STUDY

Requested by the AFCO committee

European Parliament

Strengthening transparency and integrity via the new 'Independent Ethics Body' (IEB)

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Abstract

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee, provides an overview of transparency and integrity-related elements in the current EU setting, covering both substantive elements (including, in particular, conflict of interest and revolving-doors) as well as the body in charge of ethical control and guidance. Based on a comparison covering France, Ireland and Canada, this study proposes an 'Independent Ethics Body' (IEB) via a new interinstitutional agreement.

This document was requested by the European Parliament's Committee on Citizens' Rights and Constitutional Affairs.

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LIST OF ABBREVIATIONS

ACCM	Advisory Committee on the Conduct of Members (of Parliament, respectively, of the ECOSOC)
AFCO	Parliament Committee on Constitutional Affairs
AG	Advocate General
BGBl	Austrian Official Journal (*Bundesgesetzblatt*)
BVerfG	German Constitutional Court (*Bundesverfassungsgericht*)
CAN	Canada (country code)
CAN$	Canadian Dollar
CC	Consultative Committee (of the Court of Justice)
cf.	confer
CFR	Charter of Fundamental Rights of the EU
CIE	Committee of Independent Experts
CIEC	Conflict of Interest and Ethics Commissioner (Canada)
CJEU	Court of Justice of the EU
CoC	Code of conduct
COI	Conflict of interest
COM	European Commission documents
CoR	Committee of the Regions
COREPER	Committee of Permanent Representatives of the Governments of the Member States (*Comité des représentants permanents des gouvernements des États membres*)
Dec	Decision
DOI	Declaration of interest
EAEC	European Atomic Energy Community

EAG	Ethics Advisory Group (established by the EDPS)
EC	European Commission
ECA	European Court of Auditors
ECB	European Central Bank
ECJ	European Court of Justice
ECOSOC	Economic and Social Committee
ECSC	European Coal and Steel Community
EDPS	European Data Protection Supervisor
EEC	European Economic Community
EF	Ethics Framework (of the ECB; N.B. for all staff)
EGE	European Group on Ethics in Science and New Technologies
EIB	European Investment Bank
EM	Explanatory Memorandum (to the Irish 'Public Sector Standards Bill 2015')
ENA	*École National d'Administration*
EO	European Ombudsman
EO CoC	Code of Conduct for the European Ombudsman
EO Good Practice	European Ombudsman Internal Charter of Good Practice
EO Guide	Guide on Ethics and Good Conduct for the Ombudsman's Staff
EP	European Parliament
EPOA	Ethics in Public Office Act, 1995 (Ireland; updated to 21 November 2018)
EPPO	European Public Prosecutor's Office
EPSO	European Personnel Selection Office
ESCB	European System of Central Banks

ESMA	European Securities and Markets Authority
et al.	*et alii* (= and others)
EthCo	Ethics Committee (of the ECB)
EthF	Ethics Framework (of the EDPS)
EthG	Ethical Guidelines (of the ECA)
EU	European Union
EUCO	European Council
FR	France (country code)
GAB	Code of good administrative behaviour for staff of the Commission in their relations with the public (= Annex I to EC RoP)
GAEIB	Group of Advisers to the Commission on the Ethical Implications of Biotechnology (now: EGE)
GC	General Court
HATVP	*Haute Autorité pour la transparence de la vie publique*
i.c.w.	in conjunction with
IE	Ireland (country code)
IEB	Independent Ethics Body (as proposed by this study)
IEC	Independent Ethical Committee (of the Commission)
IIA	Interinstitutional Agreement
ImpRoP	Rules for implementing the rules of procedure (Decision No 38-2016 laying down the rules for implementing the rules of procedure [cf. ECA RoP] of the Court of Auditors)
INTOSAI	International Organization of Supreme Audit Institutions
ISSAI	International Standards of Supreme Audit Institutions
JURI	Parliament Committee on Legal Affairs

leg. cit.	*legis citatae* (= the quoted law passage)
MEP	Member of the European Parliament
MFF	Multiannual Financial Framework
MoU	Memorandum of Understanding
MS	Member State(s)
NGO	Non-governmental organization
N.B.	*Nota bene* (= note well)
OAB	Outside Appointments Board (Ireland)
OECD	Organization for Economic Cooperation And Development
OJ	Official Journal (of the EU)
OLAF	European Anti-fraud Office (*Office européen de lutte antifraude*)
PACS	*Pacte civil de solidarité* (civil solidarity pact)
PSS Bill	Public Sector Standards Bill 2015 (Ireland)
PSSC	Public Sector Standards Commissioner (Ireland)
RLA	Regulation of Lobbying Act 2015 (Ireland, updated to 1 May 2019)
RoP	Rules of Procedure
SPOA	Standards in Public Office Act, 2001 (Ireland, updated to 13 April 2017)
SSM	Single Supervisory Mechanism (of the ECB)
Staff Reg	Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
TSCG	Treaty on Stability, Coordination and Governance in the Economic and Monetary Union

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EXECUTIVE SUMMARY

Background

EU integration has developed from a community of economic integration, to an entity also safeguarding human rights, to a political Union, and finally to a 'Community of values'. Such an **incremental** approach can also be observed for the relationship of EU law and ethics. In the past, actual or perceived **scandals** (Edith Cresson, Ernst Strasser, John Dalli, José Manuel Barroso, to name but a few) have triggered reforms. However, a reform that is not driven by scandal is preferable. Turning the EU in an 'Ethical Union' by strengthening the 'ethical spirit' of the EU is key for both building up, as well as maintaining trust.

Since the Maastricht Treaty, the EU has strengthened transparency, especially in the field of lobbying. However, transparency in itself is not enough and needs to be backed up with equality and integrity. This analysis in the field of lobbying also applies to our field of ethics in a broad sense. At the moment, various EU institutions have **fragmented** approaches of dealing with ethics (**N.B.** in the following the term of 'institutions' will be used in a broad sense, surpassing those listed in Article 13 TEU). The rigour of the different approaches is frequently related to past scandals.

The **European Parliament** (EP, Parliament) mainly charges its President to deal with possible breaches of Parliament's code of conduct (CoC). While the President is supported by an 'Advisory Committee on the Conduct of Members', the composition of this body follows a 'self-regulatory' approach and is also composed on the basis of "political balance"; hence, not an ambitious approach.

In the case of the **European Commission** (EC, Commission) the 'Independent Ethical Committee' has more ambitious selection criteria and is composed of external members. Still, this body only has an advisory function too, as the President of the Commission is in charge for the proper application of the Commission's code of conduct.

In the case of the **Council** of the European Union (Council) as well as for the European Council (EUCO), no rules can be identified. The same holds true for the informal meetings of the Euro Group and the Euro-Summit. This is probably related to the fact that it is assumed that ministers are bound by corresponding guidelines at the national level. The only exception is the President of the European Council who has published a code of conduct. This document follows a self-regulatory approach. No ethics body is established as the current EUCO President only has selected supervisory functions concerning former EUCO Presidents.

Besides these institutions in charge of legislative tasks, we can also find rules for the Court of Justice of the European Union (CJEU) as the body in charge of legal control, as well as for the European Court of Auditors (ECA), the institution in charge of financial control. The study also covers the two advisory bodies of the Economic and Social Committee (ECOSOC) as well as the Committee of the Regions (CoR).

One institution, which stands out as being more ambitious, is the **European Central Bank** (ECB). This is not particularly surprising as the ECB operates in a sensitive area. The ECB's Ethics Committee also comprises external members. In its approach, it strives for the "highest [!] standard of ethical conduct". The ECB can also be named in the field of enforcement, as the Governing Council can issue a reprimand and, where appropriate, make it public, in case that adherence cannot be achieved through 'moral suasion'. Finally, the ECB can serve as a role model of consolidating various codes of conduct into a single document.

he **European Ombudsman** (EO) does not only play an important role in this context of transparency and integrity. The EO's rules, amongst others, cover important topics such as declaration of (financial) interest, actual, apparent or potential conflict of interest, the revolving-doors phenomenon, outside activities during the term of office, gifts, both accepted and offered, as well as the protection of whistle-blowers. Similar rules can also be partly found in the other institutions covered in this study. In the case of the European Data Protection Supervisor (EDPS), the EDPS 'Ethics Framework' explicitly mentions that it is built on the best practices of the codes of conduct of the ECA, the CJEU, the Commission and EO.

Most documents analysed for this study mainly covered **members** (Parliament, the Commission, CJEU, ECOSOC, CoR), while some have also covered **staff** (ECA, EDPS). To get a more holistic view in terms of both members and staff in EU institutions, this study also covers the so-called Staff Regulations.

While on the one hand, a certain caution is advisable when transferring concepts from a nation state to a supranational organisation, on the other hand, the wheel does not need to be reinvented. Therefore, this study also takes a closer look at the following three countries: France, which stands out as a country with a strong independent ethics body; Ireland with an interesting Bill (although not adopted), and Canada as a third-country with another inspiring ethics body.

Aim and comparative analysis

The study proposes a new ethics body for the EU, which draws on the best practice from both the EU institutions covered in this study, as well as the ethics bodies in these three countries. Therefore, the whole study is **structured** in the following way: After identifying (1) the relevant legal document(s), (2) the person or body in charge of supervising and or enforcing these ethical standards is identified, as well as her/its (3) relevant competences. This is followed (4) by the *scope rationae personae* (the persons covered by these standards), as well as (5) the *scope rationae materiae* (the potential ethical challenges addressed). Finally, also (6) principles contained in these documents are emphasised.

In the case of **France**, the '*Haute Autorité pour la transparence de la vie publique*' (HATVP) can be qualified as an independent administrative authority, whose members are nominated for a period of six years, not renewable. Apart from its President, the twelve members are elected by various public players: by the two chambers of Parliament, two High Courts, by the Government, as well as by the Court of Auditors. An ethics officer (*référent déontologue*) shall provide general advice to the High Authority's staff and is also responsible for its training. The HATVP also stands out for its regulation on gifts. HATVP members and staff shall not accept any gifts or invitations with a value of more than € 15, which is ten times less than in Parliament and in the Commission.

The **competences** of the HATVP cover declaration of interests, conflict of interest, ethical advice, post-employment activities as well as competences in the field of lobbying (transparency register). The HATVP's role is strengthened by the fact that French tax authorities must deliver all information necessary, so that the HATVP can assess the completeness, accuracy and sincerity of the declarations of assets and interests. The HATVP is also responsible for the evaluation of ethical principles, both before the appointment of certain senior officials, during their public service activities, and for the period after the termination of those activities. The strong role of this High Authority can also be explained by the fact that failure to comply with the various obligations is punishable by up to three years' imprisonment and a fine of up to € 45,000. Hence, the HATVP can be qualified as a 'powerful

watchdog', which is in charge of a large number of people working in the public field: members of government, persons holding a local elected office and those entrusted with a public service mission.

The HATVP can serve as a **role model** for its strong independence, the possibility to request information from tax authorities, as well as the power to take up a case on its own initiative. The High Authority's budget for 2020 comprises € 7,294,355, of which € 4,902,681 is allocated to staff expenditure and € 2,391,674 to operating expenditure.

In the case of **Ireland**, the 'Public Sector Standards Commissioner' (PSSC) is presented as a Bill. While it has not entered into force, it can be seen as an intriguing proposal and 'source of inspiration' for the EU. The PSSC shall hold office for a term of six years and may be re-appointed to that office for a second or subsequent term.

The PSSC's **competences** comprise advice for those subject to this Bill, the drawing up of a model CoC to promote "the highest [!] standards of conduct and integrity among public officials", investigation in case of infringements, as well as enforcement via various sanctions. This model CoC can be supplemented by more specific codes, which are in conformity with the model code of conduct. This Bill would apply for members of the lower and the upper house of the Irish parliament, Members of Parliament (MEP), members of a local authority, and others This Irish Bill addresses various possible ethical challenges, such as declarations of interest, as well as conflict of interest situations, the obligation to provide certain tax information, gifts, the topic of lobbying, as well as the phenomenon of revolving-doors.

Canada, a so-called third country, stands out as an example of a system that is inspiring in terms of the independence of its ethics institution, which fulfils a strong preventive role in terms of integrity. The Canadian 'Conflict of Interest and Ethics Commissioner' (CIEC) is in charge of both elected and appointed public office holders. She or he is appointed for the longest period covered in this study so far, that is to say seven years, including the possibility of one or more (!) terms of reappointment. The qualification criteria are both content-related and are based on previous activities. The staff of the CIEC's office, approximately 50 persons, must adhere to the "highest [!] ethical standards", to achieve a "high [!] degree of public confidence".

The **mandate** of the Commissioner includes the task to provide confidential policy advice and support to the Prime Minister and the Commissioner is in charge of both members of the House of Commons as well as public office holders. For the **first** group, this comprises the competence to provide advice on the members' obligations. Inquiries can be based on complaints by other members as well as on a resolution of the House. Finally, the Commissioner is also in charge of educational activities. For the **second** group, that is to say public office holders, the Commissioner is in charge of advice, investigation and enforcement, compliance measures, as well as post-employment. Investigations can be initiated based on a request from a parliamentarian, indirectly based on information from the public via a parliamentarian, or by the CIEC on its own initiative. While the latter possibility strengthens the CIEC's independence, an investigation based on information from the public is important in terms of a bottom-up approach, as we also know it from the EU. According to the CJEU's concept of 'dual vigilance', individuals entitled under EU law also act as 'guardians of the treaties', besides the Commission acting top-down. Canadian statistics show that a huge majority of cases (29/50) are based on information provided by the public.

The CIEC is in charge of declarations of interest, conflict of interest, gifts, as well as post-employment activities, concerning both elected officials, as well as concerning public office holders. The CIEC has a budget of roughly € 4,600,00 and its office comprises 50 members.

Policy recommendations

The objective of an Independent Ethics Body (IEB) is to regain and then to maintain public trust by striving for a high level of integrity and transparency. The Canadian approach of striving for the "highest ethical standards" to achieve a "high degree of public confidence" is convincing. While the concept of 'ethics' should be prominently anchored in the title of this body, the concept of 'integrity' is probably better suited to act as a guiding principle at an operational level. Based on these considerations, the following **policy recommendations** are formulated:

- Integrity cannot be guaranteed through a self-regulatory approach. That is why a strong and independent body is needed, which can guarantee both transparency, as well as integrity. Such an **integrity branch** can be seen as a meaningful addition to the spirit of Montesquieu's separation of powers.
- The rules on the IEB should be **clear and understandable**, precise enough, but not too complicated, as sometimes observed in case of the Irish Bill. At the same time, loopholes should be closed to **avoid circumvention** (e.g. include family members, alternates). Hence, in setting up the IEB a balanced approach should be aimed for.
- If necessary, a **step-by-step approach** can be followed, according to which, for example, more severe sanctions only occur if softer forms such as 'moral suasion' should prove insufficient.
- In the case of persons being subject to both **EU as well as national** ethics rules, stricter rules should prevail in the case of conflict. Mutual information obligations between the EU and the national level shall avoid gaps.
- A **model code of conduct** should be drawn up as a reference document. This should figure as an annex to the document establishing the IEB (see below). Should there be specific requirements or challenges in a particular institution, these could be addressed through more specific codes of conduct. These more **specific** codes must be in line with the model code of conduct, and before their adoption an opinion of the IEB should be requested and taken into account.
- The IEB has to be an **independent** body. The independence of such a body is linked to freedom from political or partisan interference. It also is about neutrality, in terms of relevant expertise, as well as in terms of the absence of conflict of interest.
- The IEB should comprise around seven **permanent members** and should elect its own chair (see below). A staff of approximately 50 persons should support the IEB. One of them should have the role of an 'ethics officer', in charge of ethical questions within the IEB (providing advice and training).
- The seven permanent IEB members ("whose independence is beyond doubt") should be **composed** of both internal EU staff, as well as externals, with a ratio of 5:2 or 4:3 (of internals and externals). The category of internal staff should comprise both current, as well as former members of staff. **High-standards** should avoid conflict of interest situations. The qualification should aim for a combination of substantive criteria (competence, experience, independence, professional qualities, wisdom and foresight) as well as others aiming at previous functions.

- The IEB should have additional **external reserve members** (e.g., four), which are not involved in the daily business but support the IEB in the field of opinions of a more strategic nature. The same qualification criteria would apply. Besides adding more diversity, they also fulfil a similar function as 'Grand Chamber' decisions at the CJEU.
- **Gender parity** shall also be an objective.
- The **selection** of the IEB members shall take place based on an open call, published on the Europa website as well as the Official Journal of the EU, followed by a selection process conducted by a selection committee. This panel can draw inspiration from the CJEU's Article 255 panel, which shall give an opinion on candidates' suitability to perform their duties. Another example would be the 'Identification Committee' in the case of the 'European Group on Ethics in Science and New Technologies' (EGE), the Commission's ethics advisory body.
- Within this study, we can see examples of terms of three years (the Commission, Parliament), five years (Ethics Officer EDPS), six years, renewable even more than once (Irish Bill), as well as six years not renewable (French HATVP), and Canada 'holding the record' with seven years. In terms of an ambitious approach, the EU should aim **for six or seven years, renewable**.
- The permanent IEB members should elect its **chairperson**. The Selection Committee which checks the qualification criteria for all members could be tasked with identification of those three (out of the seven) permanent members, which fulfil even higher criteria. All permanent IEB members shall then elect, by a simple majority, the chairperson and a deputy-chairperson among these three IEB members for the duration of their term.
- IEB decisions should be taken by **simple majority** without providing for possible 'dissenting opinions', except for the 'IEB Grand Chamber' decisions (also including the external reserve members), where more diversity of views might be preferable.
- The IEB should be part of an '**ethics lattice**' (or 'ethics infrastructure'), which also comprises the IEB's ethics officer as well as decentralised ethics officers in each corresponding institutions. The Presidents of these institutions should be involved in terms of annual meetings or conferences, to discuss current challenges and possible future answers.
- Following the afore-mentioned concept of '**dual vigilance**', the IEB should be able to receive information in particular from individuals, civil society, the media and NGOs.
- The IEB should be able to act on its **own initiative** or on request of someone else. It should have competence to decide on its own, whether support by someone else is necessary, as in the case of the HATVP, which may hear or consult any person whose assistance it deems useful.
- The IEB should offer **advice** in written form. The person seeking the advice should be able to rely upon it in relation to the IEB and the institution the person is affiliated with. This advice cannot and should not be binding on the CJEU.
- Another preventive role would be to check for possible **conflict of interest** before working in an EU institution, both as a member, as well as in the case of staff.
- Besides prevention, constant **monitoring** and **investigation** competences are also key. Transparency on its own is not enough and needs to be supplemented by integrity, and both require monitoring and investigation.
- The IEB should be able to **start an investigation** based on an individual request, both from within an institution, as well as from the outside (e.g., individuals, civil society, the media and

NGOs), or on its own initiative and should dispose of the relevant tools. Members and staff should be obliged to cooperate with the IEB.

- The **Ombudsman** (in particular in charge of transparency, accountability, ethics) and **OLAF** (investigation in the field of fraud, corruption and any other illegal activity) shall support the IEB, as they both work in similar fields.
- **Whistle-blowing** rules exist in various forms and shall also be in place to support the IEB in terms of the aforementioned bottom-up approach.
- As the EU lacks the necessary legislative competence in **criminal law**, the existing rules of the staff regulations as well as those rules on members (from the field of EU primary and secondary law) continue to apply. As far as possible, the rules under EU secondary law can be strengthened in terms of a more ambitious approach, as long as in line with EU primary law.
- However, also softer forms of **sanctions** (publication in the Official Journal, information provided to superiors) can also prove effective.
- The **scope** of the IEB should cover all branches of power, as suggested by others for the field of lobbying. Hence, the **personal** scope of the IEB should cover not only the Commission, Parliament and the Council, but ideally all those institutions covered in this study, as well as additional ones, such as EU agencies. It should also cover both members of EU institutions and other bodies as well as the staff. On a timeline, the IEB should cover incoming members and staff, current ones, and those who are leaving or have already left.
- The IEB should be **in charge of** all types of conflict of interest (gifts; revolving-doors, including external activities during the job; lobbying) as well as declaration of interests. A broad understanding of conflict of interest (actual, apparent and potential) shall be embraced.
- The EU should strive for a low value of **gifts** than can be accepted to send a clear signal to citizens that decision-making cannot be 'bought'.
- **Declaration of interest** should cover a broad field, including both financial and non-financial information. This information needs to be verified and regularly updated. All information must be provided "in an electronic and machine-readable format" to avoid past examples such as an MEP declaring himself to be "Master of the universe" in a form then published on the Parliament's website.
- These detailed rules should be backed up by **principles** identified in the existing codes of conduct (and related documents) as well as the EU's common **values** (Article 2 TEU), including human rights (Charter of Fundamental Rights of the EU). These (ethical and/or legal) principles include, amongst others, integrity, independence, impartiality, dignity at work, honesty, transparency, and discretion.
- The IEB should possess **staff** and a **budget** that allow them to adequately perform the afore-mentioned tasks. The French and the Canadian examples can serve as role-models what is necessary.
- According to the CJEU's ***Meroni*-doctrine**, a delegation of powers is possible, even if not explicitly foreseen in the treaties (i.e. EU primary law). The delegation as such must be explicit. Only existing competences can be transferred to the IEB, that is to say not more competences than the transferring bodies enjoy under EU primary law. The IEB's competences and tasks must be addressed in a clear and precise manner, thus aiming at the 'executive', not the 'discretionary' approach. Two other prerequisites are not a problem, as the 'institutional

balance' (i.e. the relationship of the institutions towards each other) would not be changed and the IEB is not involved in EU law-making. While the IEB would be in charge of 'ethical control', it would nonetheless be subject to the 'legal control' of the CJEU.

- The various potential **legal bases** for setting up the IEB prove insufficient (Rules of Procedure; Staff Regulations; Article 11 TEU; Article 15 (1) TFEU; Article 298 TFEU), too vague (implied-powers doctrine; '*Natur der Sache*'), or too challenging because of high thresholds (unanimity in the Council) and concerns from national constitutional courts (Article 352 TFEU).
- Hence, the IEB should therefore be established by means of an interinstitutional agreement (**IIA**), for which the new Article 295 TFEU, enshrined in the EU Treaties by the Lisbon Treaty, may be used. Such an IIA cannot amend or supplement provisions of the EU treaties. If it is intended, such an agreement can be legally binding, however, not for third-person (in particular lobbyists). Based on the afore-mentioned *Meroni*-doctrine and the principle of conferral (Article 13 [2] TEU), not more competences can be transferred to the IEB than the participating institutions actually enjoy.
- An IIA, concluded and signed by the participating institutions should be **open** to both additional institutions, as well as to possible extensions of its competences and tasks, e.g. in case of future cooperation with national authorities.
- Setting up the IEB via an IIA would require some **amendments** of EU secondary law. Setting up the IEB would not require amendments of EU primary law, which could be a 'mission impossible'.
- In the field of **EU secondary law**, the existing documents of EU institutions, as covered in this study, would have to be adapted accordingly. This includes the transfer of the tasks that currently fall primarily to the Presidents. The binding nature of advice provided by the IEB on members and staff (except the CJEU) should be clearly stipulated. All possible 'investigation tools', which go beyond the existing rules of the Staff Regulations (or related documents) would require adjustments of EU secondary law. As the recommended legal basis is an IIA, this can only bind EU members and staff (e.g., to direct a person to attend before the IEB to give evidence, to provide documents), but not external persons. Other amendments to EU secondary law (e.g., in the field of whistle-blowing, cooperation with the EO and ECA, integrating existing lobbying rules) might be necessary as well.
- The study has also identified several examples, where changes of EU secondary law are **possible**, but not strictly necessary (for example, support by OLAF and cooperation with the IEB).
- Amendments to **EU primary law** are not necessary. Article 263 TFEU (action for annulment), for instance, covers "acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties", as addressed by the *Meroni*-doctrine. In case of future amendments of EU primary law, the IEB could also be integrated in EU primary law; however, this does not affect the possibility of establishing it now.
- In its resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions, Parliament insisted that "EU institutions must strive for the highest possible standards of transparency, accountability and integrity".[1] In line with the EU's afore-mentioned

[1] European Parliament. Resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI)). https://www.europarl.europa.eu/doceo/document/TA-8-2017-0358_EN.html.

step-by-step approach, now is a good time to implement this idea, which was also addressed by Ursula von der Leyen in June 2019. This way, besides examples such as data protection and the Green Deal, the EU would be able to demonstrate in an additional field an **ambitious** approach and a high level of protection, thereby establishing a benchmark.

- Now it is up to the EU to **take** an important **step** in (re-)gaining citizens' trust. In doing so, the EU has to 'walk the talk'. An outside body shall guarantee stricter application of the current or strengthened rules in order to avoid criticism, as addressed in October 2020 by Corporate Europe Observatory[2] with regard to ineffective 'revolving-doors' rules ("only 0.62% revolving door moves rejected") under the Staff Regulations.

[2] Corporate Europe Observatory (2020).

1. INTRODUCTION

European integration started with the idea of economic integration in the two sectors of coal and steel relevant to armaments, to safeguard peace. Hence, in 1951, the European Coal and Steel Community was founded. Following the step-by-step approach enshrined in the 1950 Robert Schuman declaration[3], human rights were only added at a later stage, first in 1969 via the case-law[4] of the Court of Justice of the European Union (CJEU)[5], and later via the Charter of Fundamental Rights of the European Union (CFR)[6]. In 1992, based on the famous spill-over-effect, the Maastricht Treaty created a European Union (EU) and added political integration. In 2007, the Lisbon Treaty[7] enshrined common values in Article 2 Treaty on European Union (TEU)[8]. Consequently, based on this step-by-step approach and this spill-over effect, we can observe the development of EU integration from a community of **economic** integration,[9] to an entity also safeguarding **human rights**, to a **political** Union, and finally to a 'Community of **values**'[10].

Such an incremental approach can also be observed for the relationship of **EU law and ethics**. In the late 1980s and early 1990s, rapid scientific developments in biotechnology and genetic engineering led to the necessity to address public concern about ethical implications and showed the need for an institutionalised framework in this field.[11] This situation, amongst others[12], has led to an increasing number of EU laws, for instance, EU directives[13], referring to non-legal concepts of ethics and morality[14]. In terms of the mentioned 'institutionalised framework', following the 'Group of Advisers on the Ethical Implications of Biotechnology' (GAEIB) established in November 1991, the European Commission (EC, Commission) decided in 1997 to replace this GAEIB with the 'European Group on Ethics in Science and New Technologies' (EGE). The EGE is tasked "to advise the Commission on ethical questions relating to sciences and new technologies and the wider societal implications of advances in these fields"[15].

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3 Available at: https://europa.eu/european-union/about-eu/symbols/europe-day/schuman-declaration_en.

4 ECJ judgement of 12 November 1969, *Stauder v Stadt Ulm*, 29/69, EU:C:1969:57.

5 For simplicity's sake, in the following, reference will be made to today's terminology. This abbreviation (CJEU) refers to the Court of Justice of the EU, which comprises not only the Court of Justice (ECJ), but also the General Court (GC); when in the following reference is made to the GC, this should be understood as also comprising the former Court of First Instance.

6 Consolidated version: OJ C 202, 7.6.2016, p. 389. First, solemn proclamation in December 2000 in Nice (OJ C 364, 18.12.2000, pp. 1–22), then in December 2007 in Strasbourg (OJ C 303, 14.12.2007, pp. 1–16; N.B. this version includes the explanations relating to the CFR, on pp. 17–35); CFR legally binding since the entry into force (1 December 2009) of the Lisbon Treaty (OJ C 306, 17.12.2007, pp. 1–229).

7 OJ C 306, 17.12.2007, pp. 1–271; see, Piris (2010).

8 Consolidated version: OJ C 202, 7.6.2016, p. 13.

9 Or as Ipsen (1972, pp. 196–200) has coined it, an 'association of functional integration' ('*Zweckverband funktioneller Integration*').

10 Reimer (2003); Calliess (2004); Mandry (2009). According to Hallstein (1979, pp. 66–71), certain values (peace, uniformity, equality, freedom, solidarity, prosperity, progress and security) have been part of the integration process, even before the Lisbon Treaty.

11 Plomer (2008, p. 840); Frischhut (2019, p. 100).

12 For a detailed overview on this 'ethical spirit of EU law', see Frischhut (2019), available open access.

13 E.g., Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, OJ L 213, 30.7.1998, pp. 13–21; Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, OJ L 88, 4.4.2011, pp. 45–65; Frischhut (2019, pp. 81–82).

14 Frischhut (2015a, pp. 541–545).

15 Commission Decision (EU) 2016/835 of 25 May 2016 on the renewal of the mandate of the European Group on Ethics in Science and New Technologies, OJ L 140, 27.5.2016, pp. 21–25 [EGE mandate], Article 2.

Today's EGE has not only produced valuable contributions (30 opinions and several statements[16]) for various situations creating ethical challenges, but can also serve as a role-model for a body delivering ethics advice for other fields.[17]

As has been accurately stated elsewhere, "scandals often trigger ethics reform"[18], and indeed there have been some scandals.[19] In March 1999, the Santer Commission had to resign[20] following allegations concerning "fraud, mismanagement or nepotism"[21] involving former Commissioner Edith Cresson. In the field of lobbying, in 2011, we saw the 'cash-for-amendments' scandal involving, amongst others, Austrian Member of the European Parliament (MEP) Ernst Strasser[22], in 2012, the case of health Commissioner John Dalli and the issue of contacts with the tobacco industry,[23] or in 2016, the case of former Commission President José Manuel Barroso's contested new job at Goldman Sachs[24]. This reactive approach of initiating **reforms following** a **scandal** might be both necessary to adapt past gaps, as well as a required response to public demands, but it might not be ideal. The best time to initiate a reform is when past scandals have created problem-awareness and have identified possible topics, but at the same time the 'waves should have settled and the sea should be calmer again'. Thus, it is important to start such an initiative for more ethics and values at EU level, independent of a clear cut scandal.

As these four examples above have also emphasised, increasing integrity via ethics, values and principles is also, but not only, about lobbying. What is necessary is an **ethical spirit**, which I have defined elsewhere as "the *intention* of the *authors* of a *legal system*, which is reflected in a *lattice* of various provisions"[25]. The notion of a 'lattice' was taken from Jim Dratwa's paper "How values come to matter at the European Commission", who referred to it as a "set of bodies and texts, of products and processes"[26]. While others have extensively discussed the question of ethics management and the question of rules- (or compliance-) based (emphasising the negative) and/or values-based (emphasising the desirable) approaches,[27] this study will focus especially on the question of the necessary 'institutional framework'.[28]

Taking care of ethics in an institution is also essential for both building up, as well as maintaining **trust**.[29] Talking to fellow citizens about the EU, most of the time lobbying ('they buy the laws they want') and 'far-away' decision-making are key reasons for EU scepticism. It is a truism that geographical distance also creates emotional distance. This is especially true for the EU. That is why institutions such as the EU must attach importance to a **high level** of transparency and ethics. Aiming for a high-level is

16 Cf. Pirs and Frischhut (2020).

17 Frischhut (2019, pp. 100–105). See below Chapter 4.2.

18 Cf. Cini (2019, p. 314).

19 Cf. also Cini (2013).

20 Cf. Cini (2007, pp. 27–57).

21 Cf. ECJ judgement of 11 July 2006, *Commission v Cresson*, C-432/04, EU:C:2006:455, para. 28.

22 Cf. Dialer and Richter (2014).

23 Cf. Gräßle (2014). On the pending case, see Opinion of AG Szpunar of 22 September 2020, *Dalli v Commission*, C-615/19 P, EU:C:2020:744.

24 Cf. Ariès (2016); Ad Hoc Ethical Committee (2016).

25 Frischhut (2019, p. 90).

26 Dratwa (2014, p. 113).

27 See, amongst others: Dercks (2001, pp. 348–349); Maesschalck (2004); Organization For Economic Cooperation And Development (2009).

28 On the question of accompanying (legal and ethical) principles and values, see below Chapter 4.4.2.

29 See, for instance, Organization For Economic Cooperation And Development (2014).

consistent with the EU's approach in various fields such as health, safety, environmental protection and consumer protection.[30]

So far, the EU has mainly chosen a **self-regulatory** approach, where the mentioned EGE can be seen as one example of providing expertise from the outside. As aptly mentioned by Demmke et al., "any form of self-regulation causes suspicion".[31] That is why the EU should strive for an independent ethics body. Based on the idea of the separation of powers by Montesquieu[32] (legislative, executive and judiciary branch of power), such an idea can be seen as going in a similar direction as the idea of an '**integrity branch**'.[33] According to Ackerman "[t]he credible construction of a separate 'integrity branch' should be a top priority for drafters of modern constitutions. The new branch should be armed with powers and incentives to engage in ongoing oversight."[34] This idea of a common ethics body for the EU (as well as a related code of conduct) is not new,[35] and has been addressed both in academia,[36] as well as in September 2017 by Parliament[37] and in June 2019 by now Commission President Ursula von der Leyen. As she has stated, "[i]f Europeans are to have faith in our Union, its institutions should be open and beyond reproach on ethics, transparency and integrity", and that is why she emphasised to "support the creation of an independent ethics body common to all EU institutions."[38] Various steps have been taken in integrating ethics in EU institutions.[39] Similar to the step-by-step approach in the field of general EU integration, additional steps are also necessary here. Now is a good time to take these steps.

Against this background, the author has been **tasked** by the 'Policy Department for Citizen's Rights and Constitutional Affairs' of the European Parliament (EP, Parliament) to (1) give an overview of the current institutional set-up (as regards overseeing transparency and integrity in EU institutions and bodies), (2) to examine the option of the creation of "a new EU Ethics Body", (3) t0 examine the question

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30 Article 114 (3) Treaty on the Functioning of the European Union (TFEU); consolidated version: OJ C 202, 7.6.2016, p. 47. See furthermore, on employment, etc. (Article 9 TEU; Article 147 TFEU), health (Article 9 TEU; Article 168 [1] TFEU), consumer (Article 169 [1] TFEU), environment (Article 3 [3] TEU; Article 191 [2] TFEU), and security (Article 67 [3] TFEU).

31 Demmke et al. (2008, p. 97).

32 Montesquieu (1927, pp. 152–162).

33 The question can be left open, if, after other important watchdogs such as the media, this would be seen as the fourth or fifth branch of power.

34 Ackerman (2000, p. 691).

35 The Committee of Independent Experts (CIE) installed in the wake of the resignation of the Santer Commission, etc. (cf. Cini (2007, p. 42)), has asked for such a body: "It is to be recommended that, in order to supervise the general standards, a Committee of Standards in Public Life be set up, under an interinstitutional agreement, and that specific codes of conduct would be drawn up by each institution concerned, in complement to the general standards", Committee of Independent Experts (1999, p. 121, pt. 7.7.3).

