAN COMMISSION



Ursula von der Leyen  
The President

Brussels, 18. 03. 2022  
Ares (2022) 1781817

Dear President, *cher Emmanuel*

*I have committed in my Political Guidelines for the European Commission 2019-2024<sup>1</sup> to support the creation of an independent ethics body common to all EU institutions and to engage and work closely with the other institutions to make this happen. The underlying reasoning is that the institutions of the European Union should be open and beyond reproach on ethics, transparency and integrity if Europeans are to have faith in the Union.*

*I have entrusted the Vice-President of the European Commission responsible for Values and Transparency, Věra Jourová, with the responsibility for this issue in her Mission letter and she will be in charge of the future discussions on this issue.*

*On 16 September 2021, the European Parliament adopted a resolution on 'strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body'<sup>2</sup>, which sets out the position of the European Parliament on this matter.*

*The European Commission has replied to the European Parliament with a preliminary analysis of the resolution, which is attached to this letter. The establishment of an EU ethics body would be an additional component of the existing ethical framework at EU level and help consolidate and strengthen trust in the institutions and in the people serving them. The design of the body touches, however, upon sensitive aspects of the institutional balance between institutions and advisory bodies as well as their autonomy. An interinstitutional ethics body must respect the attribution of competences to each institution and advisory body as well as their particularities, respective members and role in the framework of the system of checks and balances established by the Treaties.*

H.E. Mr Emmanuel Macron  
President of the French Republic

<sup>1</sup> [https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission\\_en\\_0.pdf](https://ec.europa.eu/info/sites/default/files/political-guidelines-next-commission_en_0.pdf)

<sup>2</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2021-0356\\_EN.pdf](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0356_EN.pdf)

*In this context, the Commission considers that some aspects of the resolution of the European Parliament are agreeable, while others require further analysis or raise substantial difficulties.*


*The Commission is in favour of an interinstitutional ethics body with a competence for the members of all institutions and advisory bodies mentioned in Article 13 TEU. All of them and all their members play an important role and must contribute to building and maintaining trust in the European Union. This is a collective responsibility.*

*One of the crucial points will be to ensure that the body is able to provide efficient and meaningful ethical advice to each institution and advisory body based on the existing ethical rules. It is necessary to acknowledge that there are significant differences between the EU institutions and advisory bodies and their respective members. Consequently, the practices and experiences of the different institutions and advisory bodies must be taken into account.*

*Against this background, the Commission would be grateful to hear from each institution and advisory body, ideally by end of April, its views on taking part in interinstitutional discussions on a possible future joint agreement to establish an ethics body common to all EU institutions, the European Economic and Social Committee and the Committee of the Regions.*

*These discussions will be important to define the way forward in this matter and would help the Commission table a respective proposal.*

*Yours sincerely,*



*Ursula von der Leyen*

*Attachment:*

*Reply of the European Commission to the European Parliament of 18 February 2022*

**Follow-up to the European Parliament non-legislative resolution on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body**

1. **Rapporteur:** Daniel FREUND (Greens/EFA / DE)
2. **Reference number:** 2020/2133 (INI) / A9-0260/2021 / P9\_TA(2021)0396
3. **Date of adoption of the resolution:** 16 September 2021
4. **Competent Parliamentary Committee:** Committee on Constitutional Affairs (AFCO)

5. **Brief analysis/assessment of the resolution and requests made in it:**

On 16 September 2021, the European Parliament adopted a resolution ‘on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body’ by 377 votes for, 87 against and 227 abstentions.

It proposes the conclusion of an interinstitutional agreement (IIA), based on Article 295 of the Treaty on the Functioning of the European Union (TFEU), between the Parliament and the Commission to set up an independent EU ethics body. The agreement and the body would be ultimately open to the participation of all EU institutions, agencies and bodies.

The body would be competent to apply the current ethical framework of each of the participating institutions, applicable to its Members (Treaties and Codes of Conduct of the various institutions), but also to its staff (EU Staff Regulations and internal rules of each institution). It would be entrusted with an advisory role towards the institutions, but would also be granted investigative powers as well as powers to issue - usually public - recommendations to the respective institutions regarding their Members and staff, including recommendations for sanctions. Finally, the body would have a broad competence for the ‘examination of conflicts of interest prior to, during and after public office’.