36 White (2014, p. 286): "an EU inter-institutional ethics committee (or committee on standards) could be set up in order to promote an ethics programme common to all EU institutions and bodies"; Grad and Frischhut (2019, p. 319) "To tackle ethical problems in the EU, it may be an option to install an independent ethics body which supports all three major decision-making bodies within the EU"; see also Dercks (2001, p. 351).

37 European Parliament (2017, 27): "Calls on those EU institutions and bodies which still do not have a code of conduct to develop such a document as soon as possible; considers it regrettable that the Council and the European Council have still not adopted a code of conduct for their members; urges the Council to introduce a specific code of ethics, including sanctions, which addresses the risks specific to national delegates; insists that the Council must be just as accountable and transparent as the other institutions; calls also for a code of conduct for members and staff of the EU's two advisory bodies, the Committee of the Regions and the European Economic and Social Committee; calls on the EU agencies to adopt guidelines for a coherent policy on the prevention and management of conflicts of interest for members of the management board and directors, experts in scientific committees, and members of boards of appeal, and to adopt and implement a clear policy on conflicts of interest, in accordance with the Roadmap on the follow-up to the Common Approach on EU decentralised agencies".

38 European Commission (2019, p. 21); "I will engage and work closely with the other institutions to make this happen".

39 See, amongst others: Cini (2007); Cini (2008); Cini (2013); Năstase (2013); Năstase (2014); Frischhut (2015a, pp. 539–541); Cini (2016); Năstase (2017); Neuhold and Năstase (2017); Năstase and Muurmans (2018); Cini (2019); Frischhut (2019).

of necessary legal changes (including Treaty changes), (4) to gather information on the best practises in selected countries (concerning legal basis, competences[40], scope, resources in terms of staff & budget, independence), and finally (5) to give policy recommendations "on creating a new independent EU ethics body".[41]

After this introduction, **Chapter 2** will depict the status quo of the current institutional set-up in this field. This includes both key substantive issues as transparency, integrity, ethics and values (Chapter 2.1), as well as the institutional setting in EU institutions covered by this study (Chapter 2.2). While there is no need to re-invent the wheel, one has to be cautious of transferring concepts of nation states to a supra-national organization such as the EU. Nevertheless, solutions given to similar challenges in selected countries can serve as a source of inspiration also for the EU in the sense of best practises (**Chapter 3**). Based on the status quo and this comparative analysis, **Chapter 4** will examine the option of the creation of a new 'Independent Ethics Body' (IEB) for the EU and give policy recommendations. Besides this design of the IEB, **Chapter 5** will address the question of how to legally set-up such a body.

The author would like to thank Brian Galvin for proofreading this study and Eeva Pavy for valuable comments. However, the author assumes all responsibility for any errors present.

[40] These competences of institutions and bodies should not be confused with legislative competences; see, for instance, fn.428.

[41] See service contract "IP/C/AFCO/IC/2020-082", pp. 2-3.

2. STATUS QUO OF THE CURRENT INSTITUTIONAL SET-UP

As mentioned above, building up and maintaining trust[42] is key for an entity, which is geographically, and hence also emotionally, perceived to be 'far away'. It is a truism and does not require further explanation that both transparency (Chapter 2.1.1) and integrity (Chapter 2.1.2) are key elements in this regard.

2.1. Key substantive elements

2.1.1. Transparency

As the ECJ has emphasised, the **principle of transparency** "enables citizens to participate more closely in the decision-making process and guarantees that the administration enjoys greater legitimacy and is more effective and more accountable to the citizen in a democratic system".[43] This statement is based on Article 1 TEU, according to which in this "new stage in the process of creating an ever closer union among the peoples of Europe, […] decisions are taken as openly as possible and as closely as possible to the citizen"[44]. Besides this general principle, transparency[45] is also emphasised in the two contexts of access to documents and lobbying.

According to the third subparagraph of Article 15 (3) TFEU, "[e]ach institution, body, office or agency shall ensure that its proceedings are transparent and shall elaborate in its own Rules of Procedure specific provisions regarding access to its documents […]." Besides proactive publication of documents,[46] such **access to documents** has been enshrined in EU secondary law (in particular Regulation 1049/2001[47]) as well as Article 42 CFR[48]. This emphasis on transparency has been a reaction, not to a scandal, but especially to the Danish negative referendum on the Maastricht Treaty, to build up trust in relation to EU citizens.[49]

Transparency has also been emphasised in the context of **lobbying**, where Article 11 (2) TEU tasks EU institutions to "maintain an open, transparent and regular dialogue with representative associations

[42] For the purposes of this study, the two terms 'trust' and 'confidence' are understood synonymously.

[43] ECJ judgement of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09, EU:C:2010:662, para. 68.

[44] Article 1 (1) TEU; see also Article 10 (3) TEU ("Decisions shall be taken as openly and as closely as possible to the citizen"), as well as Article 15 (1) TFEU ("In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible").

[45] For further information, see Driessen (2012).

[46] Especially, on https://europa.eu and https://eur-lex.europa.eu/homepage.html.

[47] Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, pp. 43–48.

[48] "Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions, bodies, offices and agencies of the Union, whatever their medium".

[49] On this historic development (pp. 207-210), as well as the topic of access to documents (also covering other examples of EU secondary law, besides Regulation 1049/2001), see Frischhut (2015b).

and civil society".[50] Transparency is also mentioned in the context of consultations, which the Commission shall conduct in this regard.[51]

Transparency in lobbying is the aim of the inter-institutional agreement between Parliament and the Commission, setting up what still remains a voluntary[52] transparency **register**[53] plus a code of conduct (CoC) for interest representatives.[54] The Juncker Commission kicked off in November 2014 with two decisions on the publication of information on meetings of both members of the Commission[55], as well as the Commission's Directors-General[56], to increase transparency also in this field.

Lobbying is often perceived in a **negative** way, besides the above-mentioned scandals, especially because of asymmetries concerning both information and resources. However, lobbying is not per se negative. According to EU law (Article 11 [1] TEU), "[EU] institutions shall, by appropriate means, give citizens and representative associations the opportunity to make known and publicly exchange their views in all areas of Union action". From a policy perspective, information from interest representatives is perceived as "useful sources of information", especially for MEPs.[57]

Hence, lobbying is an essential part of democracy, as long as it is transparent and follows the legal and ethical requirements.[58] While legal requirements must be adhered to anyway, it is worth focussing on ethical requirements, which play an important role in **balancing** the phenomenon of lobbying, to provide a fair and transparent level playing field, and ultimately to safeguard citizens' trust.

2.1.2. Integrity: ethics, values and principles

"[Parliament underlines] the need to enhance **integrity** and improve the **ethical framework** through clear, reinforced codes of conduct and ethical principles, so as to allow the development of a common and effective **culture of integrity** for all EU institutions and agencies".[59]

While we do not find explicit references to ethics or morality in the lobbying-related legal documents of the key EU institutions, there are various **implicit** references to ethical behaviour.[60] These relevant

[50] A similar provision can be found in Article 17 (3) TFEU concerning churches and religious associations or communities in the Member States (MS): "Recognising their identity and their specific contribution, the Union shall maintain an open, transparent and regular dialogue with these churches and organisations".

[51] "The European Commission shall carry out broad consultations with parties concerned in order to ensure that the Union's actions are coherent and transparent" (Article 11 [3] TEU).

[52] Several discussions in this field centred about the question of whether it would be possible to make the register mandatory; see Krajewski (2013); Krajewski (2014); Nettesheim (2014); Gerig and Ritz (2014); Alemanno (2017). Some of these aspects will be covered later one (see below Chapter 5.2) in the context of setting up the IEB. See also Proposal for a Interinstitutional Agreement on a mandatory Transparency Register, COM(2016) 627 final 28.9.2016.

[53] Available at: https://ec.europa.eu/transparencyregister.

[54] Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation, OJ L 277, 19.9.2014, pp. 11–24 (IIA Lobbying). N.B: code of conduct in Annex III.

[55] Commission Decision (2014/839/EU, Euratom) of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals, OJ L 343, 28.11.2014, pp. 22–24.

[56] Commission Decision (2014/838/EU, Euratom) of 25 November 2014 on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals, OJ L 343, 28.11.2014, pp. 19–21.

[57] Obradovic (2011, p. 319).

[58] Grad and Frischhut (2019).

[59] European Parliament (2017, 29); emphases added.

[60] Frischhut (2015a, pp. 539–541); Frischhut (2019, pp. 53–58).

documents refer to principles such as integrity, diligence, objectivity, honesty and accountability, to ensure ethical behaviour.[61]

Integrity, as a key concept for this study, has been defined as "the quality of being honest and morally upright"[62]. Ashford has referred to 'objective integrity', which "may lead to inner turbulence, since it involves an uncompromising concern for and pursuit of the truth about matters of importance, especially morality, through autonomous moral appraisal of oneself and of one's society's standards".[63] While the two concepts are often not well distinguished in EU legal documents,[64] **ethics** is a branch of practical philosophy, which deals with the question of what is morally right or wrong.[65] **Morality**[66], on the other hand, is not a branch of philosophy, but has a cultural, a regional and a temporal component,[67] as it differs in time and place. Morality "refers to norms about right and wrong human conduct that are widely shared and form a stable societal compact"[68]. While there are clear theoretical differences, all these concepts of integrity, ethics, or morality go in a similar direction.

In identifying the **ethical spirit** of EU law, I have argued that references[69] to concepts such as ethics or morality should be 'filled with life' using the EU's common **values**, as well as the EU's **human rights**.[70] In terms of CFR rights, a key provision is Article 41 CFR on the 'right to good administration', which refers to impartiality, fairness, the right to be heard, as well as the obligation of the administration to give reasons for its decisions,[71] which can be seen as another element of the above-mentioned principle of transparency.

In the context of ethical challenges posed by different forms of digitalisation (especially in the health sector such as surgical or care robots), I have argued for a combined approach of applying more **abstract values**, along with more **concrete principles**.[72] This idea has been taken from the EU's health values, where the health ministers have defined 'overarching values', as well as beneath these specific[73] values, a set of 'operating principles'.[74] This idea, as illustrated below in Figure 1, has applied the EU's common values, including respect for human rights (now: CFR), as well as a combination of legal and ethical principles, whereby the qualification (ethical and/or legal principle, or vice versa) may vary to some extent.

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61 See Grad and Frischhut (2019), with an overview on the relevant legal documents (pp. 309-310), as well as with further information on the rules for targets (pp. 310-319), as well as actors of lobbying (pp. 320-321).

62 Petrick (2008, p. 1141).

63 Ashford (2000, p. 425).

64 Frischhut (2015a, pp. 536–539).

65 Frischhut (2019, p. 15), with a visualised overview on p. 9.

66 Cf. ECJ judgement of 11 March 1986, *Conegate v HM Customs & Excise*, 121/85, EU:C:1986:114, para. 14.

67 Frischhut (2015a, p. 544).

68 Beauchamp and Childress (2019, p. 3).

69 N.B: This applies in particular, but not only, in case of references from the legal sphere to non-legal concepts such as ethics or morality, where it is unclear at the end what this reference means in terms of content. This can be a problem concerning 'legal certainty', which is one element of the 'rule of law', one of the EU's common values.

70 N.B: While the title of the CFR refers to fundamental rights, the majority of these rights refers to all human beings (every person, etc.), and only few rights to EU citizens only.

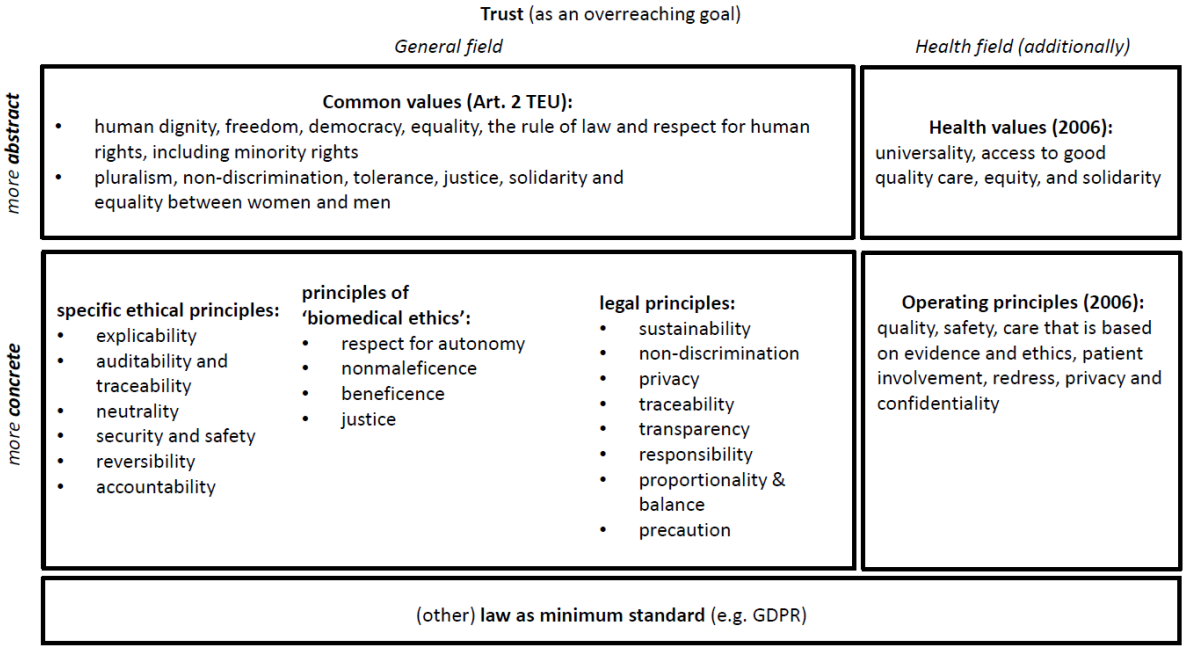
71 For legal acts, see Article 296 (2) TFEU ("Legal acts shall state the reasons on which they are based and shall refer to any proposals, initiatives, recommendations, requests or opinions required by the Treaties").

72 This approach of "principles and values" has recently also been applied by Parliament in the field of artificial intelligence, robotics and related technologies; European Parliament (2020, recital L, pt. 91, Article 10, Article 17, to name but a few).

73 I.e. in comparison to the general values of the EU, enshrined in Article 2 TEU.

74 Council Conclusions on Common values and principles in European Union Health Systems, OJ C 146, 22.6.2006, pp. 1–3.

Figure 1: EU | Values & (legal and ethical) principles in the field of digitalisation



Source: Frischhut, 2020[75]

The health values and operating principles (column to the right) are irrelevant for this study; however, the general idea shall be embraced nevertheless. As can be seen from the bottom of both Figure 1 and Figure 2, law should be seen as a minimum standard, on which the EU's general values (Article 2 TEU), as well as relevant ethical and legal principles allow for a more ambitious approach.

As mentioned above, **Article 2 TEU** has turned the EU into a 'Community of **values**' and comprises two sentences. The first one is addressed at the EU and is based on the concept of pre-existing values by stating: "The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities." The second does not refer to the EU, but to the Member States, precisely their society: "These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail". Most of these values are not defined in Article 2 TEU or elsewhere.[76] Some of these values are abstract and hardly enforceable (e.g., pluralism, tolerance), while others (such as justice) have been extensively discussed in philosophy.[77] In the case of human dignity, literature[78] mainly refers to the deontological approach of Immanuel Kant[79]. Some values are twinned with a corresponding principle: The value of non-discrimination can also be found as a legal principle in the EU's Treaties,[80] which has been extensively

[75] Taken from: Frischhut (2020, forthcoming). For a similar approach, see also Frischhut and Werner-Felmayer (2020).

[76] On democracy, see Articles 9 to 12 TEU. On the equality between women and men, see in particular Article 8 TFEU, Article 153 TFEU, Article 157 TFEU.

[77] See, Rawls (1971); Sandel (2010).

[78] E.g. Borowsky (2019, p. 86).

[79] Kant (2014, pp. 71–105).

[80] Article 10 TEU, Article 18 TEU, Article 19 TEU, all provisions of the fundamental freedoms of the EU's internal market, to name but a few.

covered in CJEU case-law. Likewise, the value of solidarity is also a legal principle, only not as much shaped in substance as non-discrimination.[81]

In the same way as EU secondary law (as well as, one level below, national law) has to be interpreted in the light of EU primary law,[82] these values must also be taken into account in the interpretation of EU law (value-conform interpretation[83]). The same holds true for the CFR.[84] Likewise for this study, not only the above-mentioned ethical spirit but also the **spirit** of these **values** (Article 2 TEU) as well as the **CFR** will play an important role.[85] In addition to these values (and the CFR), the above-mentioned legal principles are also of utmost importance. As mentioned above, in the field of lobbying no explicit references to ethics were identified. These documents rather referred to principles such as integrity, diligence, objectivity, honesty and accountability. Beyond these examples, in a paper with Julian Grad, we have identified the other legal and ethical principles that together form this *acquis légal & éthique*.[86] While legal principles (e.g., non-discrimination) can be legally enforced, ethical principles, as an example of soft-law, can have an important indirect impact.[87] Together, these more abstract values (including human rights) and the more concrete and (legal and ethical) principles shall play an important role in this study, as can be seen from and Figure 2 below.

[81] See, for instance, (in the context of social security schemes), ECJ judgement of 11 June 2020, *Commission v Dôvera zdravotná poist'ovňa*, Joined cases C-262/18 P and C-271/18 P, EU:C:2020:450, paras. 30 to 35.

[82] ECJ judgement of 26 June 2007, *Ordre des barreaux francophones and germanophone and Others*, C-305/05, EU:C:2007:383, para. 28; ECJ judgement of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325, para. 70.

[83] See Potacs (2016); Bogdandy and Spieker (2020).

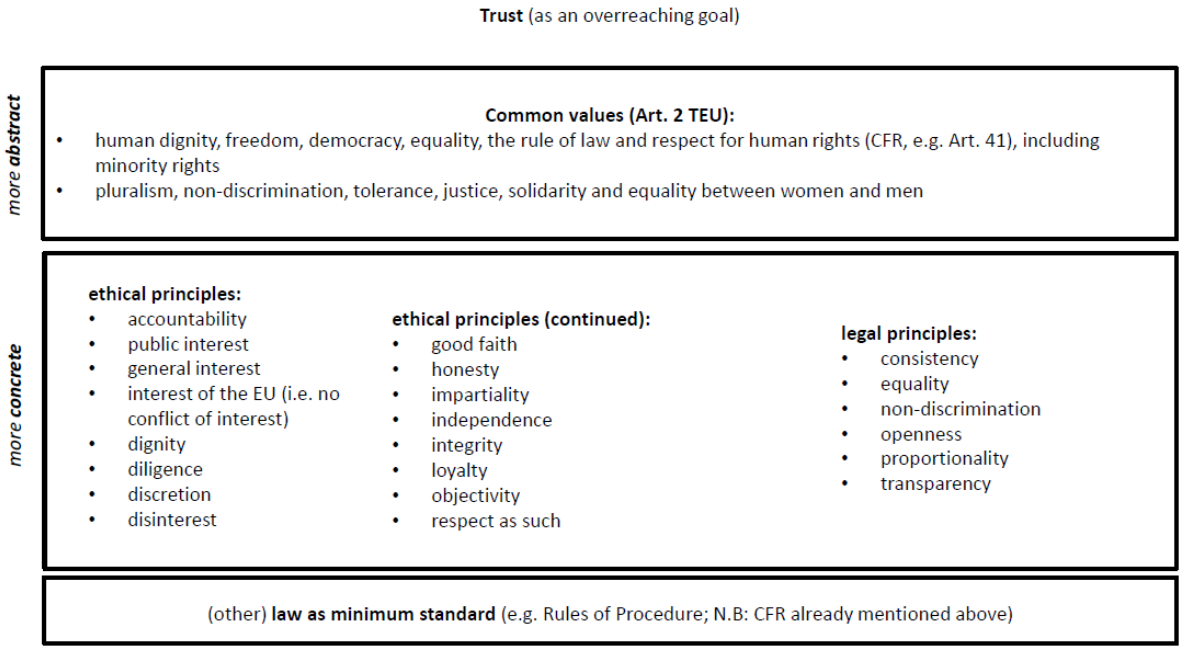
[84] ECJ judgement of 14 May 2019, *M (Révocation du statut de réfugié)*, Joined cases C-391/16, C-77/17 and C-78/17, EU:C:2019:403, para. 77 ("In that regard, it should be borne in mind that, in accordance with a general principle of interpretation, an EU measure must be interpreted, as far as possible, in such a way as not to affect its validity and in conformity with primary law as a whole and, in particular, with the provisions of the Charter […]").

[85] See below Chapter 4.4.2.

[86] Grad and Frischhut (2019, p. 313).

[87] See, Müller (2014); Tallacchini (2015); Jabloner (2019).

Figure 2: EU | Values & (legal and ethical) principles in the field of lobbying, transparency and integrity



Source: Frischhut, 2020

As can be seen from both Figures so far, **trust** is not seen as a value or a principle, but rather as an overreaching goal. Underneath these more abstract values and more concrete (ethical and legal) principles, other[88] legal provisions must be adhered to anyway and can be seen as a minimum standard, where this approach should be seen as more ambitious than legal requirements only.

Based on this overview of key substantive elements, let us now turn to the status quo of the relevant EU institutions. This is especially important as these legal documents covered in the following might have to be amended in the setting-up of the Independent Ethics Body, IEB (see Chapter 5.3).

2.2. Institutional elements

The EU's '**institutional framework**' comprises various institutions, which have to "promote its values, advance its objectives, serve its interests, those of its citizens and those of the Member States [MS] and ensure the consistency, effectiveness and continuity of its policies and actions" (Article 13 [1] TEU). EU institutions covered in the following are those enumerated in this provision. First, this comprises the three key institutions for EU decision-making: the Commission (promoting the general interest of the EU and making legislative proposals), as well as Parliament (promoting the interests of EU citizens) and the Council of the European Union, as the two institutions adopting most EU legislation[89]. The latter will be covered together with the other institution representing the interests of the MS, that is to say

[88] I.e. besides the EU's values (Article 2 TEU), which are also to be qualified as legal, and besides the legally binding CFR.

[89] I.e. in the sense of the 'ordinary legislative procedure' (Article 294 TFEU).

the European Council, which defines the general political directions and priorities (Article 15 [1] TEU). The other institutions covered in the following are the CJEU, which is in charge of the legal control, as well as the Court of Auditors in charge of financial control, and finally the European Central Bank (ECB). Likewise, the two advisory bodies (Article 13 [4] TEU), the Economic and Social Committee (ECOSOC) and the Committee of the Regions (CoR) are covered as well. At the end of this chapter, the European Ombudsman (EO), the European Data Protection Supervisor (EDPS) and the Euro Group (together with the Euro-Summit) will also be addressed. Space here precludes an inclusion of the various agencies.[90] Some documents covered in the following do not only apply to members, but also to staff. Nevertheless, at the end of this chapter, the EU Staff Regulations will be covered as well.

The following sub-chapters will cover some selected relevant aspects and will be **structured** as follows.[91] After identifying (1) the relevant legal document(s), (2) the person or body in charge of supervising and or enforcing these ethical standards will be identified, as well as her/its (3) relevant competences. This will be followed (4) by the *scope rationae personae* (the persons covered by these standards), as well as (5) the *scope rationae materiae* (the potential ethical challenges addressed). In addition to the key substantive elements portrayed above, (6) further principles contained in these documents will be emphasised.

2.2.1. European Parliament

The (ad 1) relevant legal document are the Rules of Procedure (RoP) of the European Parliament (EP) (**EP RoP**)[92], where the Code of Conduct (EP CoC; N.B. Annex I of EP RoP) mainly charges (ad 2) the **President** in case of possible breaches of the EP CoC.[93] Besides the President, an 'Advisory Committee on the Conduct of Members' (EP **ACCM**) is set up, which, upon request by an MEP, shall give her or him (in confidence) guidance on the interpretation and implementation of the EP CoC. It shall also, at the request of the Parliament President, assess alleged breaches of this EP CoC and advise the President on possible action to be taken (Article 7 [4] EP CoC).

The EP ACCM is composed of five members appointed by the Parliaments' President at the beginning of her or his term of office from among the members of the Committee on Constitutional Affairs (AFCO) and the Committee on Legal Affairs (JURI). While two relevant committees have aptly been chosen, neither this self-regulatory approach nor the selection criteria can be qualified as ambitious, as they only refer to the MEP's "experience", besides considering the "political balance"[94] (Article 7 [2] EP CoC).[95] The EP ACCM, may seek advice from outside experts only after consulting the Parliament President (Article 7 [5] EP CoC). It must publish an annual report (Article 7 [6] EP CoC). According to the ACCM's

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90 For a detailed overview, see Orator (2017). On the *Meroni* case-law, see below Chapter 5.1.

91 These six points will not only be used for the following sub-chapters, but throughout this study. While the logic of the sub-chapters might differ in the following chapters according to the relevant topic, these six points shall provide for coherence and an overview for comparison and drawing conclusions.

92 Rules of Procedure of the European Parliament, 9th parliamentary term - June 2020, https://www.europarl.europa.eu/doceo/document/RULES-9-2020-06-30-TOC_EN.html.

93 Article 8 (procedure in case of possible breaches), Article 3 (2) (conflicts of interest), Article 4 (1) (declaration of interests) EP CoC.

94 Likewise, Article 7 (3) EP CoC is also problematic, as in case of an alleged breach of the EP CoC by a member of a political group not (!) represented in the EP ACCM, the relevant reserve member (one for each political group not represented in the EP ACCM) shall serve as a sixth full member of the EP ACCM for the purposes of investigation of the alleged breach. The qualification should matter more than political affiliation.

95 There is no EP ACCM President, but each of the five members shall serve as chair for six months on a rotating basis.

RoP[96], decisions are taken "on the basis of consensus"; if this is not possible, the ACCM "shall decide by a majority of its members" (Rule 5.1). For those members who disagree with the majority, the ACCM RoP allow for dissenting opinions ("minority recommendation"; Rule 5.2).

The (ad 3) **competences** cover, as mentioned above, both ex-ante advice for members, as well as assessment of alleged breaches (Article 7 [4] EP CoC). Likewise, enforcement (examination of circumstances and, based on these findings, giving recommendations) is also an EP ACCM competence, based on which, the Parliament President can adopt a decision laying down a penalty (Article 8 [3] EP CoC, i.c.w. Rule 176 [4] to [6] EP RoP).

Scope rationae personae (ad 4), the EP CoC covers both **MEPs**, as well as **former** members; in case the latter engage in professional lobbying or representational activities directly linked to the EU decision-making process, they must inform Parliament and do not benefit from the facilities granted to former Members (Article 6 leg. cit.)

Scope rationae materiae (ad 5), the EP CoC covers the following topics:

- (actual or potential) conflict of interest (COI), Article 3 EP CoC;[97]
- declaration of (financial) interest (DOI), Article 4 EP CoC;
- gifts up to the value of € 150, Article 5 EP CoC;
- post-term rules not in terms of a cooling-off period, but only the afore-mentioned rules on former members, Article 6 EP CoC.

Article 1 EP CoC (ad 6) sets up the following 'general **principles** of conduct', which shall both guide and be observed by MEPs: "disinterest, integrity, openness, diligence, honesty, accountability and respect for Parliament's reputation".[98] In addition, MEPs may only act "in the public interest" and shall "refrain from obtaining or seeking to obtain any direct or indirect financial benefit or other reward".

As Cini has aptly shown, there is a reluctance to sanction your peers;[99] that is why there are better solutions than such an internal approach. Ideally, political-party affiliations or influence should be reduced.[100]

2.2.2. European Commission

The (ad 1) relevant legal document is the Commission decision on a CoC for its Members (EC CoC[101]), which mainly charges (ad 2) the **President** (Article 17 [6] TEU), assisted by an 'Independent Ethical Committee' (IEC), to "ensure the proper application" of this CoC (Article 13 [1] EC CoC).[102] In case of a request by the Commission President, the IEC "shall advise the Commission on any ethical question

[96] Advisory Committee on the Conduct of Members (2012).

[97] According to paragraph 1, a COI exists where an MEP "has a personal interest that could improperly influence the performance of his or her duties as a Member. A COI does not exist where a Member benefits only as a member of the general public or of a broad class of persons". Article 8 (2) EP CoC also sets up rules in case of a COI of an EP ACCM member.

[98] These principles are part of Figure 2.

[99] Cini (2019, p. 317).

[100] Cf. also Demmke et al. (2020, pp. 154–155).

[101] Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission, OJ C 65, 21.2.2018, p. 7. For further information, see also EC (2020).

[102] The EC RoP (OJ L 308, 8.12.2000, pp. 26–34, as amended by OJ L 127I , 22.4.2020, pp. 1–2) can be named in terms of Annex I, comprising the Code of good administrative behaviour for staff of the Commission in their relations with the public (EC GAB), which refers to the principles of lawfulness, non-discrimination and equal treatment, proportionality, as well as consistency.

related to this Code and provide general recommendations to the Commission on ethical issues relevant under the Code" (Article 12 [1] EC CoC). Hence, a similar task, compared to Parliament's ACCM.

The **IEC** is composed of three members, hence less members than the EP ACCM. However, the selection criteria are more ambitious, as they require "competence, experience, independence and professional qualities", as well as "an impeccable record of professional behaviour as well as experience in high-level functions in European, national or international institutions"; the composition of the IEC "should reflect experiences in different institutions or functions" (Article 12 [4] EC CoC). Besides that, these IEC members are not Commission members, but external ones, thus, another difference compared to Parliament's ACCM, composed of members of two Parliament committees. They are appointed by the Commission, based on a proposal of the Commission President. They are not only in charge of COI (see below), they have to sign a COI declaration themselves. Their term is shorter compared to Parliament's ACCM, that is to say three years, renewable once (Article 12 [4] EC CoC). Another difference concerns the chairperson, which is not based on a rotating system. The IEC elects a permanent chairperson from among its members, who must convene meetings in the case of a request by the Commission President (Article 12 [5] EC CoC). Deliberations of the IEC are confidential (Article 12 [6] EC CoC) but the EC CoC foresees the possibility for a "dissenting point of view" (Article 12 [7] leg. cit.).

The (3) **competences** of the IEC are mainly **advisory**. The main competence lies with the Commission President who must be informed by (former) Commission members in case of doubts concerning the application of the EC CoC (Article 13 [2] EC CoC). The IEC only assists the Commission President.[103] However, Commission members (including former ones) have to fully cooperate with the IEC and have a right to be heard in case the IEC considers a negative opinion (Article 12 [6] EC CoC). Enforcement is a job of the Commission, not of the IEC: In the case of an infringement of the EC CoC, which does not warrant a referral to the CJEU,[104] the Commission may decide, considering the IEC's opinion and the proposal of the Commission President to express a reprimand and, where appropriate, make it public (Article 13 [3] EC CoC).

Scope rationae personae (ad 4), the EC CoC covers both **current** and **former** members, as well as to the person proposed as **candidate** for President of the Commission and to Commissioners-**Designate** (Article 1 EC CoC).

Scope rationae materiae (ad 5), the EC CoC covers the following topics:

- (actual or potential) conflict of interest, Article 2 (6) i.c.w. Article 4 EC CoC;[105]
- declaration of (financial) interest, Article 3[106] and 4 EC CoC;
- collegiality and discretion (Article 4 EC CoC), integrity (Article 6 EC CoC);
- transparency (Article 7 EC CoC, referring to the Transparency Register[107] and Commission Decision 2014/839/EU, Euratom[108]);
- external activities during term of office, Article 8 EC CoC;

[103] The consultation of the IEC is foreseen in case of a COI (Article 4 [4] EC CoC) as well as in the context of post term of office activities (Article 11 [3] and [7] EC CoC).

[104] Cf. Article 245 TFEU (obligations both during and after term of office) or Article 247 TFEU (serious misconduct, etc.).

[105] According to Article 2 (6) EC CoC, a COI "arises where a personal interest may influence the independent performance of their duties". A COI does not exist where a Member "is only concerned as a member of the general public or of a broad class of persons". A COI includes, amongst others, "any potential benefit or advantage to Members themselves, their spouses, partners […] or direct family members". Article 12 (4) EC CoC also requires IEC members to sign a declaration on the absence of a COI.

[106] Declarations must be updated "at the earliest opportunity and at the latest within two months of the change in question" (paragraph 3 leg. cit.) and "shall be made public in an electronic and machine-readable format" (paragraph 5 leg. cit.).

[107] See above, footnote (fn.) 53.

[108] See above, fn. 55.

- participation in national (Article 9 EC CoC) and European (Article 10 EC CoC) politics during the term of office;
- gifts up to a value of € 150, Article 6 (4) EC CoC;
- post-term of office activities (Article 11 EC CoC), including a two years 'notification period'[109], where former members are prohibited from lobbying for a period of two years (three years in case of the former Commission President).

Article 2 EC CoC (ad 6) sets up the following **principles**:[110] the general interest of the Union, complete independence, integrity (cf. Article 6 CoC), dignity, loyalty and discretion (cf. Article 5 CoC), in compliance with the rules laid down [in the Treaties and this CoC]". These principles also cover collegiality (cf. Article 5 CoC) and collective responsibility. It is worth mentioning that Article 2 (2) EC CoC requires Commission members to "observe the highest [!] standards of ethical conduct".

2.2.3. Council of the European Union and European Council

The **Council** of the EU (in the following 'the Council') has **not** adopted a Code of Conduct for its members. Likewise, the rules of procedure of the Council (Council RoP)[111] do not comprise rules similar to Parliament or the Commission. The only general rules, applicable not only to the Council, can be found in the field of budget implementation, where Article 61 of the 'Financial Regulation'[112] foresees rules in the case of conflict of interest COI (i.e., obligation to refer the matter to the relevant hierarchical superior).

Although its members (representative of each Member State at ministerial level) might be bound by different provisions in their home-countries, this raises legitimate concerns as these members, as well as the staff preparing the Council work,[113] play a significant role in the preparation and decision-making at EU (!) level. As the European Court of Auditors (ECA) has held in a recent special report, "there is no overview at the Council of all the national ethical frameworks applicable to its Members and to the other representatives of the Member States. No assurance exists whether national requirements cover all the necessary elements and relevant risks with respect to the nature of the position and work they perform"[114].

[109] On the case of the former Commission President Barroso, see Ad Hoc Ethical Committee (2016); European Ombudsman (2017c).

[110] These principles are part of Figure 2, except for collegiality, as this principle is specific to the Commission; cf. ECJ judgement of 13 December 2001, *Commission v France (BSE)*, C-1/00, EU:C:2001:687, para. 79: "the principle of collegiality is based on the equal participation of the Commissioners in the adoption of decisions, from which it follows in particular that decisions should be the subject of collective deliberation and that all the members of the college of Commissioners should bear collective responsibility at the political level for all decisions adopted".

[111] Council Decision (2009/937/EU) of 1 December 2009 adopting the Council's Rules of Procedure, OJ L 325, 11.12.2009, pp. 35–61, as amended by OJ L 294, 8.9.2020, pp. 1–2.

[112] Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union […], OJ L 193, 30.7.2018, pp. 1–222.

[113] On the Committee of Permanent Representatives of the Governments of the MS (COREPER), see Article 16 (7) TEU and Article 240 (1) TFEU.

[114] European Court of Auditors (2019, p. 16).

Hence, ethics rules for this co-legislator at EU level should also be regulated at EU level. The same analysis also applies to the issue of transparency and lobbying, where the Council is not part of the IIA Lobbying.[115] Consequently, also such rules on transparency are outsourced to national level.[116]

Besides the Council (of Ministers), also the **European Council** (EUCO), comprising the Heads of State or Government of the MS, together with its President (Article 15 [6] TEU) and the President of the Commission is "not subject to any common ethical framework at EU level"[117]. The EUCO RoP[118] contain nothing relevant to this issue. The only exception is the EUCO President who is bound to a CoC (EUCO CoC)[119].

This (ad 1) EUCO CoC follows a self-regulatory approach, which does not set-up an ethics body, but only (ad 2) charges the current EUCO President with (ad 3) selected **supervisory** functions in the case of former EUCO Presidents.[120] *Scope rationae personae* (ad 4), this document applies to the current as well as to former (pts. I.4, VI.1-2 EUCO CoC) EUCO Presidents only, *scope rationae materiae* (ad 5) it covers the following topics:

- (actual or perceived) conflict of interest, pts.I.2-3 (and II.1-2, V.4) EUCO CoC;
- declaration of (financial) interest (DOI), pts. II.1-2 EUCO CoC;
- gifts (up to the value of € 150) and hospitality, including stricter rules, if offered by private entities, pts. III.1-9 EUCO CoC;
- composition of cabinet, pt. IV EUCO CoC;
- outside activities during the term of office, pts. V.1-5 EUCO CoC;
- post-term-of-office activities, pts. VI.1-2 EUCO CoC.

In the latter field and for a period of eighteen months following the end of office, the EUCO CoC (pt. VI.1) stipulates a prohibition not to lobby members of EU institutions or their staff on behalf of the former Presidents' company, client or employer. As mentioned above, in the case of the former President informing the current President about the intention to engage in an occupation during the eighteen months after ceasing to hold office, it is the current President who will examine the nature of the planned activity and if she or he considers it appropriate, the European Council will be informed on this. Hence, this is not an external ethics body, but not even an internal one.

Both these rules as well as several of the (ad 6) **principles** are reminiscent of the Commission. The EUCO CoC, amongst others[121], addresses independence, honesty, dignity, loyalty and discretion and requires the President to observe the highest (!) ethical standards ("*les normes les plus élevées en matière d'éthique*") (EUCO CoC pt. I.1)

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[115] On the broader hesitancy of the Council concerning IIA; see also Jacqué (2004, p. 390).

[116] Cf. Driessen (2012, p. 247).

[117] European Court of Auditors (2019, p. 16).

[118] European Council Decision of 1 December 2009 adopting its Rules of Procedure, OJ L 315, 2.12.2009, pp. 51–55.

[119] EUCO (2020); previously: Council of the EU (2015). In terms of legal provision, besides Article 15 (5) TEU (serious misconduct), Council Decision of 1 December 2009 laying down the conditions of employment of the President of the European Council, OJ L 322, 9.12.2009, p. 35–35, provides for no further substantive rules.

[120] Examination of the nature of planned post term-of-office activities, pt. VI.2; previously (Council of the EU (2015)) this task was assigned to the Secretary-General.

[121] The EUCO CoC also refers to the dignity and duties of the office, as well as openness and transparency (introduction); the interests of the EU (pt. V.1); as well as honesty and discretion (regarding the acceptance of certain appointments or benefits), also after holding this office (pt. VI.1).

In a **recent case**, the General Court (GC) had to decide on a possible conflict of interest of Mr Andrej Babiš (Prime Minister of the Czech Republic) and the question of excluding him from an EUCO meeting, also covering questions of the Multiannual Financial Framework (MFF) 2021/2027 because of his personal and family interests in companies of the Agrofert Group (in particular agri-food sector). The GC has referred to the above-mentioned lack of provisions at EU level and has referred to the vertical distribution of competences (EU and MS), and the "responsibility of the [MS] to adopt national measures, including constitutional measures, making it possible to determine whether they should be represented, at meetings of that institution, by their Head of State or Government respectively and, if so, whether there are grounds which may lead to one of them being prevented from representing his respective [MS] within the [EUCO]"[122].

Although not decisive for this case,[123] it should be pointed out that the GC has referred to Article 7 TEU (procedure in case of violation of the EU's common values) in case of a "manifest" COI.[124] This can be interpreted as seeking to strike a **balance** between the two pools, namely, the EU's common values (Article 2 TEU) on one hand and the protection of the national identity of the MS (Article 4 [2] TEU) on the other. This approach is not surprising, keeping in mind the CJEU's 'judicial self-restraint' when being confronted with cases involving ethical implications.[125] Knowing that certain gaps will not be filled by the judiciary (unless a high threshold is surpassed), this is another argument for EU rules on possible ethical challenges in case of EU decision-making.

2.2.4. Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) consists of two courts: the Court of Justice (ECJ) and the General Court (GC). CJEU is bound to the following (ad 1) Code of Conduct (**CJEU CoC**),[126] "adopted jointly by the Court of Justice and the General Court"[127]. According to this code of conduct, (ad 2) the **President** of the Court of Justice is responsible for ensuring its proper application. In this task, the President is "assisted" by a '**Consultative Committee**' (CC). This internal body is composed of "the three Members of the Court of Justice who have been longest in office and the Vice-President of the Court of Justice if he or she is not one of those Members"[128]. As is well known, the principle of seniority plays a major role at the CJEU, which is why this and no other qualification criteria are taken into

[122] GC judgement of 17 July 2020, *Wagenknecht v European Council*, T-715/19, EU:T:2020:340, para.35.

[123] N.B. The GC has left open the question of a COI and has referred to a pending procedure (in case T-76/20); GC judgement of 17 July 2020, *Wagenknecht v European Council*, T-715/19, EU:T:2020:340, paras.37-38. **N.B.** By GC order (of the President of the Third Chamber) of 25 August 2020, *Czech Republic v Commission*, T-76/20, EU:T:2020:379, the case has been removed from the register.

[124] GC judgement of 17 July 2020, *Wagenknecht v European Council*, T-715/19, EU:T:2020:340, para.36. In this paragraph, the GC has also mentioned the possibilities of infringement proceedings (Article 258 TFEU [EC v MS] and Article 259 TFEU [MS v MS]).

[125] Frischhut (2019, pp. 44-52, 144).

[126] Code of Conduct for Members and former Members of the Court of Justice of the European Union, OJ C 483, 23.12.2016, pp. 1-5.

[127] CJEU (2020).

[128] Article 10 (1) CJEU CoC. In case a Member or a former Member of the GC be the person concerned, the President, the Vice-President and another Member of the GC shall take part in the deliberations of the Committee.

account. Besides assisting the President, no further (ad 3) **competences** of this advisory CC are mentioned in the CJEU CoC.[129]

Scope rationae personae (ad 4), the CJEU CoC applies to the current as well as former members "of the Courts or Tribunals that constitute or have constituted the Court of Justice of the European Union" (Article 1 leg. cit.).

Scope rationae materiae (ad 5), the CJEU CoC covers the following topics:

- (actual or "perceived") conflict of interest, Article 4 (1) i.c.w. Article 5 (1) CJEU CoC;[130]
- declaration of (financial) interest (DOI), Article 5 (2) to (6) (and Annex) CJEU CoC;
- members shall not accept gifts of any kind, which might call into question their independence, Article 3 (2) CJEU CoC;
- prohibition of side jobs (except certain activities in the European interest and certain unremunerated duties), Article 8 CJEU CoC;
- post-term rules, including a three-year cooling-off period as representatives of parties, Article 9 CJEU CoC.

Article 2 CJEU CoC lists (ad 6) the following **principles**, which are then further specified in separate articles: "Members shall perform their duties with complete independence, integrity, dignity [Article 3 CJEU CoC] and impartiality [Article 4 CJEU CoC] and with loyalty [Article 6 CJEU CoC] and discretion [Article 7 CJEU CoC]". Former members "continue to be bound by their duty of integrity, of dignity, of loyalty and of discretion" (Article 9 [1] CJEU CoC).

2.2.5. European Central Bank

The financial sector is sensitive and early on, EU institutions adopted ethics related standards, particularly in this field.[131] Depicting the European Central Bank (ECB)[132] will be done in a slightly different way, as there are (ad 1) various relevant documents. One of such on staff, as well as three other ones on high-level officials (printed in Italics), i.e. the Governing Council and the Executive Board of the ECB established on the basis of Article 129 (1) TFEU and the Supervisory Board[133]. Since January 2019, the latter three are covered by a new Code of Conduct.

- 'Ethics Framework' for **all staff** (ECB EF)[134], which is part of the ECB Staff Rules[135];
- *Code of Conduct for the members of the* ***Governing Council***[136];

[129] Article 9 (4) CJEU CoC refers only to an opinion of the CC, which shall be rendered before the President takes a decision in the context of duties of the Members after ceasing to hold office.

[130] See also Article 3 (1) CJEU CoC, which addresses the conflict of both "personal", as well as "national" interest.

[131] For the European Investment Bank (EIB) and the ECB, see Frischhut (2015a, pp. 540–541).

[132] For the ECB RoP, see Decision (2004/257/EC) of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (ECB/2004/2), OJ L 80, 18.3.2004, pp. 33–41, as amended by OJ L 141, 1.6.2017, pp. 14–17; as well as, Rules of Procedure of the Supervisory Board of the European Central Bank, OJ L 182, 21.6.2014, pp. 56–60, as amended by OJ L 241, 27.7.2020, pp. 43–45. For further information, see also ECB (2020a).

[133] See Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, pp. 63–89.

[134] The ethics framework of the ECB […], OJ C 204, 20.6.2015, pp. 3–16. Updated (after the finalisation of this study), see: Amendment to the ethics framework of the ECB […], OJ C 375, 6.11.2020, pp. 25–41.

[135] ECB (2020b).

[136] Code of Conduct for the members of the Governing Council, OJ C 123, 24.5.2002, pp. 9–10.

- *Supplementary Code of Ethics Criteria for the members of the **Executive Board** of the ECB*[137];
- *Code of Conduct for the members of the **Supervisory Board** of the ECB*[138];
- (the new) CoC for **high-level** ECB officials (ECB CoC)[139].

The ECB is a good example for consolidating various standards into one document; that is why these three previous documents for high-level officials are covered also. Besides these substantive rules, the ECB, through a decision from 17 December 2014 (**ECB Dec EthCo**)[140] established (ad 2) an **Ethics Committee** (EthCo). The focus lies on this Ethics Committee. Sometimes, for instance, in case of post-employment rules, the members must provide information to both the President and Chair of the respective high-level ECB bodies, as well as to the Ethics Committee (Article 17.1 ECB Dec EthCo).

This Ethics Committee is composed of **three external** (!) members, where "at least one of whom shall be an external member of the Audit Committee" (Article 1 [2] ECB Dec EthCo). They are appointed by the Governing Council (Article 2 [1] ECB Dec EthCo) for a term of three years, renewable once (Article 2 [3] ECB Dec EthCo).[141] Apart from the fact that they are external persons, the **qualification criteria** are also ambitious. The members shall be individuals "of high repute" from Member States, and "whose independence is beyond doubt and who have a sound understanding of the objectives, tasks and governance of the ECB, the ESCB, the Eurosystem and the SSM"[142]. In terms of incompatibility provisions, they shall not be "current staff of the ECB or current members of bodies involved in the decision-making processes of the ECB, the national central banks or the national competent authorities" (Article 1 [3] ECB Dec EthCo). In addition, they shall "observe the highest [!] standard of ethical conduct" and "are expected to act honestly, independently, impartially, with discretion and without regard to self-interest and to avoid any situation liable to give rise to a personal conflict of interest" [143]. They are also expected to be "mindful of the importance of their duties and responsibilities" (Article 2 [4] ECB Dec EthCo).

Unlike the previous documents, this one does not charge an Ethics Body plus the President of this institution. Quite the opposite, in terms of (ad 3) **competences**, the EthCo shall provide **advice** on questions of ethics, related to the afore-mentioned documents based on **individual requests** (Article 4 [1] ECB Dec EthCo). In addition, the EthCo shall offer **guidance**[144] by assuming the responsibilities assigned by the afore-mentioned pervious documents (i.e. of the Ethics Adviser[145], the ECB's Ethics Officer[146], etc.[147]), and now by the new CoC concerning high-level ECB officials[148] (Article 4 [2] ECB Dec EthCo). Apart from that, the Ethics Committee may also perform other activities related to this mandate,

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[137] Supplementary Code of Ethics Criteria for the members of the Executive Board of the European Central Bank (in accordance with Article 11.3 of the Rules of Procedure of the European Central Bank), OJ C 104, 23.4.2010, pp. 8–9.

[138] Code of Conduct for the Members of the Supervisory Board of the European Central Bank, OJ C 93, 20.3.2015, pp. 2–7.

[139] Code of Conduct for high-level European Central Bank Officials, OJ C 89, 8.3.2019, pp. 2–9 (see also the various documents mentioned in the preamble).

[140] Decision (EU) 2015/433 of the European Central Bank of 17 December 2014 concerning the establishment of an Ethics Committee and its Rules of Procedure (ECB/2014/59), OJ L 70, 14.3.2015, pp. 58–60.

[141] The Ethics Committee itself (!) shall designate its Chair (Article 2 [2] Dec EthCo ECB).

[142] ESCB = European System of Central Banks; SSM = Single Supervisory Mechanism.

[143] They shall "abstain from any deliberation in cases of perceived or potential personal conflict of interest" (leg. cit.).

[144] See also Article 17.3 ECB CoC on an opinion of the Ethics Committee on the cooling-off periods of members and alternates.

[145] See fn. 136 (pt. 7: "The Governing Council shall appoint an Ethics Adviser to provide guidance to the members of the Governing Council").

[146] See fn.137 (pt. 6: consultation of the Ethics Officer in case of doubt on the application of these rules).

[147] See also Article 7.1 (etc.) of the CoC concerning the Supervisory Board (fn. 138), which has referred to the Ethics Committee.

[148] See Article 1.6 ECB CoC, etc.

however, only if so requested by the Governing Council (Article 4 [5] ECB Dec EthCo). Thus, this body has no right to assign itself to other tasks.

Enforcement is in some parts (e.g., post-employment rules) supported by the Governing Council (Article 17.6 ECB CoC). On a broader scale, in case of non-compliance by a member or alternate with the provisions of the ECB CoC, the Ethics Committee shall first address the matter with the individual concerned. In case "adherence cannot be achieved through moral suasion", the Ethics Committee shall raise the matter with the **Governing Council**, which eventually may decide "to issue a reprimand and, where appropriate, make it public" (Article 18 ECB CoC).

As mentioned in the preamble, (4) *scope rationae personae*, the ethics rules for **members** of the bodies involved in the ECB's decision-making processes should be based on the **same principles** that apply to ECB **staff** members "and should be proportionate to the addressees' respective responsibilities";that is why these aforementioned documents shall be "interpreted in a coherent manner" (recital 3 ECB Dec EthCo).[149]

Scope rationae materiae (ad 5), the afore-mentioned documents cover the following selected (!) topics:

- 'Ethics Framework' for **all staff**, which is part of the ECB Staff Rules:
  - conflict of interest, pt. 0.2.1;
  - gifts and hospitality, pt. 0.2.2;
  - external activities, pt. 0.2.6;
  - post-employment restrictions, covering notification obligations and cooling-off periods, pt. 0.2.8;
  - private financial transactions, pt. 0.4;
  - dignity at work, pt. 0.5.

- *Code of Conduct for the members of the **Governing Council**:*
  - *(actual or potential) conflict of interest, pt. 4;*
  - *(basically) no gifts, pt. 3.3;*
  - *annual list of external mandates, pt. 3.6;*
  - *private financial transactions, pt. 4.3;*
  - *post-term rules during first year, pt. 6.*

- *Supplementary Code of Ethics Criteria for the members of the **Executive Board** of the ECB:*
  - *conflict of interest, especially in case of invitations, pt. 3;*
  - *gifts received up to the value of € 50, gifts given up to the value of € 150, pt. 2;*
  - *rules on private financial transactions ('insider trading'), pt. 5.*

- *Code of Conduct for the members of the **Supervisory Board** of the ECB, which applies "without prejudice to the application of stricter national rules" (Article 1.2):*
  - *(actual or potential) conflict of interest, Article 9; see also Article 11;*
  - *declaration of wealth, Article 6;*
  - *gifts up to the value of € 50, Article 10;*
  - *independence, Article 4;*
  - *private financial transactions, Article 5;*
  - *(various) cooling-off periods, Article 8.*

- CoC for **high-level** ECB officials, which applies without prejudice to stricter national rules (Article 2.2):

[149] See also Article 1.1 ECB CoC.

- (actual or perceived) conflict of interest, Articles 6, 7[150], 11, 12 and 15;
- rules on relations with interest groups, requiring members and alternates to be "mindful of their independence, their professional secrecy obligations, and the basic principles [of the ECB CoC]", Article 8;
- declaration of interests (Article 10) and a declaration of honour (Article 17.7);
- (basically) gifts up to the value of € 100, Article 13 (see also Articles 14 and 15);
- professional secrecy, Article 4;
- separation of the supervisory function from the monetary policy function, Article 5;
- private financial transactions, Article 16;
- post-employment rules, requiring, amongst others, a signed Declaration of Honour on an annual basis, Article 17 (7).

The afore-mentioned documents cover (ad 6) the following selected (!) principles:

- 'Ethics Framework' for **all staff**: mentions various principles, among others, independence, impartiality, conscientiousness, honesty, no self-interest, dignity at work the highest standards of professional ethics, as well as the ECB's common values.
- *Code of Conduct for the members of the **Governing Council**: as in ECB Dec EthCo, pt. 2.*
- *Supplementary Code of Ethics Criteria for the members of the **Executive Board** of the ECB: refers to principles of (old) Ethics Framework, pt. 1.*
- *Code of Conduct for the members of the **Supervisory Board** of the ECB: as in ECB Dec EthCo, Article 2.1.*
- CoC for **high-level** ECB officials: mentions various principles such as "the highest [!] standards of ethical conduct and integrity", honesty, independence, impartiality, discretion, and no self-interest (Article 3.2) as well as accountability and transparency (recital 1).

There are various **lessons learnt** to be taken from the ECB:

- First, the ECB can be taken as an example of **consolidating** various codes of conduct into a single document (for high-level officials); that is why the previous documents have also been covered here.
- The principles of observance of "the highest [!] standards of ethical conduct and integrity" (Article 3.2. ECB CoC) is characteristic of the general **ambitious** approach of the ECB. The Bank has understood well that adherence to the ethical principles mentioned above "is a key element of the ECB's credibility and vital to securing the trust of European citizens" (recital 1 ECB CoC) as well as a "key prerequisites for safeguarding the reputation of the ECB" (recital 2 ECB CoC).
- The ECB does not follow a self-regulatory approach, rather its Ethics Committee comprises **external** (!) members.
- It is also worth mentioning that the Ethics Committee was mandated by the Governing Council "to reflect on the feasibility of establishing a single code of conduct". Based on this mandate, the **Ethics Committee drafted** this code of conduct for high-level ECB officials (recital 7 ECB Dec EthCo).
- The ECB CoC strives to **close loop-holes**, for instance, by also extending its scope to persons replacing the members in meetings (Article 1.2 leg. cit.) and tries raising awareness by requiring members to sign a Declaration of Ethical Conduct (Article 1.4 leg. cit.)

[150] According to Article 7.5 ECB CoC, members and alternates "shall notify the Ethics Committee in writing of any private activities which they intend to perform" and have to provide an annual update of their ongoing private activities and official mandates.

- In terms of **enforcement**, the interaction between the Ethics Committee ("moral suasion") and the Governing Council ("reprimand and, where appropriate, make it public") can serve as a role-model for other EU institutions (Article 18 ECB CoC).
- This document might also serve as a **role model** for the Council in terms of standards at EU and at national level, as members and alternates have to inform the Ethics Committee "without undue delay of any impediment to comply with this Code, including any impediment arising from conflicting provisions of national law" (Article 2.1 ECB CoC). The above-mentioned philosophy of the "highest" standards also applies in the case of a conflict, as according to Article 2.2. ECB CoC the "stricter ethical rules" apply.
- Consequently, the author agrees with the ECB's statement that the ECB CoC "reflects best practices within the central banking and supervisory communities and of fellow EU institutions" (recital 8).

2.2.6. European Court of Auditors

The European Court of Auditors (ECA) has been mentioned concerning its special report on the 'ethical framework' of the other EU institutions.[151] In the following, the ECA's own rules in this field shall be briefly depicted. The (ad 1) relevant legal documents constitute the 'Ethical Guidelines' from October 2011 (ECA EthG)[152], as well as the 'Code of Conduct for the Members of the Court' from February 2012 (ECA CoC)[153] for the **substantive** rules, as well as 'Decision No 38-2016 laying down the rules for implementing the rules of procedure [cf. ECA RoP[154]] of the Court of Auditors' (ECA ImpRoP)[155], setting up (ad 2) an **Ethics Committee**.[156] The ECA refers to ISSAI (International Standards of Supreme Audit Institutions) No 130 entitled 'Code of Ethics',[157] of the 'International Organization of Supreme Audit Institutions' (INTOSAI), which are included in its Ethical Guidelines.

This Ethics Committee is composed of three permanent and three alternate members, where both groups include two internal members of the ECA, as well as one external one (Article 33 [1] ECA ImpRoP). The members are appointed by the ECA (based on a proposal from the President) for a term of three years, renewable once (Article 33 [2] ECA ImpRoP). Interestingly enough, this document mentions no qualification criteria at all.

The (ad 3) **competences**, however, are broad, as the Committee "shall consider any matter of an ethical nature [the Ethics Committee] deems relevant to the standards and reputation of the Court". Furthermore, it shall provide **advice** to the President and Members of the Court "on any [!] ethical question, in particular relating to the interpretation of [ECA CoC]" (Article 34 [1] ECA ImpRoP).[158] In terms of **enforcement**, the Ethical Guidelines qualify a failure to respect 'ethical principles' as a possible dereliction of duty, which might result in the opening of disciplinary procedures (preface ECA EthG). According to the ECA CoC, the President and members of the Court are in charge of the application

[151] European Court of Auditors (2019).

[152] ECA (2011).

[153] ECA (2012).

[154] Rules of Procedure of the Court of Auditors of the European Union, OJ L 103, 23.4.2010, pp. 1–6.

[155] ECA (2016, as amended 2018).

[156] For further information, see also ECA (2020).

[157] International Organization of Supreme Audit Institutions (2019).

[158] The Ethics Committee is also responsible for assessing the outside activities of ECA Members (Article 24 [2] ECA ImpRoP and Article 4.5 ECA CoC).

and interpretation of this code, the Ethics Committee is involved only insofar that the President or the members seek its advice (Article 9 ECA CoC).

Scope rationae personae (ad 4), the Ethics Committee is only responsible for **members** of the Court (Article 34 ECA ImpRoP). The Ethical Guidelines, however, "apply to all Court personnel: Members, managers, auditors and staff in administrative functions"; that is why they also embrace the relevant provision of the TFEU, the Staff Regulations[159], as well as "the principles of good administrative conduct" (preface ECA EthG). The obligations of the Ethical Guidelines continue to apply after leaving the ECA (Article 1.2 ECA EthG). The ECA CoC complements the ECA EthG concerning (**current and former**) members "by provisions specifying the particular obligations deriving from the [TFEU]" (preamble).

Scope rationae materiae (ad 5), the ECA EthG (staff) and the ECA CoC (members) cover the following topics:

- (real or apparent) conflict of interest, Article 3.1 ECA EthG, Articles 2.1 and 4.3 ECA CoC;
- declaration of (financial) interests, Article 2.2-5 ECA CoC and Annex;
- recruitment of former staff by an audited entity, which can impair the staff's independence, Article 3.6 ECA EthG;[160]
- preservation of independence when meeting interest groups, Article 1.1 ECA CoC;
- (small) gifts (if within normal courtesy) (Article 3.7 ECA EthG), respectively gifts up to the value of € 150 (Articles 3 and 2.6 ECA CoC);
- not using confidential information for private purposes, Article 6.2 ECA CoC;
- outside professional activities (Article 4 ECA CoC) and post-employment rules for a period of three years (Article 8 ECA CoC);
- professional secrecy, Article 4 ECA EthG.

Besides referring to the previously mentioned International Organization of Supreme Audit Institutions (INTOSAI) Code (cf. preface ECA EthG), the Ethical Guidelines mention (ad 6) the following **principles** of integrity, independence, objectivity, impartiality, professional secrecy, as well as good administrative conduct, to achieve trust, confidence and credibility. In addition to these principles, they are based on the following '**values**': independence, integrity, impartiality, professionalism, adding value, excellence and efficiency (preface ECA EthG). The ECA CoC, applicable to (current and former) members, stipulates the following principles: independence, impartiality, integrity, commitment, collegiality, confidentiality and responsibility.

What can be taken away from the ECA is the statement that the ECA EthG document 'only' sets out guiding principles, which need to be applied ("own individual responsibility") by those covered by this document with "common sense" and in open discussions with superiors and colleagues (preface, Article 1.3).

[159] See below, Chapter 2.2.12.

[160] On the 'revolving-doors' phenomenon, see in Chapter 4.4.2.

2.2.7. Economic and Social Committee

In the case of the first advisory body (Article 13 [4] TEU), the Economic and Social Committee (ECOSOC), the (ad 1) relevant document are the RoP ECOSOC[161], comprising the 'Code of conduct of the members of the European Economic and Social Committee' (**ECOSOC CoC**) as part four of this document. The ECOSOC members "shall undertake to respect, and sign" the ECOSOC CoC (Rule 1.4 RoP ECOSOC).

This CoC (ad 2) charges the **President** with the responsibility for "for ensuring that members comply with this Code" (Article 9 ECOSOC CoC); members have to submit their DOI to the President (Article 5 [3] leg. cit.), who is also responsible for the procedure in the event of possible breaches of the CoC (Article 8 leg. cit.).

In these tasks, the President is assisted by an '**Advisory committee** on the conduct of members' (ECOSOC ACCM[162]). There are no qualification criteria mentioned for the six members (three women and three men), who, on a proposal from the bureau, are elected by the assembly for each two-and-a-half year period; members shall have no other permanent responsibilities[163] within the Committee structure (Article 7 [2] ECOSOC CoC).

The (ad 3) task of the ECOSOC ACCM is to "give any member who so requests, in confidence and within 30 calendar days, **guidance** on the interpretation and implementation" [164] of this CoC; the member in question can rely on such guidance (Article 7 [3] ECOSOC CoC). In addition to this guidance in advance, the ECOSOC ACCM, at the request of the ECOSOC President, assesses **alleged breaches** of this CoC and advises the President on possible steps to be taken (Article 7 [4] and Article 8 ECOSOC CoC).

Scope rationae personae (ad 4), the ECOSOC CoC covers the ECOSOC members and their alternates (Article 1 [1]).

Scope rationae materiae (ad 5), the ECOSOC CoC covers the following topics:

- (actual or perceived) conflict of interest, Article 3 ECOSOC CoC;
- declaration of financial interest, Article 5 (3 and 4) ECOSOC CoC.

In terms of (ad 6) **principles**, the ECOSOC members, who are expected to meet "high ethical standards" (recital 9 ECOSOC CoC), "shall be guided by and observe the following general principles of conduct: integrity, openness, diligence, honesty, accountability and respect for the Committee's reputation" (Article 1 [4] ECOSOC CoC) as well as independence (paragraphs 3 and 5 leg. cit.) and the general interest of the EU (paragrap 7 leg. cit.). In their work, ECOSOC members "shall promote democracy and values [cf. Article 2 TEU] based on human rights" (Article 2 [4], and Article 1 [6][165] ECOSOC CoC) and "behave with respect and integrity during their tenure of office" (recital 8 and Article 3 ECOSOC CoC). Article 4 leg. cit. adds dignity and confidentiality to this list.

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[161] Rules of Procedure of the European Economic and Social Committee — March 2019, OJ L 184, 10.7.2019, pp. 23–59.

[162] Not to be confused with the EP ACCM.

[163] "EESC president and vice-presidents, group and section/CCMI presidents, and the quaestors".

[164] Emphasis added.

[165] "In accordance with Articles 2 and 3 of the Treaty on European Union, and with the Charter of Fundamental Rights of the European Union, the members of the Committee shall ensure, in the performance of their duties, the promotion, effective protection and respect of fundamental rights and values such as human dignity, non-discrimination, tolerance, freedom, solidarity, the principle of the rule of law and equality between women and men".

While this CoC does not cover many topics (ad 5) and the ACCM is not ambitious, besides several principles it is interesting to note that the CoC refers twice to the EU's values (Article 1 [6] and Article 2 [4] ECOSOC CoC).

2.2.8. Committee of the Regions

The second advisory body, the Committee of the Regions (CoR)[166] adopted (ad 1) its Code of Conduct in December 2019 (CoR CoC[167]). This one is interesting insofar that (ad 2 [and 3]) it does **not** foresee a similar Ethics body. It is the task of the President and the CoR members to ensure that the CoC is observed and applied in good faith (Article 8 [1] CoR CoC).[168] Interesting to note is that the CoR has set-up an 'Advisory Board on Harassment' (Article 9 CoR CoC).

Scope rationae personae (ad 4), the CoR CoC applies to CoR members and alternates (Article 1 [1] leg. cit.)

Scope rationae materiae (ad 5), the CoR COC covers the following topics:

- conflict of interest, Article 4 CoR CoC;
- no lobbying activity, where "representation of regional or local interests shall not be deemed as lobbying", Article 5 (2) CoR CoC;
- declaration of (financial) interest, Article 6 CoR CoC;
- gifts up to a value of € 100, Article 5 (4) CoR CoC.

In terms of (ad 6) **principles**, the CoR members (and alternates) are expected to exercise their duties "with independence, impartiality, integrity, transparency, dignity and respect for diversity" (Article 2 CoR CoC), where each principle is further dealt with in one of the following articles (3 to 7).[169]

One reason for a less ambitious approach might be addressed in the CoC itself, when referring to the fact that "members of the Committee are representatives of regional and local bodies who either hold a regional or local electoral mandate or are politically accountable to an elected assembly" (recital 1 CoR CoC). The interface EU v national level can also be seen in Article 10 (1) CoR CoC, according to which, the CoR President shall inform the appropriate national authorities in the relevant MS, in case the alleged infringement could constitute a criminal offence. This proposal makes explicit what is reminiscent of the (implicit) approach of the (European) Council; that is to say, to refer to the national level instead of providing for rules at EU level.

[166] No references to ethics (or related concepts) can be found in the CoR RoP, OJ L 65, 5.3.2014, pp. 41–64.

[167] Code of Conduct for Members of the European Committee of the Regions, OJ L 20, 24.1.2020, p. 17.

[168] In fulfilling this task, the President is supported by the First Vice-President, the Chair of the Commission for Financial and Administrative Affairs, the Chair of the national delegation of the member concerned and the President of the political group of the member concerned (Article 8 [2] CoR CoC).

[169] Article 3 CoR CoC further mentions independence and acting in the EU's general interest.

2.2.9. European Ombudsman

The European Ombudsman (EO)[170] is elected by Parliament[171] and "shall be empowered to receive complaints from any citizen of the Union or any natural or legal person residing in, or having its registered office in a Member State concerning instances of **maladministration** in the activities of the Union institutions, bodies, offices or agencies, with the exception of the [CJEU] acting in its judicial role" [172]; the EO shall examine such complaints and report on them (Article 228 [1] TFEU). That is why it is important that the EO "shall be completely independent in the performance of [her or] his duties" (Article 228 [3] TFEU).[173]

The (ad 1) **relevant document**[174] for the EO is the 'Code of Conduct for the European Ombudsman' (EO CoC),[175] a document published on the EO's website. The objective of the **EO CoC**, besides legal obligations is to promote "the highest [!] ethical standards of conduct as encapsulated in the Public Service Principles for the EU civil service" (p. 1). The main EO documents for its staff are the 'Guide on Ethics and Good Conduct for the Ombudsman's Staff' (**EO Guide**),[176] as well as the 'European Ombudsman Internal Charter of Good Practice' (**EO Good Practice**)[177]. The objective of the EO Guide is "to set out and clarify what is expected in the professional conduct of staff working for the Ombudsman, to raise awareness of ethical issues that the staff may encounter and to provide guidance in identifying, preventing and handling such issues" (p. 1).

In terms of (ad 2 [and 3]) person or body in charge, there is **no** ethics body foreseen in the EO CoC. In the case of outside activities **during** the term of office, the EO shall seek the advice of the Secretary General (pp. 2-3). Similar rules apply in case of decorations, prizes or honours, where before accepting any such award, the EO shall also seek the advice of the Secretary General (pp. 3-4). In the case of the EO Guide, both the Secretary-General "and/or" the EO are in charge of authorisation of certain gifts received by EO staff (pt. 2.2). In the case the **former** Ombudsman "intends to engage in either an advisory, non-remunerated post or a remunerated occupational activity during the three-year period after leaving office, she [or he] shall inform the incumbent Ombudsman". Only the EO Guide mentions "Ethics Officer(s)", who "are responsible for ensuring that this guide is reviewed regularly and updated, as necessary" (pt. 3); however, without providing further information (pt. 2.3).

Scope rationae personae (ad 4), the EO CoC covers the EO her- or himself, the EO Guide and the EO Good Practice the EO staff. Certain obligations continue to apply even after leaving the office (e.g., EO Guide pt. 1.3).

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[170] Decision (94/262/ECSC, EC, Euratom) of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ L 113, 4.5.1994, pp. 15–18, as amended by OJ L 189, 17.7.2008, pp. 25–27 (EO Statute). Decision of the European Ombudsman adopting Implementing Provisions, OJ C 321, 1.9.2016, pp. 1–6.

[171] According to Article 228 (2) TFEU, the EO is elected after each election of Parliament for the duration of its term of office and can be reappointed.

[172] Emphasis added.

[173] This provision further states as follows: "In the performance of those duties he shall neither seek nor take instructions from any Government, institution, body, office or entity. The Ombudsman may not, during his term of office, engage in any other occupation, whether gainful or not".

[174] Please note, in case documents are not structured according to articles, in the following reference will only be made to the relevant pages.

[175] European Ombudsman (2020).

[176] See European Ombudsman (2017b).

[177] See European Ombudsman (2017a).