As set out in the 2019 - 2024 Political Guidelines for the Commission, the institutions of the EU should be open and beyond reproach on ethics, transparency and integrity if Europeans are to have faith in the Union. The Code of Conduct for the Members of the European Commission requires them to observe the highest standards of ethical conduct. The establishment of an interinstitutional ethics body will be an additional component of the existing ethical framework and help consolidate and strengthen trust in the EU institutions and in the people serving them.

The design of the body touches upon sensitive aspects of the institutional balance between EU institutions. An interinstitutional ethics body must respect the institutional autonomy and the particularities of each institution as well as the functions of its Members. In this context, some aspects of the resolution of the European Parliament are agreeable to the Commission, while others require further analysis and clarification, give rise to concern or seem not to be compatible with the Treaties.

6. **Response to requests and overview of action taken, or intended to be taken, by the Commission:**

The Commission has given the resolution careful consideration. It looks forward to continuing the dialogue with the European Parliament and to starting discussions on this matter with all other EU institutions and the two advisory bodies mentioned in Article 13 of the Treaty on



European Union (TEU).

The Commission supports the creation of an independent ethics body common to all EU institutions, as expressed by President von der Leyen in her Political Guidelines for the Commission. The Commission generally welcomes the European Parliament's resolution, and in particular its objective of ensuring that the institutions of the European Union meet and apply the highest standards of independence and integrity.

However, some aspects touch upon the autonomy and independence of all institutions and their Members.

#### **References to the current ethical framework in the Commission and the Parliament**

Insofar as the resolution expresses concerns about shortcomings in the application of the current ethical framework notably with regard to Members of the Commission and Members of the Parliament (see inter alia **recitals F, J, K and L**), the Commission recalls that it has already a well-established, strong legal framework, based on the Treaties and secondary legislation, which sets out the ethical requirements for its Members.

It points out that the Commission has set up an ethical body composed of independent personalities, the Independent Ethical Committee established by the Code of Conduct of 31 January 2018. The Committee advises the Commission on the ethical obligations of its Members. It is composed of three external high-level personalities, namely a former Member and Vice-President of the European Parliament, a former Judge of the Court of Justice and a former Director-General of the Commission.

Pursuant to the Code of Conduct for the Members of the Commission, the Commission must seek the Committee's opinion before it decides on the authorisation of post-mandate activities of former Commissioners if those activities are related to their former portfolios. Both the Commission decisions and the related opinions of the Committee have to be published, thereby ensuring transparency with regard to the views of the Committee and the final decision of the Commission. Moreover, the Commission can seek the Committee's opinion on other ethical issues concerning the Members of the Commission.

#### **Ethical framework applicable to the Members of all participating institutions**

- **Continued application of the current rules of each institution**

**Paragraph 5** of the resolution refers to the existing ethical framework applicable to the Members of the Parliament and the Commission. These are the Statute for Members of the European Parliament, the Parliament's Rules of Procedure, and the Commission's Rules of Procedure and its Code of Conduct. The resolution calls for the currently applicable ethical framework of each institution to continue to apply and for the body to issue recommendations on that basis.

The Commission **agrees** on that point and recalls its support for a body that does not imply the adoption of new ethical rules in the institutions or the adoption of a single set of ethical rules applicable to all institutions. Such unified rules would not be able to reflect the differences between the roles and status of the different institutions and their Members.

- **Competence to make proposals for a common ethical framework**

The Commission has **concerns regarding paragraph 40** of the resolution. The latter refers to the body's competence to make proposals for the development and periodic update of a common ethical framework for the EU institutions, including common rules.

The Commission stresses that the current rules of each institution are based on different

provisions in the Treaties for the members of the different institutions and reflect their different roles. A single set of rules for all would most likely lead to a set of very general principles, which would need to be complemented by specific rules for the members of each institution. It can moreover be expected that this would require lengthy negotiations to reach an agreement. The Commission therefore considers that **a single set of operational ethical rules** applicable to the Members of all institutions **is not feasible while it does not rule out discussions on a set of common principles in line with the Treaty provisions applicable to the different institutions.**

- **No overlap with the missions of existing institutions or bodies**

The resolution mentions that there should be no duplication or interference between the body and ‘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’ (**paragraph 2**).

The Commission **agrees** on this point. However, certain proposals made in the resolution would be inconsistent with this objective (see in more detail below). The Commission recalls that the competences of the body should not impinge upon those of other bodies. Therefore, its mandate should be limited to a **clearly defined list of competences delegated** by the participating institutions.