Scope rationae materiae (ad 5), the EO CoC (and the EO Guide) cover the following topics:

- declaration of (financial) interest, likely to create a COI (see below) concerning activities during a three-year period before assuming office, pp. 1-2 and Annex I[178] EO CoC;
- actual, apparent[179] or potential conflict of interest,[180] pp. 1-2 EO CoC; see also pt. 2.1 EO Guide,[181] which requires staff to take a proactive approach[182]; in the case of doubt, staff members "may obtain the advice of someone not directly involved and/or contact the Ethics Officer(s)";
- this topic of COI is also linked to the 'revolving-doors phenomenon', as "staff members may not, for a period of one year following their recruitment, deal with a complaint or inquiry, or a tender or other procedure, in which they were involved or had a direct or indirect interest in their previous employment", pt. 2.1.1 EO Guide[183];
- outside activities during the term of office, which could compromise her independence, pp. 2-3 EO CoC;
- transparency of professional meeting and activities, to be announced on the EO website, p. 3 EO CoC;
- prohibition of decorations, prizes or honours, which might compromise the EO's independence, pp. 3-4 EO CoC;
- gifts, both accepted as well as offered[184], only up to the value of € 100, pp. 4-5 EO CoC; [185] in the case of staff only up to the value of € 50, EO Guide, pt. 2.2;
- requirements on the composition of the cabinet, p. 5 EO CoC;
- protection of whistle-blowers, pt. 2.3.2 EO Guide;
- rules on post term-of-office activities (three years), p. 5 EO CoC.

In terms of (ad 6) **principles**, the **EO CoC** refers to independence and impartiality, besides the mentioned "highest ethical standards" (p. 1). Likewise, the EO Guide refers to the "highest ethical standards" for the EO office staff (p. 1). In the case of a former EO, they continue to be "fully bound by the duty of integrity, discretion and confidentiality" (p. 5). The **EO Good Practice** refers to the following

[178] Cf. also Annex II on missions.

[179] As convincingly stated in the EO Guide (pt. 2.1.1.), "[e]ven appearances of a conflict of interest must be avoided because they cast doubt on the official's impartiality and integrity and can cause reputational damage to the staff member and the Office of the European Ombudsman".

[180] These three types are defined as follows: "A **conflict** of interest involves a conflict between the public duty and private interests of a public official, in which the public official's private-capacity interests could improperly influence the performance of their official duties and responsibilities. An **apparent** conflict of interest exists where it appears that an official's private interests could improperly influence the performance of their duties but this is not in fact the case. A **potential** conflict occurs where a public official has a private interest which would constitute a conflict of interest if the relevant circumstances were to change in the future"; emphases added.

[181] A COI exists "where the staff member has personal connections and interests, such as family connections or financial interests, which may, in any way, affect or influence the work-related decisions of the staff member. Besides family connections (including spouses, partners, parents, children, siblings and the extended family) and financial interests (including share holdings and property ownership) a conflict of interest may arise because of strong bonds of loyalty to a defined person or group, such as friendship, active membership of political or social groups, and recent employment or business partnership".

[182] For instance, "a staff member needs to declare all interests when joining the Ombudsman's Office, so as to allow the hierarchy to allocate to the staff member tasks which have no connection with those interests".

[183] In addition, "any incoming staff from other EU institutions, bodies, offices or agencies who draft, or are part of the approval circuit for inquiries, must not, for one year, deal with cases involving their former DG, department, division or equivalent. This 'cooling off period' on cases is two years for senior staff (i.e. Directors, Secretary-General, and Head of Cabinet)".

[184] Protocol gifts offered by the Ombudsman shall be of a symbolic nature and may not include wines, spirits or tobacco; cf. also below fn. 195.

[185] Information on gifts received, invitations for meals accepted or meals and gifts offered, can be found on the following website: https://www.ombudsman.europa.eu/en/emily-oreilly/ethics-and-conduct.

principles, which are listed at the beginning and then further explained: leadership in problem solving, independence and neutrality, innovative approaches to dispute resolution, systemic thinking, external awareness and curiosity, responsiveness, empathy, as well as openness and engagement. Empathy, for instance, refers to appreciating "the dignity of everyone", as well as "respectful" communication (cf. Article 2 TEU on human dignity, one of the EU's common values). Leadership in problem solving involves the ability "to anticipate consequences", or as we could also say, foresight[186]. At first glance, systematic thinking does not seem to involve ethics, but taking a broader, or we could also say 'holistic' view, can indirectly lead to considering ethical perspectives. The **EO Guide** refers to democracy, accountability, transparency, independence as well as ethical administration (pt. 1.1), honesty, diligence, responsibility, openness, and some more management related principles (pt. 1.2), as well as integrity (and transparency) (pt. 2)[187].

2.2.10. European Data Protection Supervisor

Data protection is an important topic these days and according to Article 1 (3) Regulation (EU) 2018/1725[188], it is the task of the European Data Protection Supervisor (EDPS) to "monitor the application of the provisions of this Regulation to all processing operations carried out by a Union institution or body". The (ad 1) relevant documents in this field are the **EDPS RoP** of 15 May 2020[189], as well as the 'Decision of the European Data Protection Supervisor on the adoption of an Ethics Framework and the appointment of an Ethics Officer' of 12 November 2019 (EDPS EthF)[190]. This latter document refers to various codes of conduct (see recitals 6 to 10 and Article 2), which for reasons of space will not be dealt with in further details, except for the EDPS CoC Supervisors[191].

It should be briefly noted that the EDPS has also established an external advisory group on the ethical dimensions of data protection, the 'Ethics Advisory Group' (EAG).[192] However, this EAG shall, amongst others, analyse ethical dimensions of data protection,[193] and is not in charge of the EDPS, respectively its staff.

The Ethics Framework Decision establishes (ad 2) the post of an '**Ethics Officer'**, appointed for a period of 5 years, renewable once (Article 3 EDPS EthF). In the case of a conflict of interest (or long-term absence), a Deputy officer must be appointed (Article 4 EDPS EthF).

The (ad 3) **competences** comprise the task to "ensure the institution's internal control on ethics, reporting of improprieties, allegations, complaints and potential conflicts of interest", as well as awareness raising, to ensure that they are "accountable for the highest [!] levels of ethical standards"

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186 See also below at fn. 390.

187 The latter two mainly then refer to COI and gifts, as mentioned above.

188 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, […], OJ L 295, 21.11.2018, pp. 39–98.

189 Rules of Procedure of the European Data Protection Supervisor, OJ L 204, 26.6.2020, p. 49.

190 European Data Protection Supervisor (2019). Article 3 (2) EDPS RoP refers to this 'EDPS Ethics Framework'.

191 European Data Protection Supervisor (2016).

192 European Data Protection Supervisor Decision of 3 December 2015 establishing an external advisory group on the ethical dimensions of data protection ('the Ethics Advisory Group'), OJ C 33, 28.1.2016, pp. 1–4.

193 See, for instance, Ethics Advisory Group (2018).

(Article 3 EDPS EthF). Besides raising awareness, the Ethics Officer is also charged with offering **guidance** ("advice on ethics issues upon request"), as well as with investigation[194] (Article 5 EDPS EthF).

Scope rationae personae (ad 4), the "Ethics Framework of the EDPS governs the conduct of the Supervisor and all the staff members, including detached national experts, trainees and all other external staff, in their relations with other EU Institutions, with other stakeholders, and with the general public at large", as well as, basically, the members of the Secretariat (Article 1 EDPS EthF).

As mentioned above, space precludes a detailed analysis of the various documents mentioned in Article 2 EDPS EthF. The EDPS CoC Supervisors *scope rationae materiae* (ad 5), covers similar topics as the afore-mentioned documents such as:

- outside activities during the term of office, Chapter 3;
- (actual, apparent or potential) conflict of interest, chapters 4, 1 and 8;
- declaration of (financial interests) covering the last 5 years, Chapter 4 (and Annex);
- gifts[195] up to the value of € 150, chapters 3, 5-8;
- post term-of-office activities rules (3 years), Chapter 9.

This document is also noteworthy in the sense that, as mentioned in its introduction, it is built on the best practises of the codes of conduct of the ECA, the CJEU, the Commission and the EO.

In terms of (ad 6) principles, the EDPS RoP refers to the following '**guiding principles'** (Chapter 2): good governance, integrity and good administrative behaviour (Article 3), accountability and transparency (Article 4), efficiency and effectiveness (Article 5), as well as cooperation (Article 6). According to Article 55 Regulation (EU) 2018/1725, the EDPS "shall act with complete independence in performing his or her tasks and exercising his or her powers in accordance with this Regulation". The EDPS EthF refers to the principles of impartiality, integrity, transparency and pragmatism (recital 11).

As accurately mentioned in the preamble of the EDPS RoP, "guarantee of Ethics is a collective endeavour for the whole organisation, but its promotion and definition are the responsibility of the Supervisor" (or one could add more generally, of the top management; recital 4), and that is why raising awareness (recital 5) is a key issue. The EDPS CoC Supervisors aptly refers to ethics (respectively, the ethical rules in this CoC), which shall go "beyond" the applicable legal rules; an idea, which this study is also based upon (Chapter 1 EDPS CoC Supervisors).

2.2.11. Euro Group and Euro-Summit

Other than the formal meeting of Ministers for "Economic and financial affairs"[196] in the Council, the 'Euro Group'[197] is only an informal meeting of those **ministers**, whose countries' currency is the Euro.

[194] "Hearing reports of improprieties, allegations, complaints and potential conflicts of interest, intervening and where appropriate reporting any detected deviations as provided in the administrative decisions and policy documents of this Ethics Framework".

[195] Gifts offered by the Supervisors "should be of a symbolic nature and may not include wine, spirits or tobacco".

[196] On the different Council configurations, see decision of the Council (General Affairs) of 1 December 2009 establishing the list of Council configurations in addition to those referred to in the second and third subparagraphs of Article 16(6) of the Treaty on European Union, OJ L 315, 2.12.2009, pp. 46–47, as amended by OJ L 263, 6.10.2010, p. 12–12.

[197] For further information, see Council of the EU (2020a).

Other than the rotating Council presidency,[198] its President is elected for a term of 2.5 years. Although the Lisbon Treaty has **legally recognised** these meetings as such, they **remain informal**.

According to Protocol No 14[199] on the Euro Group, inserted by the Lisbon Treaty, the "Ministers of the Member States whose currency is the euro shall meet informally [!]" to discuss questions related to the specific responsibilities they share concerning the single currency (Article 1 leg. cit.). This provision further states that the Commission "shall take part" in the meetings and the European Central Bank "shall be invited" to take part in such meetings, which shall be prepared by the representatives of the Ministers with responsibility for the finance of the Member States whose currency is the euro and of the Commission.

The 'Treaty on Stability, Coordination and Governance in the Economic and Monetary Union' (TSCG)[200] in Article 12[201] also foresees so-called **Euro Summit** meetings of those "Heads of State or Government of the Contracting Parties whose currency is the euro".[202] These rules are comparable[203] to the meetings of the ministers in the Euro Group and these meetings are also qualified as informal meetings.

The Euro Group was part of some legal disputes in the context of austerity-driven measures concerning Cyprus. The famous ***Ledra*** case mainly revolved around the question of the entity responsible for the one document (Memorandum of Understanding, MoU), causing damage to some people who had lost part of their savings. Without going into the details of some complex legal questions, the ECJ in the end did not target the Euro Group, but the Commission (and in the end also rejected the claims for non-contractual liability).[204] As aptly stated by Repasi in analysing this *Ledra* case, the Euro Group "has no legal personality"[205] and "is not considered a legally accountable author because of its lack of decision-making powers and of any formal structure"[206]. The Euro Group is neither mentioned nor covered by Article 263 TFEU (action for annulment), as it is not an EU institution in the sense of Article 13 TEU[207] and can also not be considered a "body, office or agency", which is the other category of entities covered by Article 263 TFEU.[208]

Although the *Ledra* judgement "closed the doors for individuals to the action for annulment against MoUs and Eurogroup statements, but opened them to the action for damages against the Commission"[209], the practical impact of these informal bodies should not be underestimated; in this

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198 Cf. Council Decision (EU) 2016/1316 of 26 July 2016 amending Decision 2009/908/EU, laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council, OJ L 208, 2.8.2016, pp. 42–44.

199 OJ C 202, 7.6.2016, p. 283–283. Article 137 TFEU refers only to this Protocol and provides no further content-wise clarification.

200 For further information, see Council of the EU (2020b). According to Article 16 TSCG, these rules should have already (five years after 1.1.2013 = 2018) been incorporated in the legal framework of the EU; see also Proposal for a Council Directive laying down provisions for strengthening fiscal responsibility and the medium-term budgetary orientation in the Member States, COM(2017) 824 final 6.12.2017.

201 Article 12 is part of Title III (entitled 'Fiscal Compact') of the TSCG.

202 On the Council of the EU v the European Council, see above Chapter 2.2.3.

203 The Commission President shall be part of these meetings and the ECB President "shall be invited".

204 ECJ judgement of 20 September 2016, *Ledra Advertising v Commission and ECB*, C-8/15 P, EU:C:2016:701, paras. 56-60, 76.

205 Repasi (2017, p. 1144).

206 Repasi (2017, p. 1139).

207 See above Chapter 2.2.

208 See also Repasi (2017, p. 1144). He also refers to the only possibility of reviewing the acts of the Euro Group by applying the approach of the ECJ in the famous judgement of 23 April 1986, *Les Verts v Parliament*, 294/83, EU:C:1986:166, paras. 23-25, according to which action for annulment can be possible in case of "measures […] intended to have legal effects vis-à-vis third parties" (paragraph 25), as (now) the EU (before: Community) is "based on the rule of law" (paragraph 23).

209 Repasi (2017, p. 1154).

context, Repasi also mentions "the risk of advanced deliberations in the Eurogroup and subsequent voting in the ECOFIN Council without in-depth discussions"[210].

Keeping in mind that we are dealing with informal meetings of parts of the Council, as well as the European Council, it is not surprising that the lack of ethical standards identified earlier[211] also applies to the Euro Group and the Euro Summit. In view of their importance, they should both be bound to similar ethical standards as we have seen so far for the other EU institutions.

However, on the website of the Euro Group,[212] no code of conduct or similar rules can be found. A Council decision in this field refers only to the "general interests of the Union",[213] and the "Rules for the organisation of the proceedings of the Euro Summits"[214] contain no further clarification in this regard. For "points of organisation not decided in the rules", they simply refer to the EUCO RoP[215], which "shall be used mutatis mutandis as a source of reference"[216], hence, this can be seen as a **reference to the void** in search of ethical norms.

Ethical standards (both substantive ones, as well as an independent supervision), which might apply to the Council and the European Council in the future, should therefore also apply to the informal meetings of parts of these official EU institutions, that is to say, to the Euro Group and the Euro Summit.

2.2.12. Staff regulations

So far, most documents have mainly been about members (cf. EP CoC, EC CoC, CJEU CoC, ECOSOC CoC, CoR CoC), and some have also covered **staff** (cf. ECA EthG, EDPS EthF). For instance, the Commission's 'Code of good administrative behaviour for the staff of the Commission in their relations with the public' (EC GAB) has been mentioned.[217] That is why in the following, the so called Staff Regulations (Staff Reg)[218] shall briefly be depicted concerning some selected relevant rules.

- **conflict of interest** (Article 11 [3] Staff Reg, see also Article 11a): before recruitment, obligation to provide information on "any actual or potential conflict of interest".
- **gifts** (Article 11 [2] Staff Reg): Prohibition to accept any honour, decoration, favour, gift or payment of any kind whatever, without permission.
- **outside activities** (Article 12b Staff Reg): Necessity of prior-authorisation, which continues to apply in case osf 'leave on personal ground' (Article 40 [1a] Staff Reg[219]).

[210] Repasi (2017, 1145, fn. 102).

[211] See above Chapter 2.2.3.

[212] Council of the EU (2020a).

[213] Council Decision (2012/245/EU) of 26 April 2012 on a revision of the Statutes of the Economic and Financial Committee, OJ L 121, 8.5.2012, pp. 22–24 (Article 3).

[214] General Secretariat of the Council (2013).

[215] See above fn. 118.

[216] General Secretariat of the Council (2013, p. 5).

[217] See above fn. 102.

[218] Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.6.1962, pp. 1385–1386, as amended by OJ C 420, 13.12.2019, p. 22–22 (Staff Reg). See also Article 270 TFEU (CJEU jurisdiction) and Article 336 TFEU (legal basis).

[219] "Article 12b shall **continue to apply** during the period of leave on personal grounds. The **permission** under Article 12b shall **not be granted** to an official for the purpose of his engaging in an occupational activity, whether gainful or not,

- **post-term of office rules** (Article 16 Staff Reg): Officials continue to be bound by the duty to behave with integrity and discretion. The obligation of information for a period of two years, stricter rules in the case of possible COI during a period of three years, plus the possibility of prohibiting lobbying[220] for a period of 12 months in case the of former senior officials.
- **principles** (Article 11 [1] Staff Reg): Obligation to act solely in the interests of the EU, as well as objectively, impartially and in keeping with the duty of loyalty to the EU. Recruitment aiming at officials "of the highest standard of ability, efficiency and integrity" (Article 27 [1] Staff Reg).

After covering EU institutions (understood in a broad sense), let us now turn to some selected examples of best practises at the national level.

which involves **lobbying or advocacy vis-à-vis his institution** and which could lead to the existence or possibility of a conflict with the legitimate interests of the institution" (emphases added). For further details, see European Commission (2018).

[220] "In the case of former senior officials as defined in implementing measures, the appointing authority shall, in principle, prohibit them, during the 12 months after leaving the service, from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during the last three years in the service".

3. COMPARATIVE ANALYSIS

As mentioned above, there is no need to re-invent the wheel, and countries worldwide are struggling with similar challenges as the different stakeholders within the EU, as depicted in the previous chapter. Nevertheless, certain restraint and caution are advisable.

In two of its landmark cases, *van Gend en Loos* and *Costa*, the CJEU has held "that this Treaty [EEC Treaty, now: EU Treaties] is more than an agreement, which merely creates mutual obligations between the contracting states" with the "conclusion to be drawn from this is that the Community [now: EU] constitutes a new [!] legal order of international law".[221] That is why "[b]y contrast with ordinary international treaties, the EEC Treaty has created its own [!] legal system"[222].

The constitutional situation will differ from one nation state to another and concepts should only be transferred if two frameworks (from which a concept is transferred and the one into which it is transferred) are similar in terms of the decisive elements. Even more so, the constitutional situation of a nation state will most likely be different from this 'new legal order' set up by "the basic constitutional charter, the Treaty [EEC Treaty, now: EU Treaties]"[223]. Hence, neither concepts of nation states nor of traditional international organizations can be automatically transferred to a supra-national organization such as the EU. Nevertheless, solutions given to similar challenges in selected countries can serve as a '**source of inspiration**' also for the EU in the sense of best practises.

3.1. Introduction

The **countries** covered for some 'inspiration' will be France (Chapter 3.2) as an EU MS with interesting institutional elements, Ireland as an EU MS with an interesting proposal for a new bill (Chapter 3.3), as well as Canada as a non-EU country with interesting elements as well (Chapter 3.4).[224]

Also the sub-chapters in the following will be **structured** similarly to those in the previous chapter on the EU: After identifying (1) the relevant legal document(s), (2) the person or body in charge of supervising and or enforcing these ethical standards will be identified, as well as her/its (3) relevant competences. This will be followed (4) by the *scope rationae personae* (the persons covered by these standards), as well as (5) the *scope rationae materiae* (the potential ethical challenges addressed). In addition to the key substantive elements portrayed above, (6) further principles contained in these documents will be emphasised.

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[221] ECJ judgement of 5 February 1963, *Van Gend en Loos v Administratie der Belastingen*, 26/62, EU:C:1963:1, p. 12.

[222] ECJ judgement of 15 July 1964, *Costa v E.N.E.L.*, 6/64, EU:C:1964:66, p. 593. Briefly to note that the ECJ in the same judgement (same page) has also referred to the "spirit of the Treaty" to which the MS are bound.

[223] ECJ judgement of 23 April 1986, *Les Verts v Parliament*, 294/83, EU:C:1986:166, para. 23.

[224] Various countries have been excluded for various reasons. While Austria has, for instance, reacted on the 2011 cash-for-amendments scandal with a lobbying law (*Lobbying- und Interessenvertretungs-Transparenz-Gesetz*, BGBl I 64/2012), it is only the Federal Minister of Justice, which is entrusted with the enforcement of this law. While lobbying is not the only topic in the field of transparency and integrity, various countries do not have statutory lobbying rules, including Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, Greece, Latvia, Luxembourg, Malta, Portugal, Romania, Slovakia, Spain, and Sweden. See the overview in Chari et al. (2019, pp. 13–15). It should be mentioned briefly that a reform is currently under discussion in Germany.

In achieving this purpose of identifying 'source of inspiration'[225] as well as for reasons of space, the constitutional situation of these countries will not be covered. For the same reasons, the following sub-chapters will not cover all details.

3.2. The French 'Haute Autorité pour la transparence de la vie publique'

> *"It is therefore proposed that the various existing bodies be brought together within a single authority responsible for monitoring ethics in public life, with each institution, structure or administrative service also having a deontologist at the 'deconcentrated' level." (translation)*[226]

Jean-Marc Sauvé, high-ranked French expert and former President of the famous Article 255 panel[227], summarised in 2011, what was then created in 2013, and what can serve as a strong 'source of inspiration' for the EU as well: The '*Haute Autorité pour la transparence de la vie publique*' (HATVP), which is an independent administrative authority responsible for a broad range of ethics-related tasks.

3.2.1. Relevant legal documents

Without pretending to offer a comprehensive list, there are **(ad 1)** numerous legal documents to be named in this regard. For the sake of clarity, the documents in this sub-chapter are quoted as follows: first indication of the country code (i.e. FR for France), followed by a sequential number. To provide easy access, the links (here: to '*Légifrance*') are provided in the relevant footnote.

- '*LOI **organique** n° 2013-90**6** du 11 octobre 2013 relative à la transparence de la vie publique*' (FR01)[228];
- '***LOI** n° 2013-90**7** du 11 octobre 2013 relative à la transparence de la vie publique*' (FR02)[229];
- '*Règlement intérieur de la Haute Autorité pour la transparence de la vie publique*' (FR03)[230], which can be qualified as the HATVP's **RoP** (mentioned in Article 19.VII FR02);
- '*Loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires. Loi dite **loi Le Pors***' (FR04)[231];

[225] That is to say, mainly in terms of best practice examples, but equally in examples that should rather be avoided.

[226] Sauvé (2011, p. 91): "Il est donc proposé de réunir les différentes instances existantes au sein d'une seule autorité chargée du contrôle de la déontologie dans la vie publique, chaque institution, structure ou service administratif disposant en outre d'un déontologue au niveau 'déconcentré'". Translated with www.deepl.com.

[227] According to Article 255 (1) TFEU, this panel shall "give an opinion on candidates' suitability to perform the duties of Judge and Advocate-General of the Court of Justice and the General Court". For further details, see below at fn. 396.

[228] Available at: https://www.legifrance.gouv.fr/eli/loi_organique/2013/10/11/2013-906/jo/texte.

[229] Available at: https://www.legifrance.gouv.fr/eli/loi/2013/10/11/2013-907/jo/texte. In several passages, it is expected that further details must be provided for in a decree of the Council of State (see FR05). With one exception, these details will not be addressed further below.

[230] Available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000039131341&categorieLien=id.

[231] Available at: https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=B0D41940F14FB31E50F8B1200D2C5A7D.tplgfr34s_2?cidTexte=LEGITEXT000006068812&dateTexte=20210101 (consolidated version as of 1 January 2021).

- '***Décret*** *n° 2013-1204 du 23 décembre 2013 relatif à l'organisation et au fonctionnement de la Haute Autorité pour la transparence de la vie publique*' (FR05)'[232].

The *loi organique*[233] (**FR01**) mainly addresses members of **parliament**, the law issued on the same day (= **FR02**) a big group of **other** public actors, including members of government, to name but a few; that is why a special emphasis of this chapter will be on this document. The RoP (= **FR03**) mainly provide rules on **HATVP members and staff** themselves. The law called *Le Pors* (= **FR04**) provides for rules on **civil servants** and their **ethical obligations**, as well as HATVP competences in this field. The decree **FR05** comprises rules on the on the **organisation and functioning** of the High Authority (and will not be dealt with in further depth).

The 'Law No. 2013-907 of 11 October 2013 on the transparency of public life' (= **FR02**) as the key legal document is **structured** as follows:[234]

- Chapter I: Prevention of conflicts of interest and transparency in public life
    - Article 1: principles, as well as *scope rationae personae*
  - Section 1: Abstention obligations
    - Article 2: conflict of interest
    - *Article 3 amends another law*
  - Section 2: Reporting obligations
    - Article 4: DOI for government members, as well as *scope rationae personae*
    - Article 5: support from tax authorities
    - Article 6: tax information from persons themselves
    - Article 7: unusual evolution of assets
    - Article 8: no supervision of financial instruments
    - Article 8-1: transfer of information before appointment member of government
    - Article 9: procedure for verification of tax position
    - Article 10: COI member of government
    - Article 11: DOI of other (see also Article 4) persons, as well as *scope rationae personae*
    - Article 12: publication of DOI
  - Section 3: Financing political life *(Articles 13 to 18, mainly amending other laws)*
  - Section 3 bis: Transparency of relations between interest representatives and public authorities
        - Article 18-1: transparency register
        - Article 18-2: definition interest representatives
        - Article 18-3: information obligations of interest representatives
    - Subsection 1: Determination and implementation of rules applicable to parliamentary assemblies
        - Article 18-4: relevant rules in parliamentary assemblies
    - Subsection 2: Rules applicable to governmental and administrative authorities and local communities
        - Article 18-5: obligations of conduct of interest representatives
        - Article 18-6: HATVP competences in this field
        - Article 18-7: procedure in case of breach of obligations

[232] Available at: https://www.legifrance.gouv.fr/eli/decret/2013/12/23/2013-1204/jo/texte.

[233] In terms of the hierarchy of laws, a '*loi organique*' is below the Constitution but above ordinary legislation (cf. Article 46 of the French Constitution; available at: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000571356/2020-09-17).

[234] FR01 provides similar rules concerning members of parliament.

        - Article 18-8: further details to be provided in decree of *Conseil d'Etat*
    - Subsection 3: Penal sanctions
        - Article 18-9: punishment in case of infringement of Article 18-3
        - Article 18-10: punishment in case of infringement of Article 18.5 and Article 18-7
  - Section 4: The High Authority for Transparency in Public Life (HATVP)
    - Article 19: HATVP President, members, and others
    - Article 20: HATVP competences
    - *Article 21 amends another law*
    - Article 22: information to different 'superiors' in case of infringement
    - Article 23: post-employment activities
  - Section 5: Position of civil servants exercising a parliamentary mandate
    - *Article 24 amends another law*
  - Section 6: Protection of whistle-blowers
    - *Article 25 amends another law*

- Chapter II: Penal Provisions
  - Article 26: punishment in case of infringement of Article 4 and Article 11 (DOI for government members and other persons)
  - *Article 27 amends another law*
  - *Article 28 amends another law*

- Chapter III: Final provisions
  - *Article 29 amends another law*
  - Article 30: transfer of archives to HATVP
  - *Article 31 amends another law*
  - *Article 32 amends another law*
  - Article 33: dates of entry into force
  - *Article 34 amends another law*
  - Article 35: *scope rationae limitis*

3.2.2. An independent body

The **(ad 2)** HATVP was created in 2013 by FR01 and FR02 as an **independent administrative authority** (Article 19.I FR02), whose members are nominated for a period of six years, not renewable (Article 19.III FR02). Apart from its President,[235] appointed by decree of the President of the Republic, the college of the HATVP is composed of twelve other members (Article 19.II FR02): two members elected by the *Conseil d'Etat* (High Court for administrative matters), two members elected by the *Cour de cassation* (High Court for civil and criminal matters), two members elected by the *Cour des comptes* (Court of Auditors), each court electing one woman and one man; two further members are appointed by the President of the *Assemblée nationale* (National Assembly), two members appointed by the President of the *Sénat* (Senate), each committee electing one woman and one man, and finally, two members are appointed by the Government (again, one woman and one man).

The term of office of the members of the HATVP is **incompatible** with any other office or mandate whose holders are subject to reporting obligations to the HATVP (provided for in Articles 4 to 11 of

[235] See also Article 15 FR03 on the representation of the HATVP.

FR02). The HATVP members themselves have to comply with **reporting obligations** and their declarations of assets and liabilities as well as declarations of interest shall be made public (Article 19.IV FR02).[236]

The RoP define the HATVP's **guiding principles**[237], according to which, the members, rapporteurs and agents of the High Authority shall perform their duties with "integrity and honesty, in compliance with the principles of transparency, impartiality and independence"; they shall ensure, in their professional and private activities that they do not contravene these requirements and principles and that they do not compromise the reputation of the High Authority (Article 1 FR03). They also have to sign a **declaration** of honour (Article 2 FR03), as well as declaration of assets and a declaration of interests, which shall be examined (Article 3 FR03).

HATVP officers may not hold side-jobs (Article 9 FR03) and have to make good use of public funds (Article 11 FR03). Recruitment of HATVP staff must be carried out in a transparent and open way, considering objective criteria (Article 12 FR03). There are no post-employment prohibitions, but HATVP members who, during or at the end of their term of office, engage in a private professional activity may not, in the exercise of that activity, mention their HATVP membership (Article 10 FR03).[238]

An important element of this watchdog in charge of a large number of other public authorities and persons is the task of an **ethics officer** (*référent déontologue*) within the HATVP (Article 3-1 FR03). She or he is appointed by the Chair from the members of the College for the duration of her or his term of office as a member of the High Authority and shall provide general **advice** to the High Authority's staff, who may refer to her or him any ethical issues encountered in the performance of their duties. She or he shall ensure the confidentiality of the information provided by the staff members in this context and shall make any recommendations she or he deems useful. This officer is also responsible for **training** High Authority staff on ethical issues as well as to conduct awareness-raising activities. Article 3-2 FR03 provides for an alert procedure according to which HATVP officers may **report** to the ethics officer any fact of which they have personally become aware and of which they consider, "in a disinterested manner and in good faith" that it is likely to constitute a crime, offence, threat, or serious prejudice to the general interest or a breach of these RoP (= FR03).

Conflict of interest is not only one of the HATVP's competences, also the HATVP members, rapporteurs and agents must assess whether a link of interest is likely to constitute a conflict of interest. In case of doubt, members and rapporteurs shall contact the HATVP President, and staff members the ethics officer (Article 4 FR03).[239] A COI is defined in a non-exhaustive way as follows (Article 5 FR03):

- the public official is the family member of the person concerned (spouse, PACS[240] partner or cohabitee);
- the person concerned has had or continues to have a direct professional relationship with the public official, whether hierarchical or not, for less than three years;
- the person concerned and the public official belong or have belonged to the same public or private body, whether profit-making or not, within the last three years.

[236] See also Article 48 FR03 on what must be published on the website of the HATVP.

[237] Briefly to note that in Article 4 FR03 (COI situations of HATVP staff), these principles are referred to as 'values' (*valeurs*).

[238] Members, rapporteurs and agents have to ensure that they do not use their functions and the information to which they have access for personal purposes, to promote their appointment or recruitment in a public or private body.

[239] In addition, each agent shall communicate (at the beginning of her or his duties and later whenever necessary) to the Secretary General, to her or his superior, as well as a copy to the ethics officer, the list of interest representatives, with whom she or he has a relationship of interest.

[240] *Pacte civil de solidarité* (Civil solidarity pact).

A similar definition (also non-exhaustive) can be found in Article 6 FR03 concerning interest representatives; the relevant procedural rules for members and the President, rapporteurs as well as staff members can be found in Article 7 FR03.[241]

We have seen rules on **gifts** that centre around € 150 for most EU institutions. The amount is 10 times lower in France, as HATVP members, rapporteurs and agents shall not accept any gifts or invitations from a declarant or interest representative, except protocol gifts and gifts and invitations with a value of less than € 15 (Article 13 FR03). In addition, they shall not accept any gift or invitation, regardless of its origin, which they consider would place them in a COI situation; in particular, the HATVP's procurement officers will not accept any (!) gift or invitation from a candidate for a public contract.[242]

Deliberations of the HATVP are **secret** and members remain bound to the obligations of discretion and professional secrecy even after the termination of their functions (Article 14 FR03). The deliberations are adopted by a **majority** of the votes of the members present. In the event of a tie, the President shall have a casting vote (Article 5 FR05). There is no indication that the HATVP can issue dissenting opinions.

Members, rapporteurs and agents shall act with **discretion** in the performance of their duties and outside them (the same applies at the end of their duties); they shall refrain from taking any public position, including on social networks, which may be prejudicial to the reputation and proper functioning of the HATVP (Article 16 FR03).

3.2.3. Competences

The key **(ad 3) competences** of the HATVP are listed in Article 20 FR02. This covers **DOI** (I.1), **COI** (I.2), **ethical advice** (I.3), **post-employment** activities (I.4), and certain activities in the field of **lobbying**[243] (I.5 to I.7). For further details on these topics (besides these competence-related aspects), see also below at (5) *scope rationae materiae*.

- The HATVP shall receive **declarations of (financial) interests** in particular from members of the government, deputies and senators, and shall verify, control and, where appropriate, publicise them (Article 20.I.1 FR02). In the case of a missing or an incomplete declaration of assets or interests, which must be sent to the HATVP President, the HATVP shall issue an **injunction**[244] to the person concerned (Article 4.V FR02). The role of the HATVP is strengthened by Article 5.I FR02, according to which, the French **tax authorities** have to deliver all the necessary information, so that the HATVP can assess the completeness, accuracy and sincerity of the declarations of assets and interests. These declarations (except for certain sensitive data) are then published (within three months) and voters may submit to the HATVP any written comments on these declarations (Article 5.I FR02). Likewise, the HATVP can ask the **persons concerned** (those mentioned in Article 4.V FR02) to communicate declarations they have made in application of the General Tax Code (Article 6 FR02). In the case of an unusual evolution of

[241] The HATVP members and rapporteurs shall ensure that their other activities, whether or not for profit, do not place them in a COI situation; in case of doubt, they have to refer the matter to the HATVP President.

[242] Protocol gifts are subject to a declaration to the ethics officer and are remitted to the administrative and financial department if their value exceeds €30. Members, rapporteurs and agents may only accept travel at the invitation of a third party with the authorisation of the HATVP President. Gifts received whose value exceeds €30 and trips at the invitation of third parties are made public on the HATVP's website.

[243] On lobbying in France, see for instance, Houillon (2014).

[244] See also Articles 37-38 FR03 on the relevant procedural provisions.

these assets, and after having given the member the opportunity to present her or his observations, the HATVP can **publish** a special report in the French **Official Journal** (Article 7 FR02). The President of the Republic may, before the appointment of any member of the Government and regarding the person whose appointment is contemplated, request transmission of relevant information from the HATVP as well as from tax authorities (Article 8-1 FR02). In addition, any member of the Government, from the time of their appointment, shall be subject to a procedure for the verification of their tax position; this procedure is placed under the control of the HATVP, which must inform the 'relevant superior'[245] in case of non-compliance (Article 9 Fro2).[246]

- The HATVP shall decide on **conflict of interest** (Article 20.I.2 FR02). When the HATVP finds that a member of the Government[247] is in a COI situation, it shall require her or him to put an end to this situation; after having given the person concerned the opportunity to submit her or his observations within one month, it may decide to make this injunction public (Article 10 FR02).
- The HATVP shall respond to requests for **ethical advice** that certain groups of persons (mentioned in Article 20.I.1 FR02[248]) encounter in the exercise of their mandate or duties; these opinions, as well as the documents based on which they are issued, shall not be made public (Article 20.I.3 FR02).
- The HATVP shall decide on the compatibility of the exercise of a liberal profession or a remunerated activity within a body or company operating in a competitive sector in accordance with the rules of **private** law with **government** functions or local executive functions,[249] carried out during the **three years** preceding the start of that activity (Article 20.I.4 FR02).
- Either at the request of the Prime Minister or on its own (!) initiative, the HATVP shall issue recommendations for the **application of this law**, which it shall address to the Prime Minister and the interested public authorities that it shall determine. In this capacity, it shall also define recommendations concerning relations with **interest representatives** (on lobbying, see in the following), and the practise of gifts and benefits given and received in the exercise of the functions and mandates[250] (Article 20.I.5 FR02).
- The HATVP shall respond to requests for opinions from certain persons[251] on matters relating to their relations with interest representatives and to the directory of interest representatives[252] (Article 20.I.6 FR02). In this field of '**lobbying**', Article 18-1 FR02 foresees a digital directory, which shall provide citizens with information on the relationship between interest representatives and public authorities. This directory is made public by the HATVP and shall list, for each interest representative, the information that they must communicate to the HATVP via a teleservice (see Article 18-3 FRo2): the identity of persons in charge of the activities of interest

[245] This is the President of the Republic in the case of the Prime Minister, and the President of the Republic and the Prime Minister in the case of another member of the Government.

[246] See also Article 31 FR03 on the relevant procedural provisions.

[247] This does not apply to the Prime Minister.

[248] I.e. members of government, deputies and senators, and those persons mentioned in Article 11 FR02; see below at (4) *scope rationae personae*.

[249] I.e. listed in 2° of I of Article 11 FR02.

[250] Mentioned in Articles 4 and 11 FR02; see below at (5) *scope rationae materiae*.

[251] Mentioned in 1° and 3° to 7° of Article 18-2 leg. cit.

[252] Provided for in Article 18-1 leg. cit.

representation; the scope of activities; actions falling within the scope of the representation of interests carried out plus amount of expenditure related to these actions during the previous year; the number of persons employed and, where applicable, its turnover for the previous year; as well as the professional or trade union organisations or associations to which it belongs. It is the HATVP's obligation (cf. Article 18-6 FRo2) to ensure that interest representatives comply with their obligations mentioned in Article 18.3 (information obligation) and Article 18-5 (obligations of conduct) FR02. In this context, the HATVP can **require** interest representatives to provide any **information or documents** necessary for the performance of its duties and can conduct on-the-spot inspections on the professional premises of the interest representatives (Article 18-6 FR02). Such matters can be referred to the HATVP by various stakeholders (see Article 18-6 FR02). The HATVP must give its opinion on these issues within two months of the date of referral (with the possibility of an extension).

- According to Article 20.I.7 FR02, finally the HATVP shall assess **compliance with the ethical principles** inherent in the exercise of a public office, under the conditions provided by the law on the rights and obligations of civil servants, known as the *Le Pors* law (=FR04), as follows:[253]
    - **Before** appointment to certain high official positions, based on an 'exhaustive, exact and sincere' declaration of interests, the HATVP must evaluate questions of COI, in case the hierarchical authority does not consider itself able to do so (Article 25 ter FR04).
    - **During** their job as civil servants, certain high officials exercising responsibilities in **economic or financial** matters have to take all steps to ensure during their term of office that their financial instruments are managed under conditions, which preclude any right of inspection on their part. These measures must be justified to the HATVP (Article 25 quater FR04).
    - Civil servants appointed to certain high official posts (and who are mentioned on a list drawn up by decree in the Council of State), shall send to the HATVP President (within two months after **appointment**), an 'exhaustive, exact and sincere' declaration of assets. Likewise, within two months of **leaving** office, these civil servants shall send a new declaration of assets to the HATVP President. The HATVP shall assess any **change** in the assets and liabilities of the person concerned. This assessment is based on a comparison between the statement of assets and liabilities submitted following her or his appointment and the statement of assets and liabilities submitted within two months of her or his leaving office. Both the civil servant as well as the tax authorities have to provide relevant information (Article 25 quinquies FR04).
    - Failure to comply with the various obligations in this law is **punishable** by three years' imprisonment and a fine of €45,000 (Article 25 sexies FR04).
    - Article 25 septies FR04 basically foresees a prohibition of **side jobs**. Officials who are employed full-time may, at their request, be authorised by the hierarchical authority to work **part-time** to set up or take over a business and to engage in a private gainful activity. When the hierarchical authority has serious doubts on the compatibility of the proposed creation or takeover of a business with the duties performed by the civil servant during the **three years preceding** her or his request for authorisation, it shall refer the matter to the **ethics officer** for an opinion prior to its decision. When the

[253] See also Articles 39-40 FR03.

latter's opinion does not remove the doubt, the hierarchical authority shall refer the matter to the HATVP, which shall make a decision in accordance with the conditions set forth in Article 25 octies (see below).

- Last but not least, Article 25 octies FR04 emphasises that the HATVP assesses **compliance** with the **ethical principles** inherent in the exercise of public office. Officials **leaving** the service definitively or temporarily shall first refer the matter to their immediate superior for an assessment of the compatibility of any gainful activity, whether employed or self-employed, in a private undertaking or a body governed by private law or any activity in the liberal professions with the duties carried out during the **three years preceding** the start of such activity. When the hierarchical authority has serious doubts on the compatibility of the planned activity with the duties carried out by the civil servant during the three years preceding the start of such activity, it shall refer the matter to the **ethics officer** for an opinion prior to its decision. When the latter's opinion does not remove the doubt, the hierarchical authority refers the matter to the HATVP.

Besides these broad competences, due to its strong **enforcement** competences, the HATVP can be qualified as a 'powerful watchdog'.

- The HATVP is also in charge of **enforcement** (Article 20.II FR02). In the case of infringements,[254] the HATVP can take up the matter on its own initiative (!) or be referred to it by the Prime Minister, the President of the National Assembly or the President of the Senate, as well as certain associations fighting corruption. The HATVP is empowered to **ask**[255] for any explanation or document necessary for it to perform its missions. In addition, the HATVP may **hear or consult** any person whose assistance it deems useful. As we know from the EU, requiring members (e.g., of Parliament) to deliver certain information is not enough, as can be seen from the example of an MEP declaring himself as being the "Master of the universe".[256] That is why the HATVP's competence to perform **checks** on the content of declarations[257] and on the information at its disposal, is of utmost importance.
- **Non-compliance** with the various obligations is punishable with up to three years' imprisonment, heavy fines up to €45,000, as well as a ban on civil rights or a ban on holding public office, according to the French **Criminal** Code (Article 26 FR02). Specific rules can be found in Article 18-9 FR02, in the case of an **interest representative** failing to communicate required information (cf. Article 18-3 FR02 on information obligations), which is punishable by one year's imprisonment and a fine of €15,000.[258]

[254] Article 20.II FR02 refers to all persons mentioned in Articles 4 and 11 leg. cit. (see below at [5] *scope rationae materiae*), who do not comply with their obligations under Articles 1 (principles), 2 (COI), 4 (DOI), 11 (DOI) and 23 (post-term activities) leg. cit.

[255] I.e. those persons mentioned in Articles 4, 11 and 23 leg. cit. (see also fn. 254).

[256] Rohde (2012); Grad and Frischhut (2019, p. 315).

[257] I.e. provided in Article LO 135-1 of the Electoral Code and in Articles 4 and 11 leg. cit. (see below at [5] *scope rationae materiae*).

[258] N.B. Article 18-10 FR02, which foresees a punishment by one year and a fine of € 15,000 in case of a breach of Article 18-5 leg. cit. (obligations of conduct) is not covered any further, as it is mentioned on *Légifrance* that this provision has been declared non-compliant with the Constitution by Constitutional Council (*Conseil constitutionnel*) Decision No. 2016-741 DC of 8 December 2016. On the *Conseil constitutionnel*, see, for instance, Frischhut (2003, pp. 365–376).

- This enforcement competence is further strengthened by Article 22. FR02 that states which superior must be **informed** in case of a failure to comply with these obligations, e.g. the President of the Republic, in the case of the Prime Minister; the Prime Minister, in the case of another member of the Government; or the President of Parliament, in the case of a French MEP.
- In the field of **interest representation**, the afore-mentioned obligations of Article 18-3 (information obligation) and Article 18-5 (obligations of conduct) FR02 can be enforced as follows in case of a breach: The HATVP can address a formal notice to the interest representative concerned, which it may make public, to comply with the obligations to which, she or he is subject, after having given her or him the opportunity to present her or his observations (Article 18-7.1 FR02).[259]

Each year, the High Authority submits a public **report** to the President of the Republic, the Prime Minister and Parliament on the performance of its missions (Article 20.I FR02).[260]

3.2.4. Scope rationae personae

In terms of the *scope rationae personae* (ad 4), the following persons are bound by law No. 2013-907 of 11 October 2013 on the transparency of public life (= FR02), mainly covered in Articles 4 and 11 leg. cit.:

- In **general** terms, Article 1 FR02 refers to the members of the government, persons holding a local elected office and those entrusted with a public service mission. These persons are bound by certain guiding principles (see below at [6]) and have to avoid conflicts of interest (see below at [5]).
- Besides this first article, two other ones then provide for further details in the context of **DOI**, i.e. Article 4 FR02 for members of the **government** as well as Article 11 FR02, covering **other** persons as well.
- The latter provision, Article 11 FR02, extends such DOI obligations, amongst others, also to French **MEPs** (I.1), holders of the office of **President** of a **Regional Council**, President of the Assembly, of Corsica, French Guiana, Martinique, President of an Overseas Territorial Assembly, President of a Departmental Council, and others (I.2[261]), **regional councillors**, councillors at the assembly of French Guyana, Martinique, Corsica, departmental councillors (I.3), the members of the ministerial **cabinets** and the collaborators of the President of the Republic (I.4), the collaborators of the **President** of the National Assembly and the President of the Senate (I.5), and the members of the **body** responsible for **parliamentary ethics** in each of these assemblies (I.5.bis). The lengthy provision of Article 11.I.6 FR02 covers members of the colleges and, where applicable, the members of the commissions vested with powers of sanction, as

[259] See also Articles 43-47 FR03 on on-site and other inspections in the context of lobbying, respectively, Articles 41-42 FR03 on approved associations.

[260] If necessary, the ethics officer sends an annual report on his or her activity to the HATVP President, which is annexed to the HATVP's activity report after the concealment of any information relating to the individual situation of a member of staff (Article 3.1 FR03).

[261] See also Article 11.I.8 FR02.

well as the directors general and secretaries general and their deputies of a long list of bodies such as **agencies** and authorities. Amongst them figures not only the French Anti-Doping Agency or the Competition Authority, but even the HATVP itself. Besides others (I.6.bis and I.6.bis.A), Article 11 FR02 also covers any (!) other person exercising a job or functions at the decision of the Government for which, she or he has been appointed by the Council of Ministers (I.7),[262] as well as chairpersons and general managers of certain entities under public control (Article 11.III FR02).

- After potential targets of lobbying activities, let us now turn to the actors.[263] **Interest representatives** are defined as "legal persons governed by private law, public establishments or public groupings carrying on an industrial and commercial activity, [...] whose principal or regular activity is to influence public decisions, in particular the content of a law or regulatory act"; this definition also addresses those public stakeholders with whom they communicate (see Article 18-2 FR02, for further details; this also includes a negative list of who is excluded). They are bound to the rules enshrined in Articles 18-1 ff. FR02.

3.2.5. Scope rationae materiae

> *"It is therefore proposed to articulate the prevention of conflicts of interest around an Authority for the Control of Ethics in Public Life, which would take over the missions of the current Commission for Financial Transparency in Political Life and the Ethics Commission, to which would be added the missions of prevention of conflicts of interest in the public sphere." (translation)*[264]

In terms of the *scope rationae materiae* (ad 5), law No. 2013-907 of 11 October 2013 on the transparency of public life (= FR02) covers the following topics:

- **Conflict of interest**: A COI (see also Article 1 Fro2) is defined as "any situation of interference between a public interest and public or private interests, which is likely to influence or appear to influence the independent, impartial and objective exercise of a function" (Article 2.I FR02; translation). The same provision defines how the different persons affected by this obligation must react (basically they must refrain from acting and have to refer the matter to their superior) and refers to a public and electronic register, which lists those cases where a member of the Government considered her- or himself to be in a COI (Article 2.II FR02).[265]

[262] Declarations of interest of the persons mentioned in Article 11.I.4° to 8° shall also be addressed to the President of the independent authority or to the hierarchical authority. Any substantial change in the asset situation or in the interests held shall give rise within two months to a declaration in the same form (Article 11.I. FR02).

[263] On this perspective, see also Grad and Frischhut (2019).

[264] Sauvé (2011, p. 91): "Aussi est-il proposé d'articuler la prévention des conflits d'intérêts autour d'une Autorité de déontologie de la vie publique, qui reprendrait les missions des actuelles Commission pour la transparence financière de la vie politique et Commission de déontologie, auxquelles s'ajouteraient les missions de prévention des conflits d'intérêts dans la sphère publique". Translated with www.deepl.com.

[265] See also Articles 32-33 FR03 on the relevant procedural provisions.

- **Declarations of (financial) interests**: Each member of the Government must provide an 'exhaustive, exact and sincere declaration' of her or his assets (defined in Article 4.II FR02) or interests (defined in Article 4.III FR02). This declaration must be provided to the President of the HATVP within two months of her or his appointment, and changes must be indicated within a month (Article 4.I FR02).[266] As mentioned above, similar obligations also apply to those persons covered by Article 11 FR02.[267]

- The '**revolving-doors**'[268] phenomenon can lead to serious COI and refers to a situation where staff circulates, like in a revolving door, from public jobs to private ones, and vice versa. Due to the high prestige of specific schools such as the famous *École National d'Administration* (ENA) and its attractiveness even for the private industry, the practise of revolving-doors between state administration and the private sector is described by Chari et al. as "so common as to deserve its own French word: *pantouflage*".[269] According to Article 20.I.4 FR02, the HATVP shall decide on the compatibility of the exercise of a liberal profession or a remunerated activity within a body or company operating in a competitive sector in accordance with the rules of **private** law with **government** functions or local executive functions,[270] and carried out during the **three years preceding (!)** the start of that activity. Such cases can be referred to the HATVP either by the person concerned (prior [!] to the start of the planned activity) her- or himself or by the relevant chairperson within two months of learning of the unauthorised exercise of such an activity (Article 23.I FR02). The HATVP must give an opinion on this issue, after having given the person concerned the opportunity (except if the case was referred by the person her- or himself) to present its observations (Article 23.I FR02). For a maximum period expiring **three years after** (!) the end of the exercise of governmental or local executive functions, the HATVP may impose on the person concerned compatibility opinions, which may be subject to **reservations** (Article 23.II FR02). If the HATVP issues a decision of **incompatibility**, the person concerned may not perform the planned activity for a period of three years (Article 23.II FR02). The importance of the HATVP's decision is underlined by the fact that this decision is not only **notified** to the person concerned, but also to the body or company within which, that person is performing her or his duties in breach of these rules. In addition, acts and contracts in breach of these obligations **cease to have effect** when the matter has been referred to the HATVP by the person her- or himself, or are **void** *ipso iure* when the matter has been referred to the HATVP by the relevant chairperson (Article 23.II FR02). Opinions can also be made **public** (except for sensitive data) in the case of an incompatibility opinion or a compatibility opinion with reservations (Article 23.II FR02). The role of the HATVP is also strengthened by the fact that it may issue an incompatibility decision when it considers that it has not obtained the necessary information from the person concerned (Article 23.II FR02).[271] Non-compliance with a decision of incompatibility or such a reservation can lead to the following sanction: after the person concerned has been given the opportunity to produce explanations, the HATVP publishes a special report in the Official Journal, including the opinion delivered and the written

[266] As mentioned above, in case of a missing or an incomplete declaration of assets or interests, the HATVP shall issue an injunction to the person concerned (Article 4.V FR02).

[267] These declarations according to Article 11 shall be made public according to Article 12 FR02 (similarly as those of Artide 4 according to Article 5).

[268] See also above at fn. 253.

[269] Chari et al. (2019, p. 105).

[270] I.e. listed in 2° of I of Article 11 FR02.

[271] Opinions of compatibility can be issued by the HATVP President (Article 23.III FR02, further referring to the HATVP's RoP [= FR03]).

observations of the person concerned; this report and the relevant documents are transmitted to the public prosecutor (Article 23.IV FR02).[272]

- Article 18-5 FR02 sets up rules and principles (honesty and integrity), which **interest representatives** must adhere to. They have to declare their identity, the body for which they work and the interests or entities they represent; refrain from offering or handing over to these persons gifts, donations or advantages of any significant value; refrain from paying any remuneration to the certain public staff; refrain from inciting these persons to violate the ethical rules applicable to them; refrain from any approach to these persons to obtain information or decisions by fraudulent means; refrain from obtaining or trying to obtain information or decisions by deliberately communicating false information to these persons or by resorting to manoeuvres designed to deceive them, etc. These (as well as the other) rules are reminiscent of those of the CoC for the EU Transparency Register.[273]

Besides rules on interest representation (lobbying), let us now turn to the targets of lobbying.

3.2.6. Principles

In terms of (ad 6) **principles**, Article 1 FR02 requires the Members of the Government, persons holding a local elected office and those entrusted with a public service mission to perform their duties with dignity, honesty and integrity. They must ensure that any COI is prevented or immediately brought to an end. Members of independent administrative authorities and independent public authorities shall also exercise their functions impartially. Also the law (n° 83-634 of 13 July 1983) on the rights and obligations of civil servants (known as the *Le Pors* law) requires **civil servants** to perform their duties with "dignity, impartiality, integrity and honesty" (Article 25 FR04).

As mentioned above, the RoP define the HATVP's **guiding principles**, according to which HAPTV members, rapporteurs and agents shall perform their duties with "integrity and honesty, in compliance with the principles of transparency, impartiality and independence" (Article 1 FR03). Hence, we can see more requirements for the watchdogs compared to those under scrutiny.

3.2.7. Analysis

> *"[…] ethics cannot be the sole competence of an institution. It only takes on its meaning when it is closest to the action of public officials and it is necessary to be familiar with the specifics of their activity in order to advice them effectively. This is why the High Authority regularly recommends the creation of deontological bodies, in the public establishments, public housing offices or local authorities that call on us. Moreover, there is no single model in this area, with some preferring to appoint an external ethics officer, while*

[272] See also Articles 34-36 FR03 on the relevant procedural provisions.

[273] On the IIA Lobbying and the CoC in Annex III, see above fn. 54. These provisions of Article 18-5 FR02 can be specified in a code of ethics for interest representatives defined by decree of the Council of State, issued after a public notice from the HATVP.

others set up collegiate deontology or ethics commissions, which may involve citizens chosen by lot. The High Authority's role is therefore to be a point of reference rather than the holder of a monopoly on these issues, which must be resolved at the local level if ethics are to become an integral part of the ethos of public officials." (translation)[274]

This quotation well summarises the necessity of a **holistic** approach. Inside the HATVP, we have seen the post of an ethics officer (Article 3-1 FR03), but as this statement indicates, a lattice of ethics bodies is necessary to achieve this goal.[275] This is true even in the case of a powerful watchdog such as the HATVP. The powerful role of the HATVP is based on its strong **independence**, as this authority cannot receive orders from the government or other institutions and enjoys autonomy concerning its internal organisation and working methods. Likewise, the composition of its members can be seen as one of the strength of this authority.[276] As we have seen, the HATVP can take up the matter on its own initiative (!) or be referred to it by the Prime Minister, the President of the National Assembly or the President of the Senate, as well as certain associations fighting corruption.

A 'strong tooth' of this **powerful watchdog** can also be seen in the possibility of requesting information from tax authorities, which makes it possible to verify this information and to identify gaps. This cooperation has been described to have proven as 'extremely satisfactory'.[277] Another 'tooth' is the fact that several obligations in this field are backed up by sanctions (of high monetary fines, including imprisonment). The possibility of informing the relevant superiors can be added to this list, as well as the fact that family members are frequently mentioned when referring to obligations for officials. Still, the HATPV cannot be considered a court (to which cases can be referred to) and its success is also based on dialogue with 'almost all public authorities'.[278]

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[274] Buge and Caron (2017, p. 398): "[…] la déontologie ne peut pas être uniquement la compétence d'une institution. Elle ne prend son sens qu'au plus près de l'action des responsables publics et il faut bien connaître les spécificités de leur activité pour les conseiller efficacement. C'est la raison pour laquelle la Haute Autorité préconise régulièrement la création d'organes déontologiques, dans les établissements publics, les offices publics de l'habitat ou les collectivités territoriales qui nous sollicitent. Il n'y a d'ailleurs pas de modèle unique en la matière, certains préférant désigner un déontologue externe quand d'autres instituent des commissions de déontologie ou d'éthique collégiales, qui peuvent associer des citoyens tirés au sort. La Haute Autorité a donc vocation à être un interlocuteur de référence plutôt que le détenteur d'un monopole sur ces questions, qui doivent être résolues en proximité pour que la déontologie devienne partie intégrante de l'éthos des responsables publics". Translated with www.deepl.com.

[275] See also fn. 226.

[276] Buge and Caron (2017, p. 388): "Pour asseoir sa légitimité, la Haute Autorité a d'abord eu à démontrer sa totale indépendance. Dans la mesure où elle intervient dans le champ politique, il est crucial qu'elle ne puisse pas être suspectée de ce point de vue. Son caractère collégial et les garanties qui entourent la nomination de ses membres, qui sont pour la plupart des magistrats, participent de son impartialité. D'ailleurs, l'analyse des saisines de la justice par la Haute Autorité montre que seule est prise en compte la nature des manquements qui sont constatés". Translated with www.deepl.com.

[277] Buge and Caron (2017, p. 389): "L'une des grandes nouveautés des lois du 11 octobre 2013 a été de doter la Haute Autorité de la possibilité de solliciter des informations de la part de l'administration fiscale. C'est ce qui permet de détecter d'éventuelles lacunes dans les déclarations reçues, par exemple, en demandant la consultation du fichier des comptes bancaires ou celle du fichier des assurances-vie. La collaboration avec l'administration fiscale s'est révélée extrêmement satisfaisante. Elle s'est d'ailleurs concrétisée par la signature d'un protocole qui permet de fluidifier les relations. Il ne faut pas sous-estimer le progrès que cette possibilité de demander et de recevoir des informations a engendré pour la crédibilité du contrôle du patrimoine". Translated with www.deepl.com.

[278] Buge and Caron (2017, p. 396): "La Haute Autorité n'est pas une juridiction, ni un service d'enquête. C'est une administration d'un type un peu particulier puisqu'elle est indépendante et qu'elle entre en dialogue, par la force des choses, avec la quasi-totalité des pouvoirs publics. Étant dépourvue de tout pouvoir de sanction, la Haute Autorité a pour seule faculté la possibilité de saisir l'autorité judiciaire d'infractions ou de manquements dont elle pourrait avoir connaissance. Une fois le dossier transmis à la justice, nous n'avons plus vocation à intervenir. Le parquet n'est d'ailleurs pas lié par notre analyse, même si, jusqu'à présent, la justice nous a toujours suivis". Translated with www.deepl.com.

The relevant documents of the HATVP affect[279] both, members of the affected institutions as well as their civil servants but equally actors of lobbying. Civil servants are affected during the entire life of their public activities, before appointment, during their activities, and, in terms of the revolving-doors phenomenon, also after they have left their public job.

It goes without saying that a watchdog with the afore-mentioned competences and tasks also requires the necessary staff and **budgetary resources**. According the to HATVP's website, the High Authority's budget is set each year by the Finance Act and for 2020, the High Authority has a budget of €7,294,355 in payment appropriations (PA), of which €4,902,681 is allocated to staff expenditure and €2,391,674 to operating expenditure.[280] As mentioned there, an additional transfer of resources is expected during the 2020 management period following the new missions entrusted to the HATVP by Law No. 2019-828 of 6 August 2019 on the transformation of the civil service (i.e. an amendment to FR04) regarding the control of the movement of public employees between the private and public sectors (i.e. the revolving-doors phenomenon). It is only fair to provide for additional budgetary resources in the case of further competences if these activities are to be performed efficiently and effectively.

While space precludes an analysis of the CIEC's activities, one **case** concerning French Senator Bruno Sido shall be briefly mentioned to emphasise the strong tooth of the French watchdog. Sido was sentenced in Paris to a six-month suspended prison sentence and a 60,000 euro fine for not declaring his assets and laundering tax evasion because of an undeclared account in Switzerland, as reported by HuffPost. The case was referred to the justice system by the HATVP and Sido was finally sentenced by the *Tribunal de Grande Instance* of Paris.[281]

3.3. The Irish Bill for a Public Sector Standards Commissioner

In the case of Ireland, the 'Public Sector Standards Commissioner' (PSSC) is presented as a Bill, which has not yet entered into force. Nevertheless, it can be seen as an intriguing proposal and 'source of inspiration' for the EU.

3.3.1. Relevant legal document(s)

The (ad 1) relevant legal document is the 'Public Sector Standards Bill 2015' (PSS Bill, or simply **Bill**).[282] The legislative history is well documented on the Irish legislature's (*Oireachtas*) website.[283] The PSS Bill was presented to the House on 21 December 2015, and the general principles were debated on 20 January 2016. With the dissolution of the *Dáil Éireann* (lower house) and *Seanad Éireann* (upper house), the bill lapsed (14 January 2020). Hence, only two of eleven steps mentioned on this website have been taken in this procedure. It should be mentioned briefly that the 'Programme for Government. Our Shared Future' from June 2020 mentions the objective to "[r]eform and consolidate the Ethics in Public

[279] For an overview, see the following table: https://www.hatvp.fr/wordpress/wp-content/uploads/2020/02/Tableau-Obligations-declaratives-RP_fev2020.pdf.

[280] Source: https://www.hatvp.fr/la-haute-autorite/linstitution/organisation.

[281] HuffPost (2016).

[282] See also the "Explanatory Memorandum" (EM), available at the same website.

[283] Source: https://www.oireachtas.ie/en/bills/bill/2015/132/?tab=bill-text.

Office legislation" (p. 120). Still, the entry into force may be of importance for Ireland, but not in terms of using this document as a source of information and inspiration for the EU.

The PSS Bill (= IE01) as the key legal document[284] is **structured** as follows: (N.B. in the following, references without further indication refer to this Bill).

- Part 1: Preliminary and general (Sections 1 to 9)
- Part 2: Public sector **standards** (Sections 10 to 25)
  - Chapter 1: General Principles and Standards of Conduct (Sections 10 to 15)
  - Chapter 2: Obligation to furnish tax clearance certificate (Sections 16 to 19)
- Chapter 3: Disclosure of interests (Sections 20 to 25)
- Part 3: Public sector standards **Commissioner** (Sections 26 to 31)
- Part 4: **Contraventions** of the Act (Sections 32 to 50)
  - Chapter 1: Offences (Section 32)
  - Chapter 2: Complaints (Sections 33 to 35)
  - Chapter 3: Investigations by Deputy Commissioner (Sections 36 to 39)
  - Chapter 4: Oral Hearing by Commissioner (Section 40)
  - Chapter 5: Miscellaneous Provisions in Relation to Chapters 2, 3 and 4 (Sections 41 to 46)
  - Chapter 6: Action on foot of investigation (whether involving an oral hearing or not) and supplemental provisions (Sections 47 to 50)
- Part 5: **Prosecution** of offences (Sections 51 to 54)
- Part 6: **Civil** consequences of contravention (Sections 55 to 58)
- Part 7: **Outside Appointments Board** (Sections 59 and 60)
- Part 8: Miscellaneous (Sections 61 to 66)

Other related acts are the following three:

- 'Ethics in Public Office Act 1995', updated to 21 November 2018 (EPOA; IE02)[285], which would be largely repealed by Section 61.1.a of the Bill;
- 'Standards in Public Office Act 2001', updated to 13 April 2017 (SPOA; IE03)[286], which would be largely repealed by Section 61(1)(b) of the Bill;[287]
- 'Regulation of Lobbying Act 2015', updated to 1 May 2019 (RLA; IE04)[288], which is mentioned in Section 7(2)(c) of the Bill, but should not be repealed.

[284] As mentioned in Section 62, the Minister would be enabled to make regulations for giving effect to this Act.

[285] Available at: http://www.irishstatutebook.ie/eli/1995/act/22/enacted/en/html.

[286] Available at: http://www.irishstatutebook.ie/eli/2001/act/31/enacted/en/html.

[287] N.B. Section 61.1.c Bill would repeal Part 15 of the Local Government Act 2001, updated to 16 April 2019, available at: http://www.irishstatutebook.ie/eli/2001/act/37/enacted/en/html.

[288] Available at: http://www.irishstatutebook.ie/eli/2015/act/5/enacted/en/print.html.

3.3.2. The Public Sector Standards Commissioner (including Office and Deputy)

The (ad 2) person in charge of supervising and/or enforcing ethical standards is the PSSC, where the Bill establishes both the PSSC[289] (including a Deputy[290]), as well as her or his **Office**[291] (Section 26.1). Subject to the provisions of this Act, the PSSC can determine the procedure and business of the Office (Section 26.9). The **Deputy** is in charge of the functions mentioned in Part 4, i.e. contraventions of the Act (Section 28). The Deputy Commissioner shall appoint "one or more suitable persons" as '**investigation officer**(s)' (Section 37.1).[292]

The **PSSC** is appointed by the President on the advice of the Government following a resolution passed by *Dáil Éireann* (lower house) and by *Seanad Éireann* (upper house) recommending the appointment of the person (Section 26.3). The PSSC shall hold office for a term of **6 years** and may be re-appointed to that office for a second or subsequent term (Section 26.6). In the performance[293] of her or his functions, the PSSC shall be **independent** (Section 26.2) and can only be removed from office by the President in the case of "stated misbehaviour, incapacity or bankruptcy" and "following resolutions passed by each House calling for his or her removal" (Section 26.5.b). The same applies to the Deputy (see Section 28.2), as well as to the 'investigation officer(s)', who shall be "independent in the performance of his or her functions" (Section 37.3).

Independence can also be linked to the **budget**. Keeping in mind that here we are dealing with a bill, in terms of budget, Section 26.11 provides that "[s]ubject to such conditions as the Minister [for Public Expenditure and Reform, see Section 2] may determine, there shall be paid to the Commissioner out of money provided by the Oireachtas such amounts as the Minister may, after consultation with the Commissioner determine in respect of the reasonable [!] expenses of the Commissioner". Section 26.10 further provides that the Minister shall make available to the Commissioner "such reasonable facilities and services (including clerical, secretarial and executive services) as the Minister after consultation with the Commissioner may determine".

Besides the PSSC, the Bill (Section 60.1) would also establish an '**Outside Appointments Board**' (OAB). Its main task is to decide and advise in the case of 'revolving-doors'-phenomena (see below). As is mentioned concerning the PSSC budget above, also on the OAB, the Bill is rather vague, as the OAB "shall consist of such and so many members as the Minister determines and appoints" (Section 60.2). Nothing is provided about the term of office or qualification criteria, as the Bill only mentions that a "member of the Board shall hold office on such terms (including terms providing for the payment of allowances and expenses to him or her) and subject to such conditions as the Minister determines" (Section 60.3).

The PSSC shall provide **reports** annually, when requested by the Minister as well as on the PSSC's own initiative (Section 31). Likewise, the OAB shall, each year, "prepare a report on its activities in the previous year", where one copy must be furnished to the Minster (Section 60.5 and 6).

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[289] The PSSC follows the 'Standards in Public Office Commission', which would be dissolved by Section 27.

[290] See Section 28.

[291] On the 'Office', see Sections 26.4 and 26.8.

[292] An investigation officer shall be appointed "for such a period as the Deputy Commissioner may determine". Likewise, the provisions concerning payment of fees and expenses, the terms and conditions of holding office, and the removal from office are rather vague and are a responsibility of the Deputy Commissioner (Section 37.2).

[293] According to Section 26.7, the PSSC shall be paid such remuneration (if any) as may be determined by the Minister.

3.3.3. Competences

Besides (ad 3) the functions conferred on the Commissioner by this Bill, the PSSC (Section 26.12) shall also have the functions conferred on the Standards in Public Office Commission by the SPOA (IE03), which, as mentioned above, would be largely repealed. In the following, the PSSC's **competences** shall be briefly presented based on the new **Bill**.

These competences include (a) **advice** by the PSSC for those to whom this Bill would apply, how they should behave in terms of compliance, (b) the drawing up of a **model CoC** to guide public officials and "to promote, through training, education, guidelines and research, the highest [!] standards of conduct and integrity among public officials"[294], (c) **investigation** in the case the obligations under this Bill not being complied with, as well as (d) **enforcement** of this act in terms of various sanctions.

- **Advice (ad a)**: Any person to whom the Bill applies (see below), may request the PSSC for advice "in relation to steps that could be taken by the person to comply with the provisions of this Act other than in relation to *section 10* [i.e. standards in integrity]" (Section 29.1). During this time, the Bill does not apply "as respects the person who made the request, […] in relation to that case during the period from the making of the request to the time when advice is given by the Commissioner in relation to the case or he or she declines to give such advice" (Section 29.2). In the case of a proceeding or investigation concerning alleged contravention of this Act, the question of compliance with such advice or guidance shall be taken into account (Section 29.4). Advice and guidance can also be issued confidentially (Section 29.3). Nevertheless, compliance with this confidential guidance would still be taken into account (Section 29.5).
- **CoC (ad b)**: The PSSC is tasked by Section 30.1 to draw up a "model code of conduct for the guidance of public officials with regard to compliance", as well as to promote "training, education and research, and guidelines issued for the purpose by the Commissioner, the highest [!] standards of conduct and integrity among public officials, and, in particular, regarding the prevention of situations in which conflicts of interest could arise in relation to their duties". As has been mentioned concerning France, ethics cannot be a monopoly located at a centralised location. According to Section 30.2, each public body may "draw up and issue one, or more than one, code of conduct in respect of its public officials that is in conformity with the model code of conduct" and that deals with "particular aspects of the operation of this Act as they are likely to arise in practise and be of relevance to the work of the public body or with any other matter arising out of this Act connected with the public body".[295] Following the EU's motto 'united in diversity', the challenge in this case would be to find common standards applicable to all different institutions (or public bodies), while leaving room for different or more specific rules, where necessary. It is the PSSC's task to review the different CoC and give directions to amend, respectively to make recommendations (Section 30.3). The relevant CoC must be respected by the person to whom it applies, it shall be backed up by the terms and conditions of employment (Section 30.3 and 4), and courts may have regard to such a CoC (Section 30.9).