#### **Future of the Commission’s Independent Ethical Committee and similar bodies in the other institutions**

If the institutions agree on the creation of an EU ethics body common to all institutions and if the tasks and functioning of this future body are similar to those of the Commission’s current Independent Ethical Committee, the Commission is ready to consider ending the operation of its own Committee and entrusting its tasks to the new body if the other institutions are ready to do the same.

#### **Powers limited to an advisory function**

- **Respect of the institutional autonomy**

As regards the role of the body, the Commission notes that the resolution uses a plurality of terms to describe the powers to be attributed to it: ‘propose and advise’ (**paragraph 5**), ‘compliance role’ (**paragraph 9**), ‘monitoring capacity’ (**paragraph 10**), ‘investigation’ (**paragraphs 16 and 24**), ‘interpretative power’ (**paragraph 20**), ‘conduct studies and annual reporting’ (**paragraph 38**). Each of these concepts have a specific meaning and the resolution lacks precision for each of these notions.

Nevertheless, the Commission **agrees** with the resolution, which aims to entrust the body with an **advisory function** towards the institutions (**paragraph 19**) while the decision-making powers for the application of ethical rules would remain within the respective institutions (**paragraph 3**). The Commission stresses that this aspect is **crucial for respecting the institutional autonomy established by the Treaties**. The Treaties establish a system of checks and balances at EU level which is based on the democratic principles set out in Article 10 TEU. This system cannot be changed or overturned by the creation of an administrative body with decision-making powers - or similar, equally intrusive powers - that would bind or constrain the institutions or their members.

- **Possibility to entrust the body with decision-making powers at a later stage**

The Commission **does not agree** with the proposal in **paragraph 9** of the resolution to possibly entrust the body with decision-making powers at a later stage. The Commission



recalls that **an institution cannot abdicate the powers conferred upon it by the Treaties** or renounce to exercise them for the benefit of another entity. An administrative body with decision-making powers over the Members of the institutions is **not provided for in the Treaties**.

Furthermore, some **specific competences mentioned in the resolution** seem to lack grounds and **do not seem justified by the ‘Meroni doctrine’** as referred to in **recital Q**. The ‘Meroni doctrine’ can justify a delegation of powers from the institutions to external bodies as long as they are not binding and do not alter the balance of powers designed by the Treaties. The Commission considers that **decisions on ethical matters and competences such as ‘on-the-spot-checks’ and ‘records-based investigations’** mentioned in **paragraph 16** of the resolution would not fall into the scope of limited and strictly defined executive powers.

However, the Commission does **support the idea that an institution can - and in certain cases should - seek an opinion** from an independent advisory body in order to make an informed decision.

#### **Legal basis of and parties to the interinstitutional agreement**

As regards **paragraph 1** of the resolution, the Commission considers that an **interinstitutional agreement (IIA) based on Article 295 TFEU is not an appropriate legal basis** for the establishment of the EU ethics body. An interinstitutional agreement under this provision can only be concluded between the Parliament, the Council and the Commission. Using this legal basis would exclude all other institutions (except for the Council), agencies and bodies from joining at a later stage and concern issues, which affect Members of all EU institutions in the same way. The Political Guidelines of the Commission support the creation of an ‘independent ethics body common to *all* institutions’ as all institutions play an important role in fostering trust in the EU. Instead, the Commission considers a *sui generis* **interinstitutional instrument as the appropriate administrative approach**<sup>1</sup>. When there is an agreement on the principle to create an EU ethics body, the Commission will make a proposal for the conclusion of such an agreement.

#### **Areas of competence and ethical issues covered**

- **Areas of intervention**

**Paragraphs 9 and following** of the resolution refer to broad areas of competence of the body. The Commission stresses that it is important that the Body has competences for the implementation of the ethical framework applicable to the Members of all institutions, including both the Members of the European Parliament and the Members of the Commission. Consequently, the Commission considers that **more clarity is needed**, concerning both the body’s competences and the necessary distinction between different areas of intervention.