[294] Explanatory Memorandum (EM) on Section 30 (p. 4).

[295] In case no specific CoC would be drawn-up, the model CoC would apply (Section 30.6.a).

- **Investigation (ad c)**: Investigations can either occur in case of a complaint alleging a breach of the provisions of this Bill (Section 36.1) or where the Commissioner her- or himself thinks that there was a contravention of this Bill, respectively, "if, in the Commissioner's opinion, it is in the public interest [!] to have the matter so investigated in order to ensure that the provisions of this Act, or specific provisions of it, are complied with" (Section 36.2). As mentioned above, investigations are a task of the Deputy, respectively the 'investigation officers' appointed by her or him. The Deputy's **competences** are quite broad and she or he may conduct an investigation as she or he "considers appropriate in the circumstances of the case" (Section 38.1). The Deputy Commissioner may direct a person whose evidence is required, "to attend before an investigation officer […] and there to give evidence to the officer", to "produce to the officer any document or thing in his or her possessions or power", or "to send to an investigation officer any document or thing in his or her possession or power" (Section 38.2). Based on a warrant of a judge, an investigation officer may even "enter and search any premises in or at which the officer has reasonable grounds for believing there may be found any document or thing relevant to an investigation […] and may seize and remove any document or thing so relevant that he or she finds in or at the premises" (Section 38.3 to 38.9).[296] The results of an investigation shall be published in a **report** by the PSSC (Section 50). Consequently, this Bill provides for far-reaching investigation competences.
- **Enforcement (ad d)**: In case of contraventions to this Bill, the Commissioner may prosecute the offence[297] concerned summarily, or refer the matter to the Director of Public Prosecutions (Section 51). **Sanctions** (Section 52) include a '**fixed payment notice**' of € 200 in case a person "recklessly fails to furnish to the Commissioner" (Section 32.4) a statement required under Sections 21 and 22 (declaration of interests); in the case of a payment being made within the timeframe specified, no proceedings will be initiated. Section 53 provides **penalties** on conviction, including imprisonment up to 12 months and/or a fine up to € 100,000. Eventually, a person can also be **disqualified** from holding office as a public official or a particular category of public official (Section 54). In addition to these sanctions of Part 5 (prosecution of offences), Part 6 provides for '**civil consequences** of contravention', including a censure or a warning to the person concerned, a direction that the person shall undertake actions to secure compliance with this Bill, or even a recommendation to the employer of the person concerned that the person should be suspended for a certain period, or even be removed from the office or a position (Section 55). In the case of **members of a House** of the *Oireachtas*, Section 56 provides for a suspension from the service of that House for up to 12 months. As we will see below, certain persons have to provide certain **tax information**. In the case of failure to comply with these obligations, Section 57 provides for an automatic disqualification of a public official from appointment to a position as a public official.

  Notably, the PSSC can issue confidential **advice** and general guidance to the person subject of an investigation, if deemed appropriate (Section 47.5.a), or **refer** the matter to the "relevant public body" (Section 47.5.b), as mentioned above, including the Director of Public Prosecutions (Section 51.3). In the case of offences of a certain level (Section 47.5.c), the PSSC can prosecute the offences **her- or himself**.

[296] See also Section 39 on the report of the Deputy on foot of investigation, Section 40 on oral hearings by the PSSC, as well as Chapter 5 (Sections 41 to 50) on privileges and immunities of witnesses, the admissibility of certain evidence, powers of the PSSC relating to the discovery of documents, etc. See also Chapter 6 (Sections 47 to 50).

[297] See Section 32.

3.3.4. Scope rationae personae

Concerning the (ad 4) *scope rationae personae*, as mentioned in its abstract, it is the aim of this Bill to "to provide for standards of conduct for **public officials** and impose on them certain obligations in connection therewith". 'Public officials' are defined in Section 4 and include members of the *Dáil Éireann* (lower house) and *Seanad Éireann* (upper house), MEPs, members of a local authority, as well as the Attorney General or the Comptroller and Auditor General (Section 4.1). Both the office of a director as well as the position of an employee are included (see Section 4.2). However, this notion of public official does not include members of the judiciary branch of power, i.e. judges (see Section 4.3).[298]

'**Public bodies'** are defined in Section 6. Besides a list of bodies explicitly mentioned, Section 6.1.j and 6.1.k refer to both "a body that is wholly or partly funded, directly or indirectly, out of money provided by the Oireachtas or from the Central Fund or the growing produce of that Fund and in respect of which a public service pension scheme exists or applies or may be made", as well as to a subsidiary or company under the control of certain bodies. This is reminiscent of the case-law of the ECJ in the case called 'Buy Irish'. While it might be a coincidence that this case was about Ireland, the ECJ has clarified that public bodies cannot escape from their obligations under EU law by simply outsourcing tasks to private bodies, if the public appoints the members of these private bodies, grants them public subsidies, which cover the greater part of their expenses and, finally, defines the aims and the broad outline of the activities of these private bodies.[299] Similarly, as we have seen it in the French HATVP example, a good law in this field should strive, right from the beginning, to avoid the circumvention of its provisions.

3.3.5. Scope rationae materiae

In terms of the (ad 5) *scope rationae materiae*, the Bill addresses the **following** potential **ethical challenges**: (a) declarations of interest, as well as (b) conflict of interest, (c) the obligation to provide certain tax information, (d) gifts, the topic of (e) lobbying, as well as the phenomenon of (f) revolving-doors.

- **DOI (ad a)**: This Bill sets up rather complex rules on the question of disclosure of interests. While the definition of declarable interests is straight forward, the rules on which information must be provided under which conditions, sometimes remain rather complex and interlaced. According to Section 7, 'declarable interests' include income, a contract, an office, assets, gifts, travel, accommodation, refreshment or ancillary facilities, property supplied or lent, or a service supplied, as well as interest of a residual nature.[300] Section 7.9 extends these declarable interests to interests of the **spouse** or of a **child** of the public official concerned, and Section 8

[298] See also Section 5 on different categories of public officials.

[299] ECJ judgement of 24 November 1982, *Commission v Ireland (Buy Irish)*, 249/81, EU:C:1982:402, paras. 10-15.

[300] These categories are further specified in Section 7.2 to 7.9, where for the definition of income, Section 7.2.c refers to the afore-mentioned 'Regulation of Lobbying Act 2015' (= IE04).

specifies interests, which qualify as '**private** declarable interests'.[301] Section 20 refers to the **time** when a public or private declarable interest is a declarable interest, including various cross-references to other Sections, making this provision rather **complex and interlaced**. Sections 21 and 22 provide for the obligation of various **categories** of public officials to provide a written declaration of interests. As we have seen it for other examples, according to Section 23, no declaration statement must be provided if there has not been a "significant or material" **change** in the declarable interests. The PSSC shall determine the "format and means whereby such statements are to be furnished", which shall be such as to ensure to public officials "the maximum convenience in complying with the provisions" (Section 23.4.a). The Commissioner can also ask for additional information "in relation to the statement or any matter arising in connection with it" (Section 23.5). The Statements, except for the private declarable interests, shall be **published** on the PSSC's website (Section 23.6 and 23.7).[302] Bearing in mind the case of former EU Commissioner Edith Cresson[303], Section 25 requires the laying of documents by a Minister of the Government, in the case of a **special adviser**. These documents include a copy of the contract, a statement whether this person is a relative of the office holder, and if the latter is the case, a statement on the qualifications of this person. In the case of Edith Cresson, she wanted to appoint "one of her close acquaintances, Mr Berthelot", a "dental surgeon", as her "personal advisor".[304] Section 12 requires for **ad hoc declarations** of interest by public officials at certain **meetings** of the House, local authorities and certain committees and boards. Members or public officials who are present at one of these meetings "shall, if he or she has actual knowledge that he or she or a connected person has a material interest in the relevant matter"[305], **disclose** "the nature of his or her interest, or the fact of a connected person's interest at the meeting, and before discussion or consideration of the relevant matter commences", and (save in the case of a member of the House), **withdraw** from the meeting "for so long as the relevant matter is being discussed or considered" (Section 12.3). These disclosures must be recorded in the minutes (Section 12.5).[306]

- **COI (ad b)**: In addition to the obligation of ad hoc declarations according to Section 12, Section 13 requires public officials who have actual knowledge that she or he (or a connected person) has a declarable interest, holds any unremunerated office or position or has any other interest, which "could reasonably be regarded as creating a **conflict of interest** in relation to the performance by the public official of any of his or her **functions**",[307] to disclose, in writing, the nature of her or his interest (or of the connected person's interest). In addition, she or he shall not perform the function unless there are compelling reasons requiring her or him to do so

[301] Section 9 clarifies that this Bill does not prevent a person who is eligible to be a candidate in an election for either House of the *Oireachtas*, a local authority, or the European Parliament for a constituency in the State, from being such a candidate.

[302] See also Section 24 on the retention of statements and matters concerning legal or medical services, e.g. psychiatric or psychological services.

[303] See above at fn. 21.

[304] ECJ judgement of 11 July 2006, *Commission v Cresson*, C-432/04, EU:C:2006:455, para. 10.

[305] A 'connected person' includes, amongst others, relatives, trustees of a trust, partnerships, employment, via companies, as well as persons who are substantially dependent on another person (Section 2.2).

[306] Such withdrawals shall not impede the proper functioning, as Section 12.6 provides this obligation to withdraw "does not apply if 50 per cent or more of the members of the body in question would be obliged to withdraw by virtue of this section".

[307] Emphases added.

(Section 13.1). Section 14 goes in a similar direction as it provides of a prohibition on use of **confidential** information.[308]

- **Obligation to provide certain tax information (ad c)**: We have seen above, the example of an MEP declaring himself "Master of the universe"[309], therefore it is also important to verify the content of the information provided. Section 16 requires public officials (apart from elected public officials[310]) to furnish evidence of compliance with the relevant tax provisions.[311] In the case of a person contravening Section 16, she or he, as soon as possible, shall submit evidence of the subsequent compliance to the PSSC (Section 18). An important sanction to these provisions can be found in Section 57, which, as mentioned above, provides for **automatic disqualification** of a public official from appointment to a position in the case of failing to be tax compliant.

- **Gifts (ad d)**: In terms of gifts, Section 11.1 is **strict** in stating that a public official "shall not seek or exact from any person, other than from the official's employer, any [!] benefit, remuneration, fee, reward or other favour for anything done or not done by virtue of his or her employment, engagement or office". Besides this strict prohibition of actively seeking gifts, Section 11.3 is more **liberal** as public officials may not accept "accept a gift the value of which exceeds €600, except a gift that is unconnected with the performance of his or her functions". We have seen thresholds of € 150 in the EU, hence € 600 is high.[312] Such gifts must be emit to the State or a public body, and the Commissioner must be notified in writing "of its receipt and of the name and address (if known) of the person who gave the gift, and of the body to whom the gift was remitted" (Section 11.4).[313]

- **Lobbying (ad e)**: The 'Regulation of Lobbying Act 2015' (cf. Section 7.1.c, *et passim* Bill) refers to the 'Standards in Public Office Commission', which (as mentioned above[314]) shall be dissolved and (certain of) its functions shall be conferred to the PSSC (cf. Section 27 Bill).[315] This Act establishes a lobbying[316] register (Sections 8 to 15 IE04) and provides for a CoC, which must be produced by the Commission (to be replaced by the PSSC) "with a view to promoting high [!] professional standards and good practice" (Section 16 IE04). The Commission may also "issue guidance about the operation of this Act" (Section 17 IE04). This Act also imposes restrictions on the involvement in lobbying by certain former 'designated public officials' (Section 6 IE04) for a period of one year (cf. Section 22 IE04), as well as rules on enforcement (Section 18 to 21 IE04).

- **Revolving-doors (ad f)**: Section 59 provides for the duties of public officials concerning post-employment activities once she or he has ceased to be a public official and operates both with a 12 month time limit (from the date on which she or he has ceased to be a public official), as well as a link of the old to the new activity. This can either be "any business not conducted by

[308] See also Section 15 (dealing with land).

[309] See above fn. 256.

[310] I.e. of either House of the *Oireachtas*, a local authority, or the European Parliament.

[311] In case of judicial appointments and certain other appointments, Section 17 requires tax clearance certificates (cf. Section 19) for judicial offices, listed in Section 17.3.

[312] In terms of 'declarable interests', Section 7.6 provides for a threshold of € 200 for gifts, as well as € 600 in case of travel, accommodation, refreshment or ancillary facilities.

[313] See also Section 11.5 on the supply or lending of property.

[314] See fn. 289.

[315] The Irish lobbying transparency rules have been referred to as "gold standard"; Cooper (2017).

[316] For the definition of lobbying, see Section 5 IE04.

his or her present employer or any other public body, being a business with which he or she has or had **dealings** [!] during the course of the performance of his or her duties as such an official", or "in circumstances where it is reasonably possible that a result of his or her being so engaged in or connected with that business is that that business will gain an **advantage over its competitors** by reason of that person's being so engaged in or connected with it" (Section 59.1).[317] In the case of such a situation, public officials have to inform their public employer of this intention before they cease to be such an official (Section 59.2). Public officials shall not accept such offers without having first notified in writing, the Outside Appointments Board (OAB) of the intended course of action and requesting its consent (Section 59.6). The OAB can refuse to give its consent or can consent with or without conditions (Section 59.7).[318]

3.3.6. Principles

In addition to the key substantive elements portrayed above, (ad 6) further **principles** are mainly addressed in Section 10[319], entitled 'standards of integrity'. Integrity is not further clarified in this provision. Section 10.2 adds accountability and transparency (also mentioned in Section 6.4.c) as further principles. This lack of clarification can be explained in terms of the code of conduct, which should be drafted by the PSSC according to Section 30. One important clarification can be found in Section 30.1, which refers to the "highest [!] standards of conduct and integrity". **Values** are not mentioned in this Bill.

3.3.7. Analysis

Both the PSSC and the French HATVP shall hold office for a term of six years, in the case of Ireland, the PSSC may be re-appointed to that office for a second or subsequent term. The PSSC stands out for its **independence**, which also applies to the Deputy and the 'investigation officer(s)'. Although the Bill has not entered into force, the PSSC is especially interesting for the strong **investigation** (including tax information) and **enforcement** competences, but also fulfils advisory functions, to anticipate integer behaviour of public officials. Complaints can be made to the Commissioner (Section 33), but the PSSC can also request her or his staff on their own initiative to conduct a preliminary inquiry (Section 35).[320] As this Bill has not entered into force, no information is covered here concerning budget and staff.

[317] Emphases added.

[318] In addition to these functions, the OAB shall also furnish advice to the Minister, including "practices that may be adopted to manage conflicts of interest that could arise in such cases".

[319] This provision is the first one in Chapter 1 (of Part 2) entitled 'general principles and standards of conduct'.

[320] Sections 48 provide for the cost of witnesses (e.g., in case of false or misleading information), as well as Section 49 for a possible award of cost against a complainant, on the grounds that the complaint concerned was "frivolous or vexatious".

3.4. Canada

Canada, a so-called third-country, stands out as an example of a system that is inspiring in terms of the independence of its ethics institution, which fulfils a strong preventive role in terms of integrity, concerning both elected as well as appointed public office holders.

3.4.1. Relevant legal documents

Without pretending to offer a comprehensive list, there are **(ad 1)** numerous legal documents to be named in this regard. For the sake of clarity, the documents in this sub-chapter are quoted as follows: first, indication of the country code (i.e. CAN for Canada), followed by a sequential number. To provide easy access, the links are provided in the relevant footnote.

- 'Parliament of Canada Act' (R.S.C., 1985, c. P-1) (**CAN01**)[321], which establishes the 'Conflict of Interest and Ethics Commissioner' (**CIEC**);[322]
- 'Conflict of Interest Act' (S.C. 2006, c. 9, s. 2) (**CAN02**)[323], which applies to **public office** holders;
- 'Conflict of Interest Code for Members of the House of Commons' (= Appendix I to 'Standing Orders of the House of Commons, including appendices, consolidated version as of April 20, 2020') (**CAN03**)[324], which, as the name indicates applies to **members of the House of Commons**;
- 'Code of Values for Employees of the Conflict of Interest and Ethics Commissioner' (CAN04)[325]; as well as the
- 'Standards of Conduct' (CAN05)[326], where all **employees** of the **Office** of the CIEC "are expected to follow the values set out in [CAN 04 and CAN05], to translate those values into actions and to accept responsibility for their actions"[327].

The '**Parliament of Canada Act**' (= CAN01) is structured as follows: [328]

- Part I: Senate and House of Commons (Sections 2 to 13)
- Part II: Senate (Sections 16 to 20-7), including Section 16 on **conflict of interest** and Sections 20-1 to 20-7 on the '**Senate Ethics Officer**'
- Part III: House of Commons (Sections 21 to 54), including Sections 32 to 41-5 on **conflict of interest**
- Part IV: Remuneration of Members of Parliament (Sections 54-1 to 72)
- Part V: General (Sections 73-1 to 90), including Sections 81 to 90 on the **CIEC**

The '**Conflict of Interest Act**' (= CAN02) is **structured** as follows:[329]

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[321] Available at: https://laws-lois.justice.gc.ca/eng/acts/p-1/FullText.html.

[322] For the CIEC website, see https://ciec-ccie.parl.gc.ca.

[323] Available at: https://laws-lois.justice.gc.ca/eng/acts/C-36.65/.

[324] Available at: https://www.ourcommons.ca/About/StandingOrders/SOPDF.pdf.

[325] Available at: https://ciec-ccie.parl.gc.ca/en/About-APropos/Documents/Code%20of%20Values%202019.pdf.

[326] Available at: https://ciec-ccie.parl.gc.ca/en/About-APropos/Documents/Standards%20of%20Conduct.pdf.

[327] Source: https://ciec-ccie.parl.gc.ca/en/About-APropos/Pages/CodeValues-CodeValeurs.aspx.

[328] Please note, the gaps between Sections are due to repealed provisions; Section 1 refers to the short title.

[329] Please note, Sections 1 to 3 refer to the short title, interpretation, as well as the purpose of this Act.

- Part I: Conflict of interest rules (Sections 4 to 19)
- Part II: Compliance measures (Sections 20 to 32), including Sections 28 to 32 on **functions** of the **Commissioner**
- Part III: Post-employment (Sections 33 to 42), including Sections 39 to 42 on **functions** of the Commissioner
- Part IV: Administration and enforcement (Sections 43 to 62), including Sections 43 to 45 on **mandate and powers** of the Commissioner, Section 51 on the **public registry**, as well as Sections 52 to 62 on administrative monetary **penalties**
- Part V: General (Sections 62-1 to 68)

The 'Conflict of Interest Code for **Members** of the House of Commons' (= CAN03) is structured as follows:

- Part I: Purposes (Section 1)
- Part II: Principles (Section 2)
- Part III: Interpretation (Section 3)
- Part IV: Application (Sections 4 to 7)
- Part V: Rules of conduct (Sections 8 to 25)
- Part VI: Opinions (Section 26)
- Part VII: Inquiries (Sections 27 to 29)
- Part VIII: Miscellaneous (Sections 30 to 34)

3.4.2. The (Office of the) Conflict of Interest and Ethics Commissioner

The 'Conflict of Interest and Ethics Commissioner' (CIEC) is **appointed** by the 'Governor in Council'[330], after consultation with the leader of "of every recognized party in the House of Commons and approval of the appointment by resolution of that House" (Section 81.1 CAN01). The Commissioner is appointed for the longest period covered in this study so far, that is to say **seven years**, including the possibility of one or more (!) terms of reappointment (Section 81.3 CAN01). The Commissioner may be removed only "for cause" by the Governor in Council on address of the House of Commons (Section 82 CAN01).[331] To be appointed, a person must fulfil the following **qualification criteria**: she or he must be a former judge of a superior court in Canada or of a province, a former Senate Ethics Officer or former Ethics Commissioner or a former member of a federal or provincial board, commission or tribunal. In the latter case, in the opinion of the Governor in Council, she or he must demonstrate expertise "in one or more of the following" fields: conflicts of interest, financial arrangements, professional regulation or discipline, and ethics (Section 81.2 CAN01). The Commissioner shall be paid the remuneration and expenses set by the Governor in Council and is not allowed to engage in any other functions (Section 83 CAN01). The Commissioner must **report** on her or his activities annually. Given the two main tasks (see below), the Commissioner must submit a report concerning the members of the House of Commons to its Speaker as well as concerning public office holders to the Speaker of the Senate and the Speaker of the House of Commons (Section 90.1 CAN01).

[330] "Governor in Council (GIC) appointments are those made by the Governor in Council—the Governor General acting on the advice of Cabinet"; source: https://www.canada.ca/en/privy-council/programs/appointments/governor-council-appointments/general-information/appointments.html.

[331] See also Section 82.2 CAN01 on interim appointment.

The Commissioner has the control and management of the **office** (Section 84.1 CAN01). She or he has the power to enter into contracts, to employ any officers and employees, and to engage in services of any agents, she or he "considers necessary for the proper conduct of the work of the office" (Section 84.2 and 84.3 CAN01).[332] The salaries of the officers and employees of the office, as well as any casual expenses connected with the office, shall be paid out of money provided by Parliament (Section 84.6 CAN01).[333] The powers the Commissioner enjoyed under CAN01 or CAN02 can be delegated to any person according to Section 89 CAN01. In terms of confidentiality, personal information may not, without the consent of the individual to whom it relates, be used by the Commissioner "except for the purpose for which the information was obtained or for a use consistent with that purpose" (Section 88.1 CAN01).

An institution checking the ethical conduct of others also must adhere to high standards in this field. As mentioned in the 'message from the Commissioner' in the '**Code of Values for Employees** of the Conflict of Interest and Ethics Commissioner' (= CAN04), the CIEC and her or his office "have the unique and important mandate of administering regimes aimed at maintaining and enhancing the trust and confidence [!] of the Canadian public in the conduct of elected and appointed officials". Therefore, they must apply the following values "in everything [they] do". At the same time, the document acknowledges that such a code of values "cannot address all ethical dilemmas that may arise in the course of conducting our business"; that is why "[c]ollaboration and dialogue are a critical part of the process for making sound decisions". The vision of this document is to support a "culture of integrity to achieve a high degree of public confidence", the mission is to provide "independent, rigorous and consistent direction and advice". These four values comprise respect for people (fostering "inclusion, civility and dignity"), professionalism (inducing diligence, consistency, as well as a spirit of collaboration), integrity (building and maintaining trust "by upholding the highest ethical standards"), as well as impartiality (independence, objectivity, non-partisan behaviour, as well as maintaining diversity of views). Notably, the staff must adhere to the "highest [!] ethical standards", to achieve a "high [!] degree of public confidence".

These values are then further concretised by the '**Standards of Conduct**' (= CAN05), which "support" the Code of Values "and are intended to offer guidance on its application". This document also admits that it cannot address every possible situation of a misconduct, and hence tasks the persons subject to it to seek advice if necessary. This document also follows an approach, which I have argued elsewhere for the EU (ethics linked to values and human rights),[334] by referring to the "Canadian Charter of Rights and Freedoms". This 'Standards of Conduct' document applies to all employees of the CIEC Office in the sense of a wide scope of application. They must review and sign this document, both when first appointed, as well as annually "at the time of their performance review". The document basically addresses outside activities and (actual, potential or perceived) conflict of interest, as well as political activities and social media. The document refers to the values of the Code, to integrity, as well as to the principles of precaution, non-discrimination, impartiality, diligence, confidentiality, as well as the acceptance of gifts. Open questions shall be discussed with the relevant superior.

The Governor in Council appoints a '**Senate Ethics Officer**' after consultation with the leader of every recognised party in the Senate and after approval of the appointment by a resolution of the Senate

[332] According to Section 84.1 CAN01, the Commissioner has the rank of a deputy head of a department of the Government of Canada.

[333] On the budget, see below in Chapter 3.4.7.

[334] Frischhut (2015a); Frischhut (2019).

(Section 20-1 CAN01). This Senate Ethics Officer follows mainly similar[335] rules to the CIEC, described above. She or he holds office (including the possibility of one or more reappointments) for seven years (Section 20-1 CAN01), side-jobs are limited (Section 20-3 CAN01), she or he holds the rank of a deputy head of department and has powers to contract, as well as to hire staff (Section 20-4 CAN01).[336] The Senate Ethics Officer shall perform the **duties and functions** "assigned by the Senate for governing the conduct of members of the Senate when carrying out the duties and functions of their office as members of the Senate", which includes "the general direction of any committee of the Senate that may be designated or established by the Senate for that purpose", except for the Conflict of interest act (= CAN02) (Section 20-5 CAN01).

3.4.3. Competences

Section 85 CAN01 defines the **mandate** of the Commissioner. This includes the task to provide confidential policy advice and support to the Prime Minister "in respect of conflict of interest and ethical issues in general", as well as to perform the following functions: to perform the duties and functions concerning the conduct **(a)** of the members of the **House of Commons** (cf. Section 86 CAN01), as well as **(b)** concerning public **office holders** (cf. Section 87 CAN01). As mentioned above, for members of the House of Commons, the relevant document (besides CAN01) is the 'Conflict of Interest Code for Members of the House of Commons' (CAN03), and for public office holders the 'Conflict of Interest Act' (CAN02).

Concerning **(ad a)** the members of the **House of Commons**, the Commissioner shall perform the duties and functions "assigned by the House of Commons for governing the conduct of its members" when they are "carrying out the duties and functions of their office as members of that House" (Section 86.1 CAN01). In this regard, the Commissioner "enjoys the privileges and immunities of the House of Commons and its members when carrying out those duties and functions" (Section 86.2 CAN01). In carrying out these **duties and functions**, the Commissioner operates "under the general direction of any committee of the House of Commons that may be designated or established by that House for that purpose" (Section 86.3 CAN01), which however does **not include** the administration of the Conflict of Interest Act (= CAN02) regarding ministers of the Crown, ministers of state or parliamentary secretaries acting in their capacity as ministers of the Crown, ministers of state or parliamentary secretaries (Section 86.4 CAN01). In their activities, the Commissioner and the relevant staff are protected as they cannot be a witness in respect "of any matter" coming to their knowledge in performing their duties and functions, and enjoy immunity in civil and criminal proceedings "for anything done, reported or said in good faith" in the exercise of their duties or functions (Section 86-1.1 CAN01).[337] The following **three competences** will be explained in more details: (a.1) **advice** given to a member, (a.2) **inquires** based on a request from another member or the House, as well as (a.3) **educational** activities.

- One important preventive function is the possibility for members of the House of Commons to request **(ad a.1) advice** "on any matter respecting the member's obligations under this code"

[335] See also Section 20-6 on summons and protection concerning criminal and civil proceedings as well as Section 20-7 on the annual report.

[336] See also Section 20-4 on her or his office.

[337] See also Section 50 CAN02 on summons in case of activities concerning (former) public office holders.

(Section 26.1 CAN03). In this case, the Commissioner shall provide the member "with a written opinion containing any recommendations that the commissioner considers appropriate" (Section 26.1 CAN03). This opinion is confidential and may be made public "only by the member, with his or her written consent or if the member has made the opinion public" (Section 26.2 CAN03).[338] Such an opinion is binding on the Commissioner her- or himself (Section 26.3 CAN03).

- Besides the possibility seeking advice on one's own behaviour, **(ad a.2)** a member who has "reasonable grounds" to believe that **another member** has **not complied** with her or his obligations under this code may request that the Commissioner conducts an inquiry into the matter (Section 27.1 CAN03). Likewise, also the **House**, by way of resolution, can direct the Commissioner to conduct an inquiry to determine whether a member has complied with her or his obligations under this code (Section 27.3 CAN03). After giving the member concerned time to state her or his opinion, if necessary, the Commissioner shall either start an inquiry or dismiss the request if she or he thinks it was "frivolous or vexatious or was not made in good faith" (Section 27.6 CAN03). Members are obliged to "cooperate with the commissioner with respect to any inquiry" (Section 27.8 CAN03). While the Commissioner shall basically not make public comments to a preliminary review or inquiry (Section 27.5.1 CAN03), she or he shall report to the Speaker, where the report can then be published "upon tabling in the House" (Section 28 CAN03). These reports must include reasons (Section 28.7 CAN03) and may contain "any recommendations arising from the matter that concern the general interpretation of this code and any recommendations for revision" (Section 28.8 CAN03). The person subject to the report has the right to make a statement in the House (Section 28.9 CAN03).[339] Where another authority is in charge in the case of an offence, the Commissioner shall suspend her or his inquiry (Section 29 CAN03).
- Finally, **(ad a.3)** the Commissioner shall undertake **educational** activities for members and the general public regarding this code and her or his role (Section 32 CAN03).[340]

Concerning **(ad b) public office holders**, Section 87 CAN01 provides for no further details, but simply refers to the Conflict of Interest Act' (= CAN02). This Act provides for the following competences: (b.1) **advice**, (b.2) **investigation** and (b.3) **enforcement**, (b.4) **compliance** measures, as well as (b.5) **post-employment**.

- **Advice (ad b.1)**: The CIEC offers confidential advice both to the Prime Minster as well as to individual public office holders. According to Section 43 CAN02, in the case of the Prime Minster, this confidential advice also includes "the application of this Act to individual public office holders"; in the case of individual public office holders, this advice covers their obligations under this act.
- **Investigation (ad b.2)**: There are various possibilities for investigations[341] to be initiated: (b.2.1) based on a request from a parliamentarian (Section 44.1 CAN02), (b.2.2) indirectly based on information from the public via a parliamentarian (Section 44.4 CAN02), or (b.2.3) by the CIEC on its own initiative (Section 45 CAN02). A **(ad b.2.1) member** of the Senate or House of

[338] For the guidance of members, such opinions can be published, "provided that no details are included that could identify the member" (Section 26.4 CAN03).

[339] On a motion concerning this report, see also Sections 28.10 to 28.12.

[340] See also the different activities, mentioned in the CIEC Annual Report 2019-2020, in respect of the Conflict of Interest Act, available at: https://ciec-ccie.parl.gc.ca/en/publications/Pages/ARAct201920-RALoi201920.aspx.

[341] On investigations, see also https://ciec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/default.aspx.

Commons who has "reasonable grounds" to believe that a (former) public office holder has contravened the COI Act can request the CIEC in writing to examine the matter (Section 44.1 CAN02). Such a request must identify the provisions of this Act alleged to have been contravened and set out the reasonable grounds for the belief that the contravention has occurred (Section 44.2 CAN02). Examination of frivolous, vexatious and those requests made in bad faith can be declined (Section 44.3 CAN02). From EU law we know the concept of the CJEU applying the concept of '**dual vigilance**' to enforce EU law not only top-down (via the Commission) but also bottom-up via individuals enforcing their rights under EU law.[342] Section 44.4 CAN02 goes in a similar direction by stating that in conducting an examination, the Commissioner may **(ad b.2.2)** consider information from the public that is brought to her or his attention by a member of the Senate or House of Commons indicating that a public office holder or former public office holder has contravened this Act.[343] Looking at **statistics**, in the huge majority of cases (29/50), the source of the 'examination case files' was a member of the general public, followed by information from within the office (11/50), Public Sector Integrity Commissioner referrals (5/50), the media (3/50), and members of the House of Commons (2/50).[344] While considering whether to bring such information to the attention of the Commissioner, the parliamentarian shall not disclose that information to anyone; once the information is brought to the attention of the Commissioner, the information shall not be disclosed to anyone until the Commissioner has issued a report (Section 44.5 CAN02).[345] In any case (even if the request was frivolous or vexatious or was made in bad faith), the Commissioner shall provide the Prime Minister with a report (Section 44.7 CAN02). A copy shall go to the member who made the request, the public office holder in question, and must be made available to the public (Section 44.8 CAN02). Last but not least, the Commissioner may also examine a possible contravention of this Act by a (former) public office holder **(ad b.2.3)** on her or his **own (!) initiative** (Section 45.1 CAN02).[346] In any case, before such a report, the Commissioner, following the principle '*audiatur et altera pars*', shall provide the (former) public office holder concerned with a "reasonable opportunity" to present her or his views (Section 46 CAN02).

- In terms of **(ad b.3) enforcement**, the CIEC's powers are strengthened by Section 48 CAN02, according to which the Commissioner has the power to **summon** witnesses and require them to give (oral or written) evidence under oath and to produce documents and things "that the Commissioner considers necessary".[347] The **administrative monetary penalties** that the

[342] ECJ judgement of 5 February 1963, *Van Gend en Loos v Administratie der Belastingen*, 26/62, EU:C:1963:1, p. 13: "The vigilance of individuals concerned to protect their rights amounts to an effective supervision in addition to the supervision entrusted [...] to the diligence of the Commission and of the Member States [i.e. infringement proceedings, Articles 258 and 259 TFEU]".

[343] The member must identify the alleged contravention and set out the reasonable grounds for believing a contravention has occurred (Section 44.4 CAN02).

[344] CIEC Annual Report 2019-2020, in respect of the Conflict of Interest Act (p. 14), available at: https://ciec-ccie.parl.gc.ca/en/publications/Pages/ARAct201920-RALoi201920.aspx.

[345] Otherwise, the Commissioner can refer to matter (in confidence) to the Speaker of the Senate or the House of Commons (Section 44.6 CAN02).

[346] Similar reporting obligations apply in this case (Sections 45.3 and 45.4 CAN02).

[347] The Commissioner has the same power to enforce the attendance of witnesses and to compel them to give evidence as a court of record in civil cases (Section 48.2 CAN02). According to Section 48.4 CAN02, information given by a person under this section is inadmissible against the person in a court or in any proceeding, other than in a prosecution of the person for an offence under Canadian criminal law (perjury) in respect of a statement made to the Commissioner. See also Section 48.5 on confidentiality in such investigation, as well as Section 49 on the obligation to hand over an examination to another relevant authority.

Commissioner can impose are not high (up to CAN$ 500), but the rules set out in Sections 52 to 62 CAN02 seem to be convincing enough.

- Reporting without monitoring makes only limited sense. Hence, in case of the various possible **(ad b.4) compliance measures** (see below, at Chapter 3.4.5), the Commissioner must annually review, with each 'reporting public office holder'[348], the information contained in her or his confidential reports and the "measures taken to satisfy his or her obligations under this Act" (Section 28 CAN02). The appropriate measures are determined by the Commissioner, after trying "to achieve agreement with the public office holder" (Section 29 CAN02).[349] According to Section 32 CAN02, the Commissioner shall advise the public office holder of his or her obligations under Part 3, before a public office holder's last day in office. Part 3 refers to post-employment, which is the next competence.
- The Commissioner also enjoys some competences in the field of **(ad b.5) post-employment** activities (see below, at Chapter 3.4.5) of former public office holders. The Commissioner can waive or reduce the cooling-off periods according to Section 36 CAN02 (Section 39 CAN02).[350] Such a decision, including the reasons, shall be published according to Section 39.5 CAN02 in the registry under Section 51 CAN03[351]. One interesting measure can be found in Section 41 CAN02, according to which, the Commissioner can order current public office holders not to have official dealings with the former reporting public office holder, who is not complying with her or his obligations in this field. This is one measure that does not target former staff but also takes public administration into account.[352]

3.4.4. Scope rationae personae

As mentioned above, the Commissioner is in charge of both the **members of the House of Commons** (Sections 85 and 86 CAN01; see also Sections 4 to 7 CAN03), as well as (former) **public office holders** (cf. Sections 85 and 87 CAN01; see also CAN02).[353] The percentage of people subject to the regime of the CIEC (see below in Figure 3) can be described as a pyramid, where the number of people subject to the CIEC increases down the hierarchy. This overview (valid as of June 2020) also indicates the above-mentioned category of 'reporting public office holders'[354].

[348] According to Section 2.1 CAN02, the notion of 'reporting public office holder' comprises, amongst others, a public office holder that is a minister, member of mistrial staff, ministerial adviser, ministerial appointee, or the Parliamentary Budget Officer.

[349] On the compliance order, see Section 30 CAN02, according to which the Commissioner may order a public office holder, "in respect of any matter, to take any compliance measure, including divestment or recusal, that the Commissioner determines is necessary to comply with this Act".

[350] In taking this decision, the Commissioner has to balance the public interest of granting a waiver or reduction against the public interest in maintaining the prohibition (Section 39.2 CAN02) by considering the factors of Section 39.3 CAN02.

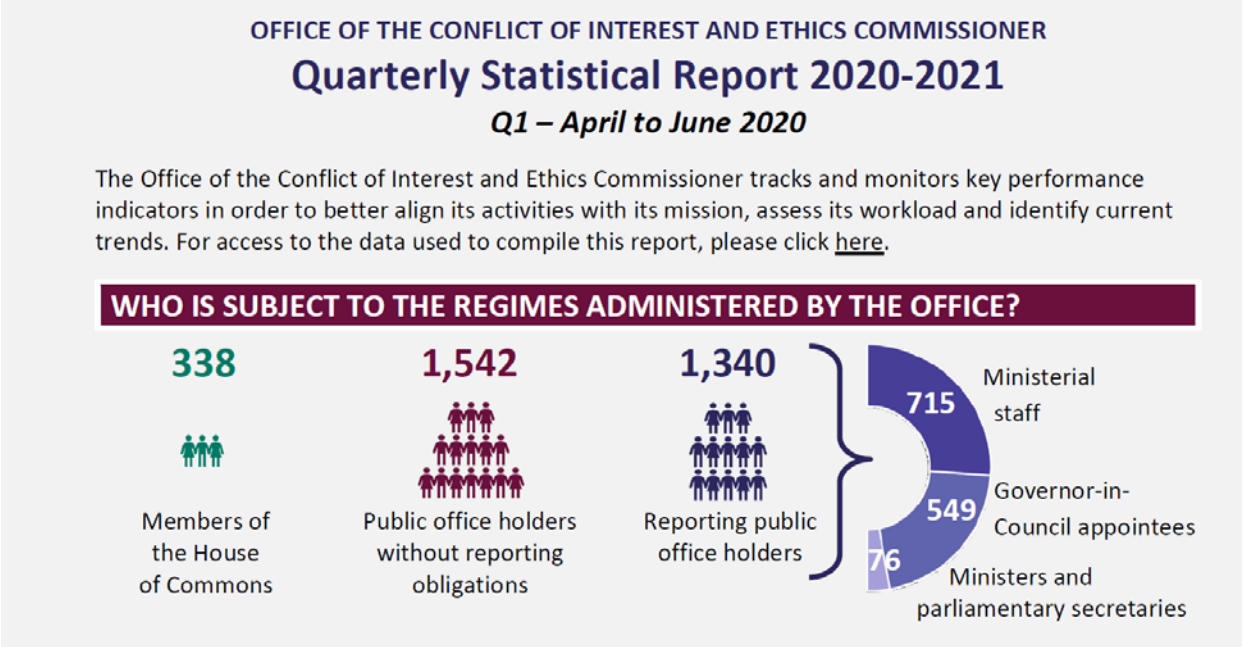
[351] The registry is available at: http://prciec-rpccie.parl.gc.ca/EN/PublicRegistries/Pages/PublicRegistryHome.aspx.

[352] As clarified in Section 42 CAN02, these rules apply irrespective of obligations under Canadian lobbying rules. For further information on Canadian lobbying rules, see Chari et al. (2019, pp. 38–55).

[353] On the Senate Ethics Officer, see above, in Chapter 3.4.2.

[354] See fn. 348.

Figure 3: Canada | people subject to the regime of the CIEC



Source: CIEC Quarterly Statistical Report 2020-2021, Q1 – April to June 2020[355]

3.4.5. Scope rationae materiae

In the following, a short overview will be given on the ethical challenges of (a) declarations of interest, (b) conflict of interest, (c) gifts, as well as (d) post-employment activities, concerning both **elected** officials (x.1), as covered by CAN01 and CAN03, as well as concerning **public office holders** (x.2), as covered by CAN02.[356]

- **Declaration of interest**: Members of the House of Commons **(ad a.1)** have to disclose private interests that might affect them "by a matter that is [!] before the House of Commons or a committee of which the member is a member", at "first opportunity" (Section 12 CAN03). Apart from these **ad hoc** declarations, **within 60 days** following their election (respectively, following the date for the annual review), members have to "file with the commissioner a full statement disclosing the member's private interests and the private interests of the members of the member's family"[357] (Section 20.1 CAN03). The **content** of this statement is determined in Section 21 CAN03[358] and following such a statement, the Commissioner may require a meeting with the member (eventually also the family members) "to ensure that adequate disclosure has been made and to discuss the member's obligations under this code" (Section 22 CAN03).

[355] Available at: https://ciec-ccie.parl.gc.ca/en/About-APropos/Pages/QuarterlyStatReport20-21Q1-RapportStatTri20-21Q1.aspx.

[356] On the different rules, see also https://ciec-ccie.parl.gc.ca/en/rules-reglements/Pages/default.aspx.

[357] Information relating to the private interests of members or the member's family "shall be to the best of the member's knowledge, information and belief"; and the member shall make "reasonable efforts to determine such information" (Section 20.2 CAN03).

[358] This includes, amongst others, assets or liabilities, amount and source of income, as well as benefits out of contracts with the Government of Canada.

While the statement itself shall be kept **confidential** (Section 20.3 CAN03), a '**disclosure summary**'[359], first prepared by the Commissioner and then submitted to the relevant member for review, shall be posted on the Commissioner's website (Section 23 CAN03). Finally, a noteworthy provision can be found in Section 25 CAN03, according to which a member "shall not take any action that has as its purpose the circumvention of the member's obligations under this code". In the case of **(ad a.2)** public office holders, Sections 22 to 24 CAN02 provide rules for confidential disclosure, as well as Sections 25 and 25 CAN02 on public declaration. Reporting officers have to provide a **confidential** report within 60 days after appointment, which must cover assets, liabilities, income, as well as "any other information that the Commissioner considers necessary to ensure that the reporting public office holder is in compliance with this Act" (Section 22.1 and 22.2 CAN02). In particular Ministers also have to add information concerning their family members (Section 22.3 CAN02).[360] Changes to these confidential reports must be indicated within 30 days (Section 22.5 CAN02). Public office holders also have to disclose gifts above the value of CAN$ 200 (Section 23 CAN02) as well as offers of outside employment (Section 24 CAN02). The **public** declaration covers details on situations, where a public office holder has recused herself or himself to avoid a conflict of interest, on assets, outside activities, gifts as well as on liabilities and travel, in the case of Ministers (Section 25 CAN02).[361]

- **Conflict of interest**: Members of the House of Commons **(ad b.1)** shall not "not participate in debate on or vote on a question in which he or she has a private interest" (Section 13 CAN03). Sections 32 to 41-5 provide further details on COI such as ineligibility and disqualification (Sections 32 to 35 CAN01), and the prohibition to receive compensation for services in relation to "to any bill, proceeding, contract, claim, controversy, charge, accusation, arrest or other matter before the Senate or the House of Commons or a committee of either House", as well as for "for the purpose of influencing or attempting to influence any member of either House" (Section 41.1 CAN01). Such activities are qualified as an offence and can lead to fines of up to CAN$ 2,000 and disqualification as a member or public office holders for five years (Section 41.2 CAN01). Persons who give, offer or promise such compensation can be punished with imprisonment of up to one year and a fine of up to CAN$ 2,000 (Section 41.3 CAN01).[362] A similar prohibition applies to members of the Senate, including a fine for members of the Senate of up to CAN$ 4,000 (Section 16 CAN01). For **(ad b.2)** public office holders, Section 4 CAN02 defines a COI as a situation where a public office holder "exercises an official power, duty or function that provides an opportunity to further his or her private interests or those of his or her relatives or friends or to improperly further another person's private interests". Such a COI situation implies a **general duty** for a public office holder to "arrange his or her private affairs in a manner that will prevent the public office holder from being in a conflict of interest" (Section 5 CAN02). This is complemented by more **specific** duties in the field of decision-making, preferential treatment, insider information, using one's position to improperly influence a decision of another person[363], offers of outside employment, gifts, travel, contracts with public sector entities, contracting, fundraising and divestment (Sections 6 to 17 CAN02). Section 18

[359] The content is defined in Section 24 CAN03.

[360] See also Section 22.4 CAN02 on benefits from contracts with public sector entities.

[361] See also Section 26 CAN02 on the summary statement.

[362] On trusts, see also Sections 41-1 to 41-5 CAN01.

[363] "No public office holder shall use his or her position as a public office holder to seek to influence a decision of another person so as to further the public office holder's private interests or those of the public office holder's relatives or friends or to improperly further another person's private interests" (Section 9 CAN02).

CAN02 entails a prohibition to circumvent these obligations and Section 19 CAN02 makes compliance with this Act "a condition of a person's appointment or employment as a public office holder". Specific duties can also be found in Section 22 CAN02 on the duty to recuse[364], and in Section 27 CAN02 on divestment.

- **Gifts**: Members of the House of Commons **(ad c.1)** (including their family members) shall not "accept, directly or indirectly, any [!] gift or other benefit, except compensation authorized by law, that might reasonably be seen to have been given to influence the member in the exercise of a duty or function of his or her office" (Section 14.1 CAN03).[365] This general prohibition is complemented by rules on sponsored travel, government contracts, partnerships and private corporations, including rules on pre-existing contracts (Sections 15 to 19 CAN03). For **(ad c.2)** public office holders, Section 11.1 CAN02 states that "[n]o public office holder or member of his or her family shall accept any gift or other advantage, including from a trust, that might reasonably be seen to have been given to influence the public office holder in the exercise of an official power, duty or function".[366]
- **Post-employment activities**: As confirmed on the CIEC website[367], there are no post-employment rules in the 'Conflict of Interest Code' (= CAN03) for **(ad d.1)** members of the House of Commons'. Rules can be found for **(ad d.2)** public office holders. According to Section 10 CAN02, no **current** public office holder shall allow himself or herself "to be influenced in the exercise of an official power, duty or function by plans for, or offers of, outside employment". Section 33 CAN02 states in general terms that no **former** public office holder "shall act in such a manner as to take improper advantage of his or her previous public office". Section 34 prohibits former public office holders to act in proceedings, in which they have acted previously as public office holders. Former reporting public office holders shall not get into contractual relations with entities with which they had "direct and significant official dealings during the period of one year immediately" before their last day in office (Section 35.1 CAN02). Former reporting public office holders who, during the last one or two years (cf. Section 36 CAN03) have "any communication" according to the Canadian Lobbying Act or arrange a meeting shall report that communication or meeting to the Commissioner (Section 37.1 CAN02).[368]

3.4.6. Principles

Members of the **House of Commons** are bound to the principles of honesty and integrity and must serve the public interest. Although it is more of a substantive issue and less of a principle, the COI Code refers to "the highest standards" in avoiding COI, to "maintain and enhance public confidence" (Section

[364] "A public office holder shall recuse himself or herself from any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest".

[365] Gifts may be received "as a normal expression of courtesy or protocol, or within the customary standards of hospitality that normally accompany the member's position" (Section 14.2 CAN03). See also Section 14.3 CAN03 on disclosure obligations.

[366] The other relevant rules have been mentioned above (ad b.2) in terms of COI. See also Section 11.2 CAN02 on certain exceptions.

[367] Source: https://ciec-ccie.parl.gc.ca/en/rules-reglements/Pages/Post-Employment-Apres-mandat.aspx.

[368] See Section 37.2 CANo2 on what to report, Section 38 CANo2 on possible exemptions, which can be granted by the Commissioner in cases of minor importance.

2 CAN03). Besides these principles and possible ethical challenges (COI, but also gifts), this provision also requires members to "perform their official duties and functions and arrange their private affairs in a manner that bears the closest public scrutiny".

The values and principles for the CIEC staff have been covered above (see Chapter 3.4.2).

3.4.7. Analysis

The CIEC can be taken as an inspiring example of an institution **in charge of** ethical advice, monitoring and publishing declarations of interests, as well as investigation of alleged breaches of the above-mentioned relevant documents, concerning both elected and appointed public officials.

The CIEC can be seen as a strong **independent** institution with powerful preventive problem-solving competences regarding both declarations of interest and compliance with the Conflict of Interest Act. The Commissioner's strong independence is also reflected in his seven years of term of office, the longest period covered in this study. As mentioned above, this also includes the possibility of one or more (!) terms of reappointment. The CIEC himself, Mario Dion, emphasises in his latest report that the Commissioner is "a separate employer whose employees are not part of the federal public administration".[369]

The CIEC Office comprises 50 members of **staff**, working mainly in the fields of advisory and compliance (19 persons), corporate management (11 employees), investigations and legal service (8 persons), and communications, outreach and planning (8 persons), as can be seen from Figure 4 below. In addition to the pure figures, the following approach is also worth mentioning. The CIEC staff itself must adhere to the "highest [!] ethical standards", to achieve a "high [!] degree of public confidence".

[369] CIEC Annual Report 2019-2020, in respect of the Conflict of Interest Act (p. 21), available at: https://ciec-ccie.parl.gc.ca/en/publications/Pages/ARAct201920-RALoi201920.aspx.

Figure 4: Canada | CIEC staff

Source: CIEC Annual Report 2019-2020, in respect of the Conflict of Interest Act (p. 22)[370]

The CIEC has a budget of around CAN$ 7,000,000 (see Figure 5 below), roughly € 4,600,00, which is less than the budget of the French High Authority (2020: €7,294,355).

Figure 5: Canada | CIEC financial resources summary

FINANCIAL RESOURCES SUMMARY

(thousands of dollars)					
Program Activities	2018-2019 Actual Spending	2019-2020 Main Estimates	2019-2020 Total Authorities	2019-2020 Actual Spending	Alignment to Government of Canada Outcomes
Administration of the *Conflict of Interest Act* and the *Conflict of Interest Code for Members of the House of Commons*	5,827	6,356	6,356	6,199	Government Affairs
Contributions to employee benefit plans	691	787	787	687	
Total spending	6,518	7,143	7,143	6,886	
Plus: cost of services received without charge	1,110	n/a	n/a	1,134	
Net cost of department	7,628	7,143	7,143	8,020	

Source: CIEC Annual Report 2019-2020, in respect of the Conflict of Interest Act (p. 26)[371]

[370] Available at: https://ciec-ccie.parl.gc.ca/en/publications/Pages/ARAct201920-RALoi201920.aspx.
[371] Available at: https://ciec-ccie.parl.gc.ca/en/publications/Pages/ARAct201920-RALoi201920.aspx.

While space precludes an analysis of the CIEC's activities, one famous **report** shall be mentioned here. This case involved Justin Trudeau, Prime Minister of Canada. As mentioned above,[372] according to Section 9 CAN02 (part of Part 1, Conflict of Interest Rules), "[n]o public office holder shall make a decision or participate in making a decision related to the exercise of an official power, duty or function if the public office holder knows or reasonably should know that in the making of the decision, he or she would be in a conflict of interest". Trudeau was accused of seeking to influence a decision of the Attorney General of Canada relating to a criminal prosecution involving SNC-Lavalin, a large Canadian construction company. The "Commissioner determined that Mr. Trudeau, either directly or through the actions of those under his direction, sought to influence the Attorney General's decision whether she should intervene in SNC-Lavalin's criminal prosecution"[373]. Apart from the outcome, also the argumentation is of interest. According to the Commissioner, the "actions that sought to further these interests were **improper** since they were contrary to the principles of prosecutorial **independence** and the **rule of law**" [374]. The qualification of these actions as "improper" is reminiscent of the principles mentioned so far, the reference to the "rule of law", if transferred to the EU, is a reference to one of the common values.

[372] See fn. 363.

[373] CIEC Annual Report 2019-2020, in respect of the Conflict of Interest Act (p. 16), available at: https://ciec-ccie.parl.gc.ca/en/publications/Pages/ARAct201920-RALoi201920.aspx.

[374] CIEC Annual Report 2019-2020, in respect of the Conflict of Interest Act (p. 16; emphases added), available at: https://ciec-ccie.parl.gc.ca/en/publications/Pages/ARAct201920-RALoi201920.aspx.

4. THE 'INDEPENDENT ETHICS BODY' (IEB) – POLICY RECOMMENDATIONS

The following **policy recommendations** are not only addressed to Parliament, but to all institutions, in particular those covered in Chapter 2.2, as well as others not covered for reason of space, such as EU agencies.

4.1. Introduction

EU integration has developed **step-by-step**, from economic to political integration, also embracing human rights and common values. Thankfully, no current scandal pushes both public attention and academic discussion in one direction only. That is why now is a good moment to take the next step in EU integration, which allows to make decisions in a calm manner and to take a more holistic perspective.

The objective of an Independent Ethics Body (IEB) is to regain and then to maintain public **trust** in the European Union and its institutions. In EU health legislation, we have seen the discussion on the question of a **high v** the **highest** level of health.[375] The TFEU also distinguishes in qualification for judges and AGs at the ECJ (Article 253 [1]) and judges at the GC (Article 254 [2]) between "the highest judicial offices" and "high judicial office". While the legitimate question arises whether a high level is precisely distinguishable from the highest level of protection, this is a significant illustration of the underlying approach. The Canadian approach of striving for the "highest ethical standards" to achieve a "high degree of public confidence" seems convincing.[376] Pushing for more integrity in the EU is important, however, it is not the only factor to influence the degree of trust in the EU. By taking the most ambitious approach possible, the EU would send a clear signal to its citizens. We have seen similar approaches in data protection and now in the field of measures against climate change, where the EU has aptly opted for a more ambitious approach than elsewhere.

As the title of this study indicates, the aim is to strengthen **transparency and integrity** within the EU. While transparency has been continuously strengthened in the past (and of course can still be further strengthened), transparency alone is not enough. Transparency can lead to much information available on the Internet, but it does not necessarily change the attitude and the spirit of an organization and its institutions. Ammann has convincingly argued that both equality[377] and integrity must be

[375] Frischhut (2017, pp. 65–66).

[376] Within this study, we have also seen "the highest [!] standards of ethical conduct and integrity" (Article 3.2 ECB CoC); "the highest [!] ethical standards of conduct" (EO CoC p. 1); "the highest [!] levels of ethical standards" (Article 3 EDPS EthF); "the highest standard of ability, efficiency and integrity" (Article 27 [1] Staff Reg); as well as "the highest [!] standards of conduct and integrity among public officials" (Section 30.1 IEo1). European Commission Decision establishing horizontal rules on the creation and operation of Commission expert groups, C(2016) 3301 final 30.5.2016 also requires "highest level of integrity of experts" (p.8).

[377] Equality in lobbying can refer to equal access of information, access to decision-makers, as well as human and financial resources. Cf. also Article 9 TEU ("the Union shall observe the principle of the equality of its citizens, who shall receive equal attention from its institutions, bodies, offices and agencies"). On democracy and equality, see also Sandel (2020, p. 227).

strengthened in the field of lobbying.[378] While this study is not only about lobbying, the underlying idea is also the basis for this study.[379]

As mentioned in Chapter 2.1.2, **integrity** is "the quality of being honest and morally upright"; **ethics** is a branch of practical philosophy. While the concept of 'ethics' should be prominently anchored in the title of this body, the concept of 'integrity' is probably better suited to act as a guiding principle at an **operational level**. This avoids the necessity to opt for a particular normative theory (deontology, consequentialism or virtue ethics). As we have also seen, concerning the ethical spirit of the EU, there is no clear assignment to a single normative theory, even though deontology played an important role.[380]

Integrity cannot be guaranteed through a self-regulatory approach. As Demmke and others have rightly emphasised, "any form of self-regulation causes suspicion".[381] This might be true for an entity that is in close contact with its citizens and is even more true for an organization, which is both physically and emotionally 'far away'. That is why we need a **strong and independent** body, which can guarantee both transparency, as well as integrity. Such an **integrity branch**[382] can be seen as another branch of power, besides the traditional ones (the executive, the legislative and the judiciary), as well as more modern ones such as good quality media. This idea represents a meaningful addition to the spirit of Montesquieu's separation of powers[383].

As mentioned earlier, there is no need to reinvent the wheel and **inspiration** can be drawn from both EU institutions, as well as from a national level.[384] This includes those EU institutions covered in Chapter 2.2, as well as other ethics bodies such as the EGE. Within EU institutions covered in this study, we have seen a broad spectrum of institutions with no rules (such as the Council), as well as institutions like the ECB operating in a sensitive field and having aspiring standards. We have also seen the example of a code of conduct (EDPS CoC Supervisors), which was based on the best practises of other codes of conduct (of the ECA, the CJEU, the Commission and EO).

This study focuses on both the **institutional** framework and on more **substantive** questions, insomuch that the latter are linked to the institution and determine what it should look like. These substantive topics, which fall within the competence of the IEB, shall integrate the best practise identified so far. For this task of consolidating various codes, we can draw inspiration from the ECB, which **consolidated** various codes of conduct into a single document (for high-level officials).

One **guiding idea** should be to have clear and understandable rules, which are both precise enough, but not too complicated, as we have sometimes seen it in case of the Irish Bill (concerning DOI), a **balanced** approach so to say. This includes the objective of avoiding foreseeable **circumvention**, to close loopholes (cf. the example of the ECB), for instance, by including family members, and others. This guiding idea of avoiding circumvention should be part of a preamble, and then further 'filled with life' by the IEB. A balanced approach can also be applied as far as the above-mentioned **step-by-step** method is also used here. Again, the best practise stems from the ECB, where first the Ethics Committee was in charge of "moral suasion", followed by the Governing Council (to issue a "reprimand and, where

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[378] Ammann (2020, forthcoming).

[379] As the Commission has convincingly argued, "integrity rules are another essential contribution to transparency in lobbying"; European Commission, Green Paper - European transparency initiative, COM(2006) 194 final 3.5.2006, p. 9.

[380] Frischhut (2019, pp. 144–145).

[381] Demmke et al. (2007, p. 97).

[382] Ackerman (2000, p. 691).

[383] Montesquieu (1927, pp. 152–162).

[384] At this point, reference should again be made to the clarification at the beginning of Chapter 3.

appropriate, make it public"; Article 18 ECB CoC). From a vertical perspective, it might be necessary to provide a solution for actors linked to both the EU, as well as the national level (for example, Council). In such a scenario (cf. ECB and CoR), mutual information obligations between the national and the EU level are necessary, as well as the precedence of the respective stricter regulations.

Based on the above-mentioned **(ad 1)** relevant documents of Chapter 2.2, a **model code of conduct** should be drawn up to have one code of conduct as a reference document. As we have seen it for Ireland (Section 30.2 IE01), the idea would be to have one model code of conduct, which should figure as an annex to the document on establishing the IEB (see below, Chapter 5.2). If there are specific requirements or challenges in a particular institution, these could be addressed through more specific codes of conduct.[385] These more **specific codes** of conduct should be in line with the model code of conduct. Before the adoption of these more specific codes of conduct by the institution concerned, an opinion of the IEB should be requested and taken into account.

4.2. Independence (members and chairperson, working methods and decisions)

In the field of lobbying, Chari et al. have argued for an autonomous body, which is not part of a ministry or department and free from political interference. The independence of such a body is linked to freedom from political or partisan interference, as well as neutrality, in terms of relevant expertise, as well as in terms of the absence of conflict of interest.[386] While this study is not limited to the subject of lobbying, these considerations on **independence** also apply to our broader area of transparency and integrity.

The **(ad 2)** body in charge of strengthening transparency and integrity, as proposed by this study, is the **Independent and Ethics Body (IEB)**. This body should comprise around seven permanent members and should elect its own chair. A staff of approximately 50 persons should support the IEB. One of them should have the role of an 'ethics officer', in charge of ethical questions within the IEB. Such an ethics officer, as we have seen it for the French HATVP (*référent déontologue*) should be responsible for providing advice and training within the IEB.[387]

The independence of a body can be seen as **independence from** political stakeholders. It also entails the members' **obligation** to "neither seek nor take instructions from any Government or other institution, body, office or entity", as we know it from the Commission (Article 17 [3] TEU), the European Ombudsman (Article 228 [3] TFEU), as well as the Court of Auditors (Article 286 [3] TFEU).[388] Independence is also linked to the possibility of determining its own internal **organisation and working methods**. Finally, independence must also be reflected at a **budgetary** level (see below in Chapter 4.5).

[385] Năstase (2014, p. 102) has pointed out that even within one institution, different requirements might exist; "ethics does not materialize in the same way throughout the European Commission. It is evident that officials working in different parts of the Commission come across distinct challenge".

[386] Chari et al. (2019, p. 204).

[387] On 'local ethics correspondents' in the Commission, see Năstase (2014, p. 102).

[388] N.B. the quotation is taken from Article 17 (3) TEU, the wording of the other two articles differs slightly. See also Article 11 (1) Staff Reg.

The seven (permanent) **IEB members** should be composed of both internal EU staff, as well as externals, with a ratio of 5:2 or 4:3 (of internals and externals). The category of internal staff should comprise both current, as well as former staff. High-standards should apply to **avoid conflict of interest** situations (see below). All of them should fulfil ambitious **qualification criteria**. These criteria should not be based upon political-party affiliation, as we have seen it in case of Parliament, as this would decrease, not increase trust.[389] These qualification criteria should aim for a combination of substantive criteria as well as others aiming at previous functions.

- An **Independent** Ethics Body should require members "whose independence is beyond doubt", as we know it from the Commission (Article 17 [3] TEU), the CJEU (Article 19 [2] TEU, Article 253 TFEU, and others), the Court of Auditors (Article 286 [1] TFEU), to name but a few.
- Inspiration for **substantive qualification criteria** can be drawn from the Commission, which requires "competence, experience, independence and professional qualities", as well as from the EGE, which requires "wisdom and foresight"[390]. Likewise, the ECB can be named in this regard, requiring members "of high repute", and "whose independence is beyond doubt and who have a sound understanding of the objectives, tasks and governance of the ECB […]". Some food for thought can also be gained from a different field, where in risk assessment, the GC has referred to "excellence, independence and transparency".[391]
- In terms of **previous functions**, we can again look at the Commission model, which requires "an impeccable record of professional behaviour as well as experience in high-level functions in European, national or international institutions". Likewise, the Canadian example has determined certain high-ranked functions, which the potential members must have previously held.
- Besides individual members, the overall **composition** of the IEB as such "should reflect experiences in different institutions or functions" (Article 12 [4] EC CoC) to guarantee for a certain level of (institutional) diversity.
- The IEB should have **additional external reserve members** (e.g., four), which are not involved in the daily business of the IEB. They could support the IEB in the field of opinions of a more **strategic** nature. These members would have to fulfil the same qualification criteria, but would not support the IEB in a permanent capacity. This approach has the advantage of integrating a more **diverse** perspective, as we know it from non-permanent ethics advisory bodies such as the EGE. These four additional non-permanent members can integrate "expertise and pluralism, a geographical balance, as well as a balanced representation of relevant know-how and areas of interest"[392]. Besides adding more diversity in the case of questions of a more strategic nature, they also fulfil a similar function as 'Grand Chamber' decisions at the CJEU or at the national level[393].
- For an institution in charge of **COI** (see below) it should be self-evident to check for possible COI, especially in the case of current or former EU staff. However, the same high standards

[389] Cf. Demmke et al. (2007, p. 97).

[390] Commission Decision (EU) 2016/835 of 25 May 2016 on the renewal of the mandate of the European Group on Ethics in Science and New Technologies, OJ L 140, 27.5.2016, pp. 21–25 [EGE mandate], Article 4 (6) (a).

[391] GC judgement of 11 September 2002, *Alpharma v Council*, T-70/99, EU:T:2002:210, para. 172.

[392] EGE mandate, Article 4 (4).

[393] See for instance, the 'reinforced senate' (*verstärkter Senat*) at the Austrian Supreme Court (§ 8 *Bundesgesetz über den Obersten Gerichtshof*, BGBl 328/1968, as amended by BGBl I 112/2007).

should apply for all IEB members and staff. In this area too, the EGE can be used as a reference point, whereby EGE members "shall inform the Commission in due time of any conflict of interest which might undermine their independence"[394]. Possible COI must be checked before appointing all members and staff.

- The ECOSOC and the French HATVP are both aiming for **gender parity**, and the IEB should strive for a similar ratio of male and female members, as well as in the office.[395]

An ambitious approach should also be reflected in the way members are **selected**. For this question, one can find inspiration in the example of the CJEU. Article 255 (1) TFEU provides for a panel, which shall "give an opinion on candidates' suitability to perform the duties" of judge, etc., before they are appointed. The panel "shall comprise seven persons chosen from among former members of the Court of Justice and the General Court, members of national supreme courts and lawyers of recognised competence, one of whom shall be proposed by the European Parliament" (Article 255 [2] TFEU), where the afore-mentioned Jean-Marc Sauvé was a former President of this panel.[396] As he stated, this procedure of Article 255 TFEU "contributes effectively to the strengthening of independent, well-qualified, and legitimate judiciary within the European Union"[397]. CJEU Advocate General Bobek goes in a similar direction when he mentions that "the 255 Panel became widely regarded as a success story in terms of guaranteeing a greater quality of Union courts' appointees"[398]. Likewise, the EGE mandate also provides for a "selection process overseen by an Identification Committee".[399] This approach should also be implemented for the IEB. In the case of such strict scrutiny in terms of both qualification criteria (i.e. substantive ones, as well as referring to previous functions), it would even be possible to have a system of more institutions nominating possible members, as we have seen it from the French HATVP. This should be irrespective of an open call, published on the Europa website[400] as well as in the Official Journal of the EU.

The idea of institutions nominating members should be seen as one element of **linking** the centralised IEB to the institutions, which fall under its scrutiny. As addressed by Sauvé at the beginning of Chapter 3.2, a centralised ethics authority should go hand in hand with decentralised ethics officers[401] in those institutions falling within the scope of the IEB. The IEB, the IEB's ethics officer, as well as decentralised ethics officers would establish an institutional ethics **lattice**.

Independence is evidently linked to the **term of office**. A longer term of office strengthens independence. One example of a potentially negative role model is the EUCO President, who's term is not five years (as for Parliament and the Commission), but 2 times 2.5 years (Article 15 [5] TEU), which offers room to take influence based on the performance in the first 2.5 years. While, so far, the EGE has been mentioned often as a possible role model, the fact that EGE members are also appointed for a term of 2.5 years, renewable with the limitation of "a maximum of three terms", is not ideal.[402] Within

394 EGE mandate, Article 4 (2).

395 See also EGE mandate, Article 4 (6) (a): "[g]ender balance shall be strictly taken into account".

396 See at fn. 227.

397 Sauvé (2015, p. 84).

398 Bobek (2015, p. 280). See also Dumbrovský et al. (2014, p. 481), mentioning the "very significant impact" of the panel's advice.

399 EGE mandate, Article 4 (3).

400 See also EGE mandate, Article 4 (7).

401 Not to be confused with the IEB ethics officer.

402 EGE mandate, Article 4 (5).

this study, we have seen examples of terms of three years (the Commission, Parliament), five years (Ethics Officer EDPS), six years, renewable even more than once (Irish Bill), as well as six years, not renewable (French HATVP), and Canada 'holding the record' with seven years. For political functions, it is legitimate to have the political term of office of the Commission linked to that of Parliament (i.e., five years). For a non-political body such as the IEB, a term of office not aligned to Parliament elections (2019, 2024, 2029, and so forth) should be chosen, i.e. six or seven years. Allowing for a renewal after these six of seven years should be welcomed.

The permanent IEB members should elect its **chairperson**.[403] The Selection Committee checking the qualification criteria for all members could also be tasked with identification of those three (out of the seven) permanent members, which fulfil even higher criteria. All permanent IEB members shall then elect, by a simple majority, the chairperson and a deputy-chairperson from among these three IEB members for the duration of their term.[404]

Independence also has to do with how and under what conditions someone can be **removed from office**. According to the Irish Bill, this was only possible in the case of misbehaviour, or in the case of Canada, only "for cause". While misbehaviour can endanger trust in this body, which should also contribute to establishing trust in the EU and its institutions, serious misbehaviour must lead to consequences. As an institutional safeguard, it would be possible to foresee a role of the selection committee or for the CJEU (on Treaty changes, see Chapter 5.4).

The above-mentioned **ethics lattice** with ethics officers in EU institutions should also include the **Presidents** of these institutions, which so far are mainly responsible for ethical behaviour in their relevant institutions (e.g., Parliament, the Commission, and CJEU). Besides the possibility of asking for advice (see below in Chapter 4.3), one possibility would be an annual meeting or conference to discuss current challenges and possible future answers. This can be seen as one possibility to establish a dialogue, which can be relevant to support this process. An analogy can be drawn in this regard to the regular meetings of the CJEU judges, with judges of national high courts.

Part of this ethics lattice is also an **ethics officer** within the IEB, which is in charge of integrity within this new body. The obligations, which IEB members and staff are monitoring in EU institutions (see below Chapters 4.3 and 4.4) should also apply to themselves. In the Canadian example, we have seen the 'staff values'. For the IEB, these would be the common **values** of the EU (Article 2 TEU), and the **principles** identified so far. As for the model code of conduct (annexed to the IIA setting up the IEB; see below Chapter 5.2), it would be the task of the IEB to further specify these principles and 'fill them with life'.

The IEB should publish **annual r**eports, which should be freely available on its website, and be published in the Official Journal of the EU. This **website** can gain inspiration from the Canadian CIEC website.