In view of the Commission, the body should only have **explicitly defined competences** where the body would add real value. This is crucial, on the one hand to respect the institutional balance and independence of each institution as set out in the Treaties and, on the other hand, to limit the tasks of the body to a workable number of areas. In this regard, the position of the Commission on the different topics specifically mentioned in the resolution is the following:

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<sup>1</sup> Approach chosen by the Commission in 2000 to propose the set-up of an Advisory Group on Standards in Public Life with the Parliament, Council, Court of Justice, Court of Auditors, EESC and Committee of the Regions (SEC(2000)2077)

- **Declarations of interests**

With regard to the examination of the declarations of interests of the Members of all institutions, e.g. Members of Parliament or Members of the Commission, it is worth exploring the possibility to entrust it to the body after the Members have taken up their functions and have submitted their first declaration as confirmed member to their respective institution. This would allow the body to carry out a thorough examination and identify appropriate remedies where needed. The situation is more complex with regard to declarations to be made before Members take up their function. As regards, for example, the declarations of interests of Commissioners-designate, the constraints of the interinstitutional process to appoint a new Commission need to be taken into account. All institutions and persons concerned have to take decisions within a very limited period.

- **Post-term of office activities of the Members of the institutions**

Concerning post-term of office activities of former Members of the institutions, the Commission agrees that the body could be consulted, on request of the President of each participating institution, on envisaged post-term of office activities of former Members of the signatory parties. This is already case for the Commission's Independent Ethical Committee. The Commission notes however that it would require clarification on which basis the Parliament would consult the body on post-mandate activities of its former Members since the Parliament does not seem to have specific rules for notifying and evaluating post-mandate activities of its former Members.

- **Wider transparency issues**

**Paragraph 5** of the resolution refers to the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on a **mandatory transparency register**, as well as to the 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. Such wider transparency issues, covered in the specific interinstitutional agreement, should not be part of the competences attributed to the body.

The Commission recalls in this respect that Article 6(4) of the Interinstitutional Agreement on a mandatory transparency register establishes a Secretariat, composed of staff from the Parliament, the Council and the Commission, with the ability to carry out investigations. Those can be launched based on a complaint alleging that a registrant has not observed the code of conduct of the register, as well as on the Secretariat's own initiative in the light of information that the registrant may no longer satisfy the requirements for eligibility as set out in the interinstitutional agreement.

The Commission considers that there is no need for additional scrutiny as this would **risk adding additional administrative layers without added-value**.

#### **Investigative powers and ability to issue recommendations for sanctions**

- **Investigative powers**

In **paragraphs 16 and 24**, the resolution calls for the body to have the power to initiate procedures and to conduct investigations based on information it has collected or has received from third parties. More precisely, the resolution aims at entrusting the body with the **power to initiate investigations** on its own initiative as well as to conduct 'on-the-spot and records-based investigations **based on information** it has collected or that it has **received from third parties**, such as journalists, the media, NGOs (non-governmental organisations), whistleblowers, civil society or the European Ombudsman' (**paragraph 16**). The resolution



also refers to an **exchange of information with national authorities** where this is necessary for the performance of its tasks, for example, tax information, land registers and data held by national ethics bodies (**paragraph 8**).

The Commission underlines that requesting information directly from national administrations such as tax authorities or private entities like banks **would require a proper legal basis for legislation**, since it would **interfere with the privacy of the Members of the institutions**, possibly their families, and directly concern third parties. Additionally, the Commission stresses that investigations must be subject to substantiated allegations and suspicions. In this regard, a well-established and sound legal framework that entrusts existing bodies with investigative powers is already in place. National judicial authorities or the European Public Prosecutor's Office (EPPO) are competent in case of suspicions of criminal behaviour. The European Anti-Fraud Office (OLAF) can investigate irregularities affecting the EU budget as well as serious breaches of professional duties. Finally, the European Ombudsman can launch inquiries in case of behaviour that would constitute maladministration. Against this background, investigative powers should remain reserved for these existing bodies. On its part, the body should work on the basis of information provided by the Members, by the Members' institutions or open sources. The body could also have the competence to ask for additional information from a Member or the EU institutions.

- **Possibility to issue recommendations for sanctions of Members of the institutions**

The resolution calls for the possibility of the body to issue recommendations for sanctions to the responsible authorities of the respective participating institutions in relation to their Members (**paragraph 19**).

On this matter, the Commission recalls that, with regard to its Members, there is **already** a robust ethical framework in effect which establishes **provisions for sanctions**, including at Treaty level:

- For the Members of the Commission, **Article 245 TFUE** reserves the competence to issue financial sanctions to the Court of Justice;
- Article 13(3) of the **Code of Conduct for the Members of the Commission** states that the Commission may decide, taking into account the opinion of its Independent Ethical Committee and on proposal of the President, to express a reprimand to its Members and, where appropriate, make it public.

These provisions are applied in addition to the political control exercised by the Parliament and the judicial control of the Court of Justice.

- **Two-step approach mechanism**

The resolution mentions a two-step approach (**paragraph 33**). If the body becomes aware of a breach of ethics rules, it would first **recommend actions to put an end to the breach**. If the individual concerned refuses to take the appropriate actions, 'the EU ethics body should make a **reasoned recommendation for sanctions** measures and transmit all relevant information about the case to the competent authority, which will decide how to follow-up on the recommendation within 20 working days'.

Such a generalised two-step approach could lead to complicated administrative procedures. Moreover, the Commission considers that the 20-day deadline will often be unrealistic in view of all institutions' internal procedures and in view of taking an informed decision. Therefore, **a general deadline should not be set since the duration of a procedure will depend on its complexity**.

More importantly, it is in certain cases not up to individual Members of an institution to take unilateral action. Instead, **it can be the exclusive prerogative of the institution or of its President to decide** on the course of action. At the Commission, this is for instance the case as regards organisational measures within an institution like the establishment of a conflict of interest and the reattribution of a file to another Member.

- **Publicity**

The Commission considers that **making all cases public** (paragraph 34) is **not in line with the advisory character** of the body. The body should exclusively advise and allow the institutions to address a situation. A general publication of all opinions or recommendations can in addition be inappropriate in many situations since **ethical advice can concern personal issues** of Members or their families, can conclude that no or only minor action is needed or require internal deliberations within an institution before a final position is taken.

Therefore, making all cases public would risk not being in accordance with the personal data protection rules, with the aim of providing effective ethical advice, or with the independent decision-making powers of an institution.

#### **Ethical staff matters**

- **Personal and material scope**

The resolution states that the body should be competent towards ‘all EU staff falling under the scope of the Staff Regulations’ (**paragraphs 5, 6 and 7**). Its scope would consequently cover officials, temporary agents, contractual agents and accredited parliamentary assistants regardless of their hierarchical position.

The EU civil service is composed of approximately **60 000 staff members** employed by the various institutions, bodies, offices and agencies. Most staff work for the Commission.

As regards the material scope, the body would deal with **all ethics-related areas covered by the Staff Regulations** of Officials and the Conditions of Employment of Other Servants of the European Union and their implementing provisions: outside activities while in active service (which would include e.g. teaching activities of staff); outside activities during leave on personal grounds; post-service activities; publication of articles or books; gifts and hospitalities; protection against harassment, assessment of conflicts of interest; spouse employment; acceptance of decorations; exercise of public functions; judicial testimony; examination of potential conflict of interest before recruiting an official and for officials returning from leave on personal grounds.

The Commission has **strong doubts on this very broad scope** and considers that the competence of the body for all categories of individuals covered by the resolution recalled in paragraphs 5, 6 and 7 would not be balanced. It would generate a **heavy workload** for the body and the institutions and risk delaying procedures or meeting statutory deadlines. It would require significant resources and **duplicate structures** without real added value in most cases.

The 2020 General Report on the Activities of Human Resources and Security prepared by the Commission’s Directorate-General for Human Resources and Security outlines that 5 450 ethics-related requests were treated by the Commission services in 2019. The Commission considers that in the vast majority of cases, **an external body** would not provide added value as it would be distant from the daily work of the person concerned and would **not have the appropriate means to evaluate the actual risks** of conflict of interest. More importantly, such involvement or the transfer of decision-making powers could create in certain instances a



**risk for the institutional autonomy** of the respective institutions established by the Treaties who bear responsibility for the management of their staff.

The Commission recalls in this respect that **the Staff Regulations** have put in place a **comprehensive set of rules and procedures in the field of ethics and disciplinary action, which is applicable to the staff of all EU institutions, bodies, offices and agencies**. In addition, in case of serious breaches of their obligations, staff members can be subject to investigations by the European Anti-Fraud Office (OLAF), the European Public Prosecutor (EPP), national authorities or internal services responsible for inquiries. They can be subject to disciplinary proceedings and sanctions as well as to criminal sanctions by national courts in case of criminal offences. Under this well-established system, the body would ultimately have a limited role.

- **Whistleblower protection**

The resolution emphasises the need to protect **whistleblowers (paragraphs 14 and 18)** when they report possible violations of rules. The Commission recalls that such measures are **already set out in the Staff Regulations and in implementing measures** to be adopted by all institutions. The reporting channels are established by the Staff Regulations. There should be **no overlap or duplication** of tasks with existing bodies.

#### **Size and composition of the body**

- **Size**

**Paragraph 25** proposes establishing a body composed of **9 Members**.

In the view of the Commission, the size of the body must not complicate its functioning and deliberation process. The Commission considers that, in line with its proposal made already in 2000<sup>2</sup>, such a body should rather be composed of **5 Members**, allowing it to function in an **effective and efficient** manner.

- **Composition of the body**

According to the resolution the Members of the body be chosen ‘in particular from among former judges of the Court of Justice, 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’ (**paragraph 30**). The Commission notes that, while the Parliament mentions former Members of Parliament and of other EU institutions as potential members of the body, it does not mention former Members of the Commission. This distinction is difficult to understand given that the body should be common to all institutions and consequently be responsible for issues concerning the members of all institutions equally. The Commission considers in this regard that the body requires personalities who have high-level experience as well as a strong knowledge and understanding of the functioning of all institutions, including the Commission. In addition, the Commission points out that the **reference to ‘presidents of OLAF’ (paragraph 30)** should read as Director-General of OLAF.

Finally, the Commission has concerns as regards **paragraph 25** of the resolution, which states that where staff matters are concerned, **staff representatives** from the institution of the person concerned should be included in the body’s composition and proposes to amend

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<sup>2</sup> Approach chosen by the Commission in 2000 for the set-up of an Advisory Group on Standards in Public Life with the Parliament, Council, Court of Justice, Court of Auditors, EESC and Committee of the Regions (SEC(2000)2077).



Annex II to the Staff Regulations. The Commission does not see a need or justification to amend existing legislation in view of the creation of the body.

Furthermore, the body will need to be assisted by a dedicated secretariat. The staffing and operating costs will have to be shared equally among the participating institutions.

**Topic not related to the creation of an EU ethics body**

In **recital T**, as well as **paragraph 40**, the resolution calls for the creation of a **statute for the Members of the Commission**, ‘to be drawn up in accordance with the ordinary legislative procedure’.

The Commission considers that there is **no legal basis in the Treaties** for a comprehensive statute, which would cover the financial and non-financial rights and obligations as well as the working conditions of the Commission. The principles that govern the ethical framework for Members of the Commission are already laid down in Article 17(3) TUE and Article 245 TFEU. Moreover, Article 243 TFEU provides a legal basis for the Council to legislate specifically on the financial rights of the Members of the institutions mentioned in this provision, which is an exclusive competence of the Council. The Council has adopted in this regard Council Regulation (EU) 2016/300. Finally, as regards the ‘**working conditions**’ of Members of the Commission, specific rules related to leave or working time would be **inappropriate** with regard to the specific nature of the Commissioners’ functions which is to be at the service of the Commission at all times and places whenever it is necessary.

**Conclusion:** The Commission welcomes the resolution adopted by the European Parliament. It considers it an important contribution to the discussions between all institutions.

In this context, the Commission is ready to play its role in the preparatory work for the establishment of an independent EU ethics body, which is common to all institutions.

As a next step, the Commission will consult the other institutions and the two advisory bodies, as defined in Article 13 of the Treaty on European Union, on their position with regard to the establishment of such an ethics body.

The Commission will send a letter to them, explain its position as set out in the present document and seek their views on the resolution of the Parliament.

**European Parliament**

2019-2024



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**TEXTS ADOPTED**

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**P9\_TA(2021)0396****Strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body****European Parliament resolution of 16 September 2021 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, 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,

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

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

- 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)<sup>1</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,
  - 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;

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



- 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:
  - (a) the principle of sound financial management, ensuring the efficient and effective management of Union resources,
  - (b) the principles of conferral and separation of powers,
  - (c) 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,
  - (d) 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,
  - (e) the Statute of Members and notably the freedom of mandate enshrined in Article 2 thereof,
  - (f) 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,
  - (g) 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 about the case to the competent authority, which will decide how to follow-up on the recommendation within 20 working days;
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 the individual had reasonable grounds to believe that the information was true at the time of disclosure, 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<sup>1</sup> 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;
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58. Instructs its President to forward this resolution to the Council and the Commission.

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<sup>1</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement and repealing Directive 2004/18/EC (OJ L 94, 28.3.2014, p. 65).