In terms of **working methods** and **decisions**, we have seen the possibility of a "dissenting point of view" (Article 12 [7] EC CoC) for both the Commission, as well as a similar solution in the case of Parliament's ACCM ("minority recommendation")[405]. The same situation applies in the case of the EGE, where this "Group shall endeavour to reach consensus. However, where an opinion is not adopted

[403] While this person could also be referred to as a 'President', a 'Chairperson' might encounter less resistance. From a legal perspective this might not carry a lot of weight. Still, the symbolic nature of such wording should not be underestimated, as we have seen in case of the EGE; see Pirs and Frischhut (2020) and Frischhut (2019, p. 102).

[404] Cf. EGE mandate, Article 5 (2).

[405] See at fn. 96.

unanimously, it shall include any dissenting point of view (as a 'minority opinion') together with the name(s) of the dissenting Member(s)".[406] Looking at constitutional and other high-courts worldwide, it is a well-known discussion whether to opt for 'dissenting opinions' to strengthen the diversity of views or to strengthen uniformity in the opposite case. While we have dissenting opinions for the Council of Europe's European Court of Human Rights and other Supreme Courts, this approach cannot be found at the CJEU, as this could potentially "question the authority of the court, its collegiality and unity, as well as the independence of each of its members"[407]. Likewise, the former President of the Austrian Constitutional Court has also expressed concerns that dissenting opinions could negatively affect the behaviour of the judges and thus endanger their independence, understood as 'inner freedom'.[408]

For the IEB, decisions taken by **simple majority without** providing for possible '**dissenting opinions**' should be the preferred option. The IEB shall offer clear guidance and shall have the task to apply the common values of the EU and the principles mentioned above in this area of integrity (and transparency) of EU institutions and to ensure that they become **operational**. While the CJEU takes the role of the judiciary branch of power and is in charge of legal control, the IEB, as the above-mentioned 'integrity branch', shall be in charge of transparency[409] and integrity control and should function according to a similar working method. Having an institution in charge of ethical control (IEB) in addition to the institution in charge of legal control (CJEU) is also convincing in so far as the CJEU, as is well known, "applies a judicial self-restraint when being confronted with cases involving ethical implications"[410].

The only **exception** to this principle should apply in the case of the above-mentioned 'Grand Chamber', comprising the seven permanent, as well as the four additional external reserve members. Having uniform decisions as well as advice (see below in Chapter 4.3) is more important for daily issues, whereas more diversity might be of added-value in the case of more strategic issues.

The question of working methods is also related to the cooperation with the public and other information-providers. Following the above-mentioned concept of '**dual vigilance**',[411] the vigilance of individuals can also contribute to an effective supervision in this field. That is why the IEB should be able to receive information in particular from individuals, civil society, the media and NGOs.

4.3. Competences (advisory, monitoring, investigatory, enforcement)

The IEB should have preventive and investigative roles and be responsible for enforcement. Constant monitoring shall support these functions and it should be possible in particular for individuals, civil society, the media and NGOs to provide the IEB with information. For all these (ad 3) competences, the afore-mentioned independence plays an important role. All three countries covered in this study had this competence to act on their own initiative.[412] Therefore, the IEB should be able to act on its own

[406] EGE mandate, Article 5 (8).

[407] Alemanno and Oana (2014, p. 132), which also mention that it would be worth "discussing the impact that dissenting opinions may have on the overall openness of the Court" (p. 133).

[408] Holzinger (2017, p. 211).

[409] Obviously, also the CJEU is in charge of transparency issues, as we have seen from ECJ judgement of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09, EU:C:2010:662.

[410] Frischhut (2019, p. 144; see also pp. 44-52).

[411] See above fn. 342.

[412] We have seen this competence in France for the HATVP (Article 20.I.5 FR02), as well as in Ireland, where investigations can either occur in case of a complaint alleging a breach of the provisions of this Bill (Section 36.1), or where the Commissioner

initiative or on request of someone else[413]. The IEB should also have competence to decide on its own, whether they need the support of someone, as in the case of the HATVP, which may hear or consult any person whose assistance it deems useful.

The **preventive** function should first cover the **model code of conduct**, to offer "guidance of public officials with regard to compliance", as we have seen it in case of Ireland (Section 30.1 IE01). Based on this role model, the IEB staff should also offer **training**, education and other guidelines, to achieve the highest standards of conduct and integrity. To fulfil this preventive function, offering ad hoc advice to persons who have the necessary self-awareness, or whose awareness has been triggered by one of these trainings, is key.

- This **advice** should be offered in a written form (cf. Section 26.1 CAN03) and the person concerned should be able to rely on it (cf. Section 29.4 IE01) in relation to the IEB and the institution the person is working in. Such an advice cannot be formally binding on the CJEU, but it can be an important argument in the case of a legal proceeding. Such advice will be particularly relevant in situations of conflict of interest. Advice given to one person should be collected internally and then be made available to others in an anonymised way by abstracting the relevant principles from the specific case. Superiors and Presidents of the institutions (understood in a broad sense) covered by the IEB shall also be able to request advice. In the case of more fundamental questions or strategic issues, the afore-mentioned 'Grand Chamber' of the IEB shall provide such advice. In the field of migration, Joseph Carens has argued for a **firewall** as 'irregular migrants' entitled to certain rights might not dare to make use of those rights, as they are worried about coming to the attention of (immigration) authorities, and therefore "are often reluctant to pursue legal protections and remedies to which they are entitled".[414] A similar firewall might be needed to not deter those subject to the IEB from seeking its advice because they might be afraid of the IEB's sanction tools. Persons seeking advice show a certain degree of problem awareness and should not be punished for this.
- A preventive role is also essential in case of checking for possible COI **before** the **appointment** of EU staff. The Staff Reg[415] requires "highest standard of ability, efficiency" in recruitment (Article 27 [1] leg. cit.), as well as "the appropriate character references as to [her or] his suitability for the performance of [her or] his duties" (Article 28 [c] leg. cit.). Article 11 (3) Staff Reg stipulates that before recruitment "the appointing authority shall examine whether the candidate has any personal interest such as to impair [her or] his independence or any other conflict of interest. To that end, the candidate, using a specific form, shall inform the appointing authority of any actual or potential conflict of interest". In this field, the appointing authority could be supported by the IEB.

Besides prevention, constant **monitoring** and, eventually, **investigation** are also key.[416] The example of an MEP declaring himself to be "Master of the universe" shows that transparency on its own is not enough. Transparency needs to be supplemented by integrity, and both require monitoring and investigation. One practical element in this regard should be the requirement that all information

her- or himself thinks that there was a contravention of this Bill. Likewise, the CIEC can start investigations on its own initiative (Section 45 CAN02).

[413] I.e. those subject to the IEB scrutiny, in particular colleagues and Presidents (see below).

[414] Carens (2015, pp. 132–135).

[415] See at fn. 218.

[416] Also emphasising investigative and enforcement powers: Rosenthal (2006, p. 158).

provided by the staff, etc. must be provided "in an electronic and machine-readable format" (cf. Article 3 [5] EC CoC).

- As mentioned above, the IEB should be able to start an investigation based on an individual **request**, both from within an institution, as well as from the outside (e.g., individuals, civil society, the media and NGOs), or on its **own initiative** (cf. Section 36.2 IE01). This is in line with the Irish Bill, which also provided that an investigation can be started if "it is in the public interest [!] to have the matter so investigated in order to ensure" compliance (Section 36.2 IE01). As we have seen from the Canadian statistics, in most cases (29/50), the source of information was a member of the general public. Requests for investigation shall only be **rejected** if they are "frivolous or vexatious or […] not made in good faith" (cf. Section 27.6 CAN03).
- A solid independent ethics body needs to be strong in investigation and therefore also needs the relevant **tools**. Based on the Irish Bill, the IEB should in particular be able to direct a person to attend before the IEB to give evidence, to provide documents (cf. Section 38 IE01).
- Both **members** of the institutions concerned as well as EU **staff** members should be obliged to **cooperate** with the IEB. Article 3 (2) EO Statute[417] can serve as a model, according to which EU institutions and bodies are "obliged to supply the Ombudsman with any information [s]he has requested from them and give [her] access to the files concerned"; in addition, officials and other servants of EU institutions and bodies "must testify at the request of the Ombudsman"[418].
- In the case of France, we have seen the advantage of the obligation of French tax authorities to deliver all the necessary information, so that the HATVP can assess the completeness, accuracy and sincerity of declarations of (financial) interests. Article 3 (3) EO Statute foresees the **MS authorities' obligation** to provide the Ombudsman, via the Permanent Representations of the MS, "with any information that may help clarify instances of maladministration". The crucial question in this context is whether the cases of unethical behaviour in question always necessarily qualify as cases of maladministration.
- Nevertheless, there will be considerable overlap between maladministration and unethical behaviour. As the **EO**, amongst others, deals with questions of transparency, accountability, ethics and fundamental rights,[419] the EO should support the IEB and an institutional form of cooperation (e.g., regular meetings) would make sense. The IEB should also be supported by, and cooperate with, **OLAF**, which is , amongst others, in charge of internal administrative investigations in the field of "fraud, corruption and any other illegal activity adversely affecting the Union's financial interests".[420]
- Drawing inspiration from the recent EU directive on **whistle-blowing**,[421] similar rules should also allow the flow of information to the IEB. Likewise, in 2017, Parliament has also emphasised

[417] See fn. 170.

[418] For further details (e.g., concerning access to documents rules [see fn. 47], classified information), see in this provision.

[419] For further information, see https://www.ombudsman.europa.eu/en/home.

[420] Commission Decision (1999/352/EC, ECSC, Euratom) of 28 April 1999 **establishing** the European Anti-fraud Office (OLAF), OJ L 136, 31.5.1999, pp. 20–22, as amended by OJ L 333, 19.12.2015, pp. 148–149. Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning **investigations** conducted by the European Anti-Fraud Office (OLAF) […], OJ L 248, 18.9.2013, pp. 1–22, as amended by OJ L 317, 23.11.2016, pp. 1–3. On the investigation powers of OLAF, see Opinion of AG Szpunar of 22 September 2020, *Dalli v Commission*, C-615/19 P, EU:C:2020:744.

[421] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, pp. 17–56. See also the Commission statement regarding Directive (EU) 2019/1937 […], OJ C 270I, 17.8.2020, p. 1–1.

the importance of whistle-blowing.[422] According to Article 22c Staff Reg, "each institution shall put in place a procedure for handling complaints made by officials" in this field. Based on this provision, for instance, Parliament has adopted internal implementation rules for whistle-blowers.[423] While this new Directive applies to workers and self-employed persons in various fields not of relevance for the IEB (e.g., transport, product safety),[424] inspiration could also be drawn from this recent EU directive (from 23 October 2019). However, space precludes a deeper analysis of this question.

The IEB shall also be in charge of **enforcement**. In the case of France, failure to comply with the various obligations is punishable by up to three years' imprisonment and a fine of up to €45,000 (Article 25 sexies FR04).

- The EU, however, has **no** genuine **competence** in **criminal** law, Articles 82 to 86 TFEU are only on 'judicial cooperation (!) in criminal matters'.[425] While Article 83 TFEU offers a competence to issue directives via the ordinary legislative procedure, this is limited to "particularly serious crime"[426], and which also have to have "a cross-border dimension".[427] Article 84 TFEU on crime prevention excludes harmonisation and only allows for measures to 'promote and support',[428] and the 'European Public Prosecutor's Office' (EPPO)[429] is in charge of "offences against the Union's financial interests" (Article 86 TFEU). Hence, the IEB would need the Member States' support if criminal sanctions for actions taken by EU institution members and EU staff should be envisaged for the IEB's enforcement competences.
- An existing provision can be found in Article 4 (2) EO Statute, according to which the **European Ombudsman** "shall immediately notify the competent national authorities via the Permanent Representations of the Member States", in case the EO, in the course of inquiries, "learns of facts which [s]he considers might relate to criminal law". This provision only concerns the flow of information from the EO to the national level. However, it contains no specific obligation of

[422] European Parliament (2017, 60–67). Also Commission Vice-President Šefčovič has referred to whistle-blowing as "part of the Commission's overall ethics policy"; European Commission (2012, pp. 2–3). See also European Commission, Strengthening whistleblower protection at EU level, COM(2018) 214 final 23.4.2018.

[423] European Parliament (2015). According to Article 2 leg. cit., whistle-blower "means a person who, acting in good faith, forwards to his or her superior, in writing, information on facts of which he or she has become aware during or in connection with the performance of his or her duties and which suggest that serious irregularities may have taken place".

[424] The directive also applies to "breaches affecting the financial interests of the Union", which could be of relevance for the topic at hand.

[425] According to Article 4 (1) TEU, "competences not conferred upon the Union in the Treaties remain with the Member States"; see also Declaration No 18 in relation to the delimitation of competences, OJ C 202, 7.6.2016, pp. 344–345. This national competence for criminal law is also mirrored in Article 82 (3) TFEU, where draft directives can be referred to the European Council, in case fundamental aspects of the national "criminal justice system" would be affected (cf. also Article 83 [3] TFEU).

[426] Spencer and Csúri (2020, p. 818) summarize this range of matters as "where the media are demanding action".

[427] Article 83 (1) TFEU mentions topics that fall outside the scope of the IEB (e.g., terrorism, human trafficking) and even if the list would unanimously be extended, as mentioned by the last subparagraph, the cross-border requirement would still be a problem.

[428] Cf. Article 2 (5) and Article 6 TFEU, i.e. legislative competences "to support, coordinate or supplement".

[429] Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the **establishment** of the European Public Prosecutor's Office ('the EPPO'), OJL 283, 31.10.2017, pp. 1–71. The **material** scope will be determined by Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, pp. 29–41; Staffler (2020, paragraph 20.87). See also the CJEU press release No 118/20 from 28 September 2020, on the **inauguration** of the European Public Prosecutor's Office. On the EPPO, see also Herrnfeld et al. (2020).

cooperation for those national authorities in charge of criminal law. The general principle of loyal cooperation (Article 4 [3] TEU) remains unaffected.[430]

- In the case of **EU staff**, Article 86[431] Staff Reg[432] i.c.w. Annex IX provide rules for disciplinary measures and proceedings. Without going into to more procedural details, Article 9 (1) of Annex IX lists the following **possible penalties**: "(a) a written warning; (b) a reprimand; (c) deferment of advancement to a higher step for a period of between one and 23 months; (d) relegation in step; (e) temporary downgrading for a period of between 15 days and one year; (f) downgrading in the same function group; (g) classification in a lower function group, with or without downgrading; (h) removal from post and, where appropriate, reduction pro tempore of a pension or withholding, for a fixed period, of an amount from an invalidity allowance"; paragraph 2 leg. cit. adds the possibility "to withhold an amount from the pension or the invalidity allowance for a given period". Article 10 of Annex IX lists various factors to determine the seriousness of the misconduct and to decide upon the disciplinary penalty to be imposed, which also includes the "integrity [!], reputation or interests of the institutions". The afore-mentioned written advice of the IEB could, amongst others, be taken into account in terms of the "extent to which the misconduct involves intentional actions or negligence". While the IEB could be explicitly mentioned in this Article 10 of Annex IX Staff Reg, it should also be possible to integrate the IEB under the current wording. Cooperation with national judicial authority is only implicitly addressed in the Staff Reg (Article 1 [2] Annex IX).
- In terms of **members** of EU institutions, the relevant rules apply: for instance, in case of the Commission, Article 245 (2) TFEU (obligation to behave with integrity and discretion) or Article 247 TFEU (serious misconduct).
- Besides the legal level, enforcement should also occur via **information** of IEB opinions and decisions to **superiors**. These opinions and decisions should also, if necessary, be published on the IEB's website in severe cases, as well as in the Official Journal of the EU. In the case of France, under certain circumstances, the HATVP can **publish** a special report in the French **Official Journal** (Article 7 FR02). Neuhold and Năstase, for instance, mention 'special reports' as the "'sharpest' tool in the EO's arsenal", as "they must be debated within [Parliament] and as such, they receive political attention".[433] Hence, sanctions can also be effective even if not based on criminal law.

[430] For further details, see Klamert (2014).

[431] "Any failure by an official or former official to comply with his obligations under these Staff Regulations, whether intentionally or through negligence on his part, shall make him liable to disciplinary action" (paragraph 1).

[432] See at fn. 218.

[433] Neuhold and Năstase (2017, p. 43).

4.4. Scope

4.4.1. Scope ratione personae

As Chari et al. have mentioned, lobbying regulation should cover not only the legislative, but also the executive **branch of power**.[434] Translated to the EU, this means that the Commission, Parliament and the Council should be involved in the personal scope of the IEB, covering transparency and integrity. Ideally, the competence of the IEB covers those **institutions** (understood in a broad sense) covered in Chapter 2.2, including also those who do not have rules: that is to say, the Council, the European Council (except for the EUCO President), as well as the Euro Group and the Euro Summit, as informal[435] meetings. The personal scope of the IEB should also cover EU agencies or offices, not covered in Chapter 2.2. As mentioned above, both the **members** of these institutions, as well as their **staff** should be included in the personal scope of the IEB. Most documents analysed above were mainly about members (cf. EP CoC, EC CoC, CJEU CoC, ECOSOC CoC, CoR CoC), whereas some have also included rules on staff (cf. ECA EthG, EDPS EthF). For either category (members and staff) the IEB's competence shall cover both **current** as well as **former** ones. As mentioned in the previous chapter, the IEB's competence should even be extended on a time-line to incoming members or staff, as we have also seen it for the person proposed as candidate for President of the Commission and to Commissioners-Designate (Article 1 EC CoC).[436]

4.4.2. Scope ratione materiae

The IEB should be in charge of all types of **conflict of interest** (gifts; revolving-doors, including external activities during the job; lobbying) as well as **declaration of interests**. The model code of conduct shall be based on the (ad 5) *scope rationae materiae*, as identified in this study, as depicted in Chapter 2.2, enriched by the comparative analysis on France, Ireland and Canada in Chapter 3.

Conflict of interest situations can be described as the most relevant challenge of unethical behaviour. According to the OECD, a COI is a "conflict between the public duty and private interests of public officials, in which public officials have private-capacity interests which could improperly influence the performance of their official duties and responsibilities"[437]. This definition refers to the so-called '**actual**' COI, which should be differentiated from '**apparent**' and '**potential**' COI. According to the OECD, "an *apparent* conflict of interest can be said to exist where it appears that a public official's private interests could improperly influence the performance of their duties *but this is not in fact the case*. A *potential* conflict arises where a public official has private interests, which are such that a conflict of interest would arise if the official were to become involved in relevant (i.e. conflicting) official responsibilities in the future".[438] These private interests, which may be contrary to the public interest, can be of a diverse

[434] Chari et al. (2019, p. 198).

[435] See above, Chapter 2.2.11.

[436] On Article 11 (3) Staff Reg, see above at fn. 415.

[437] Organization For Economic Cooperation And Development (2003, 15, 24). For a deeper analysis, see also another study, commissioned by Parliament: Demmke et al. (2020).

[438] Organization For Economic Cooperation And Development (2003, p. 24); no emphases added.

nature. As the OECD aptly mentions, they "are not limited to financial or pecuniary interests, or those interests which generate a direct personal benefit to the public official", but might also "involve otherwise legitimate private-capacity activity, personal affiliations and associations, and family interests, if those interests could reasonably be considered likely to improperly influence the official's performance of their duties".[439] As we have seen in Chapter 2.2, most EU institutions embrace such a broad concept of COI, and the same should apply for the IEB.

- One practise that can lead to conflicts of interest is **gifts**. So far we have seen rules mainly on acceptance, but also on offering of gifts. While the first category is more important, both categories should be embraced. The most important question in this context revolves around the amount, where we have seen huge differences. When talking to people working in Brussels, they often mention that an amount of € 150 (the Commission, Parliament) is only enough for one dinner. The question is though, what signal to send to ordinary citizens for whom € 150 is usually a lot of money. The higher the amount (e.g., € 600; Section 11.3 IE01), the more 'fuel is added to the flames' of euro-sceptics. The author suggests no gifts as a basic rule with a 'junk-exception' of € 15 (cf. Article 13 FR03). In the case of an appointed or elected public person being in charge of scrutinising an external natural or legal person, a zero gift acceptance policy is recommended.
- Another important topic in this field is the '**revolving-doors**' phenomenon, a conflict of private v public interests related to the previous, the current, and eventually also a future job. Hence, the model code of conduct should embrace rules on incoming staff members, rules on current ones, and post-term-of-office rules.
    - We have seen checks for **incoming** staff in the case of Article 11 (3) Staff Reg. It is also well known that candidates for the Commission are 'grilled' in Parliament. Having a thorough conflict of interest check for incoming members and staff is essential. Such a test could cover the last three years (cf. Article 20.I.4 FR02), and an extension could be considered for higher functions.
    - **During** the time of holding a public office (both members and staff), conflict of interest situations must be thoroughly checked. A special emphasis should also be put on cabinets. This includes gifts, COI based on previous activities, external activities (including part-time), as well as public officials in terms of targets of lobbying activities.[440]
    - When **leaving** office, the IEB should be in charge of deciding on the compatibility of the public function with a future private activity for a maximum period up to three years (cf. EDPS CoC Supervisors, Chapter 9; Article 23.II FR02). Likewise, differentiation for higher-level and other functions could be considered, as we have seen it for the President of the Commission v Commissioners. In the case of someone being in charge of supervising a private entity, stricter rules should apply (cf. ECA, EO).

Apart from COI, **declaration of interest** is also key to enhance transparency and integrity. The EU should embrace a **broad** understanding also in this field, covering both financial and non-financial information. As mentioned on several occasions, this information must be **verified** and further

[439] Organization For Economic Cooperation And Development (2003, p. 25).

[440] For an overview of the topics also covered in this study, but from this perspective of targets of lobbying, see Grad and Frischhut (2019, pp. 310–319).

information requested if necessary (cf. Section 16 IE01). DOI should be **updated** annually, as well as ad hoc, for instance, in case of a dossier, report, or speech. In the case of data protection issues, one possibility would be to have confidential DOI and a public summary (cf. Section 23 CAN03).

These detailed rules should be backed up by the **(ad 6) principles** identified so far, as well as by the EU's common values, as enshrined in Article 2 TEU. According to **Article 13 (1) TEU**, the Union's "institutional framework […] shall aim to promote its values". The **ECOSOC** has explicitly referred to these values by requiring members to "promote democracy and values based on human rights" (Article 2 [4], and Article 1 [6] ECOSOC CoC). **Canada** has also referred to values. These four values comprised respect for people (fostering "inclusion, civility and dignity"), professionalism (inducing diligence, consistency, as well as a spirit of collaboration), integrity (building and maintaining trust "by upholding the highest ethical standards"), as well as impartiality (independence, objectivity, non-partisan behaviour, as well as maintaining diversity of views).

As I have argued elsewhere, the 'ethical spirit' of the EU has, amongst others, to be based on the EU's fundamental (or **human**[441]) **rights**, as enshrined in the **CFR**.[442] Besides the ECOSOC, also Canada has referred to the 'Canadian Charter of Rights and Freedoms'. Especially, the equality rights (Articles 20 to 26 CFR) and the right to good administration (Article 41 CFR) will be of relevance. According to Article 41 (1) CFR "[e]very person has the right to have his or her affairs handled **impartially**, **fairly** and within a **reasonable time** by the institutions, bodies, offices and agencies of the Union" (emphases added). Likewise, Article 42 CFR (right of access to documents), Article 43 CFR (European Ombudsman) and Article 44 (right to petition) of title V (citizens' rights) are of importance. The same holds true for the rights of title VI (justice), comprising, amongst others, Article 47 CFR[443] (right to an effective remedy and to a fair trial), Article 48 CFR (presumption of innocence and right of defence).

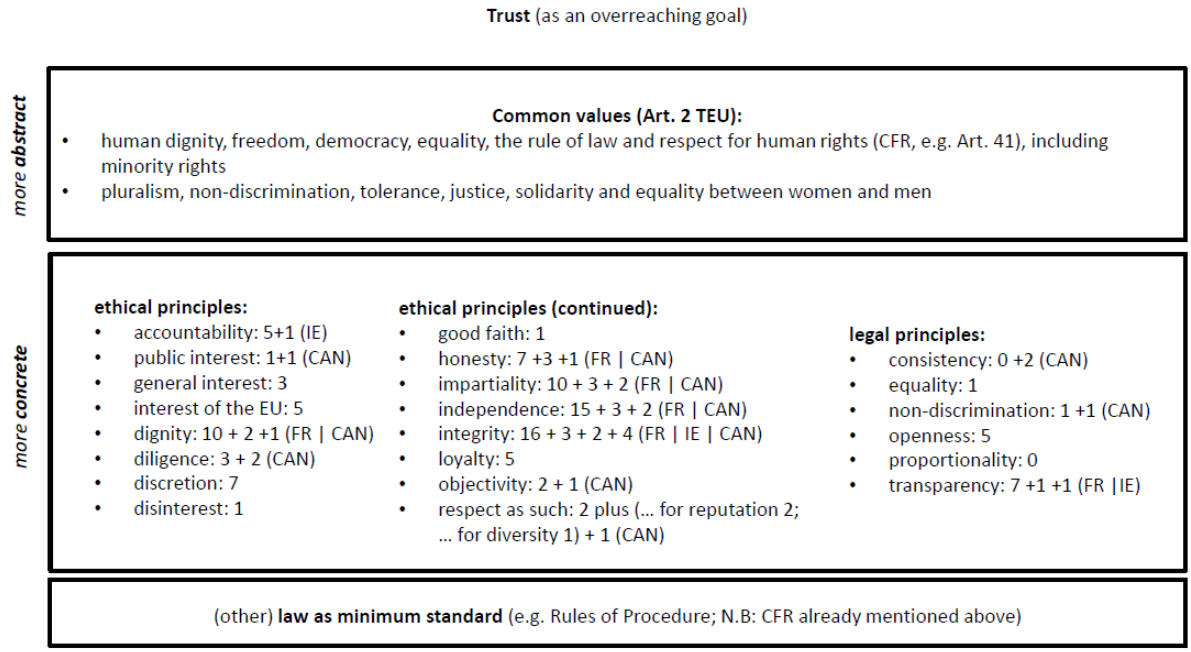
For the **principles**, those identified in Figure 1, together with those mentioned in Chapter 2.2, can be taken as a starting point. These should be further developed and 'filled with life' by the IEB. It is important to emphasise that both the values as well as these principles should be seen in addition to legal requirements, where law serves as the minimum standard and ethical behaviour adds up to that in the sense of more ambitious standards. The statistical occurrence of these principles was added to the above-mentioned Figure 2 (see below Figure 6).

[441] The fast majority of these rights entitle human beings not only EU citizens.

[442] Frischhut (2019).

[443] See below fn. 517.

Figure 6: EU | Values & (legal and ethical) principles (plus statistics)



Source: Frischhut, 2020

First, we can see a considerable overlap both within the EU, as well as between the EU and the three countries covered in this study. Second, although this quantitative analysis does not replace a qualitative one and should be viewed with caution, we can see several documents referring to integrity (25), independence (20), impartiality (15), dignity (13), honesty (11), transparency (8), and discretion (7).

In the case of the EDPS, we have seen more **administrative principles** such as good governance, good administrative behaviour, efficiency and effectiveness, as well as cooperation and pragmatism.

In case of the European Ombudsman, we have seen another noteworthy example (EO Good Practice) of a more **holistic** view, including principles such as leadership in problem solving (involving the ability "to anticipate consequences"), independence and neutrality, innovative approaches to dispute resolution, systemic thinking, external awareness and curiosity, responsiveness, empathy (appreciating "the dignity of everyone", as well as "respectful" communication), as well as openness and engagement.

4.5. Resources (staff, budget)

As Chari et al. have mentioned, the EU is understaffed in comparison to Canada when it comes to reviewing lobbying registrations.[444] Likewise, Saint-Martin has also convincingly argued that budget matters.[445] The same mistake should not happen in this field of transparency and integrity for which the IEB is responsible.

In terms of **budget**, we have seen the examples of the Canadian CIEC, which has roughly € 4,600,00 (CAN$ 7,000,000), less than the French High Authority (2020: €7,294,355). The IEB should be provided with the necessary budget, where the two examples of Canada and France can serve as a possible range. As verifying information provided in terms of DOI is key, the IEB should have the necessary staff. The 50 persons of Canada can serve as a guideline.

[444] Chari et al. (2019, p. 64).

[445] Saint-Martin (2006, pp. 22-23).

5. POLICY RECOMMENDTIONS TO SET UP THE INDEPENDENT ETHICS BODY

For setting up the IEB, three main questions must be tackled. Is it possible to delegate certain powers to the IEB based on the so-called '*Meroni*-doctrine' (Chapter 5.1), what can be a possible legal basis for establishing the IEB (Chapter 5.2) and which changes are necessary in the field of secondary (Chapter 5.3) and primary EU law (Chapter 5.4)?

5.1. *Meroni*-doctrine

In one of its first cases from June 1958, the ECJ had to decide on the **limitations** of the **delegation** of powers. Before the establishment of the Common Market, there was a need "for an arrangement for the equalization of imported ferrous scrap"; in this context "equalization was based on a voluntary agreement between the Community producers of pig-iron and of steel, who had created a 'Joint Bureau of Ferrous Scrap Consumers' (hereinafter referred to as 'the Joint Bureau'), an imported Ferrous Scrap Equalization Fund' (hereinafter referred to as 'the Fund') and an Office representing consumers and traders on a basis of parity".[446] These bodies (the Joint Bureau and the Fund) are companies established under **private law** and are "cooperative undertakings under Belgian commercial law and their registered offices are at Brussels"[447]. As they are referred to as the 'Brussels agencies', it is important to emphasise that they were not (!) part of the **European Coal and Steel Community (ECSC)**, but rather companies under private law. Since it was found that the first **voluntary** system was 'inadequate', the High Authority (now: the Commission) created an 'equalization arrangement', which was **compulsory** for all undertakings in the Community using ferrous scrap. The functioning of this equalization arrangement was **entrusted** by the High Authority "subject to its supervision" to the above-mentioned private (!) 'Brussels agencies' under the ECSC Treaty.[448] In this context, *Meroni* questioned their obligation of certain payments as imposed by these 'Brussels agencies' and, in particular, the delegation of powers from the High Authority to these bodies under private law. These facts of the case are important to understand the significance of the legal statements of the Court in those two leading cases.

AG Roemer well summarised what is now commonly known as the '*Meroni*-doctrine': "Let it suffice for me to extract two points which, in a modern **State** founded on the **rule of law**, seem to me to be generally accepted as conditions governing the delegation of the administrative powers of public authorities to private [!] associations: the delegation must be **governed by a law** which **specifies** the content of the delegation **precisely** and which must guarantee not only sufficient **control** by the State, but also complete **legal protection** against the measures adopted by these associations. Legal protection may be achieved by assimilating the measures adopted by such associations to those of public administrations, so that they may be contested by legal proceedings in accordance with the

[446] Joined opinion of Advocate General [AG] Roemer of 19 March 1958, *Meroni v High Authority of the European Coal and Steel Community [Meroni]*, 9/56 and 10/56, EU:C:1958:4, p. 179.

[447] Joined opinion of AG Roemer of 19 March 1958, *Meroni*, 9/56 and 10/56, EU:C:1958:4, p. 179.

[448] Joined opinion of AG Roemer of 19 March 1958, *Meroni*, 9/56 and 10/56, EU:C:1958:4, p. 180.

general rules of administrative law".[449] This reference to the 'rule of law', one of the EU's common values (Article 2 TEU), and to 'legal protection', highlights the main concerns and drivers for the statements of the ECJ in its two judgements, delivered on the same day.

As there was a "true delegation of powers", the Court had to clarify the question "whether such delegation accords with the requirements of the Treaty".[450] The ECJ's judgement on the admissibility of the delegation of powers concerns the following aspects:

- **Possibility of delegation as such**: Although Article 8 of the ECSC Treaty on the High Authority does "not provide any power to delegate", the "possibility of entrusting to bodies established under private law, having a distinct legal personality and possessing powers of their own, the task of putting into effect certain 'financial arrangements common to several undertakings' as mentioned in subparagraph (a) of Article 53 cannot be excluded".[451] Although this statement refers to an article of the expired ECSC Treaty[452], this statement is valid for today's EU too, hence, also for possible delegations to the IEB. Obviously, no delegation of powers is possible if "formally prohibited"[453]. This poses no problem for the IEB. As emphasised more recently, "the powers conferred on an institution include the right to delegate, in compliance with the requirements of the **Treaty**, a certain number of powers which fall under those powers, subject to conditions to be determined by the **institution**".[454] This clarifies the possibility of transferring own powers, if so decided by an institution and as long as the Treaties are respected.
- **Explicit delegation**: As the ECJ has emphasised, a "delegation of powers cannot be presumed and even when empowered to delegate its powers the delegating authority must take an express decision transferring them".[455] This precondition of explicit delegation will have to be taken into account by the document setting up the IEB (see below Chapter 5.2).
- **No 'magic' increase in powers**: '*Nemo plus iuris transferre potest quam ipse habet*' is a principle, which we know from private law. If you are not the owner of an object, you cannot transfer ownership to another person. The same principle applies at EU level. A decision delegating powers can "not confer upon the authority receiving the delegation powers different [!] from those which the delegating authority itself received under the Treaty", as this would give "the Brussels agencies more extensive powers than those which the High Authority holds from the Treaty".[456] Setting up the IEB must respect this requirement. First, existing powers can be

[449] Joined opinion of AG Roemer of 19 March 1958, *Meroni*, 9/56 and 10/56, EU:C:1958:4, p. 190. This is in line with ECJ opinion of 26 April 1977, *Accord relatif à l'institution d'un Fonds européen d'immobilisation de la navigation intérieure*, Avis 1/76, EU:C:1977:63, para. 16: ("[…] it is unnecessary in this opinion to solve the problem thus posed. In fact the provisions of the Statute define and limit the powers which the latter grants to the organs of the Fund so **clearly** and **precisely** that in this case they are **only executive** powers […]"; emphases added).

[450] ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, p. 149. See also, from the same day, ECJ judgement of 13 June 1958, *Meroni v High Authority*, 10/56, EU:C:1958:8.

[451] ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, p. 151.

[452] As the only founding Treaty in EU integration, the ESCS Treaty existed only for a limited time. See Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 20 July 1998 concerning the expiry of the Treaty establishing the European Coal and Steel Community, OJ C 247, 7.8.1998, pp. 5–6, and the Protocol [annexed to the Nice Treaty] on the financial consequences of the expiry of the ECSC Treaty and on the research fund for coal and steel, OJ C 80, 10.3.2001, pp. 67–68.

[453] GC judgement of 18 October 2001, *X v ECB*, T-333/99, EU:T:2001:251, para. 102.

[454] ECJ judgement of 26 May 2005, *Tralli v ECB*, C-301/02 P, EU:C:2005:306, para. 41.

[455] ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, p. 151. See also GC judgement of 17 June 2008, *FMC Chemical and Arysta Lifesciences v EFSA*, T-311/06, EU:T:2008:205, para. 66.

[456] ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, pp. 149-150.

transferred from EU institutions (understood in a broad sense) (see Chapter 2.2) to the IEB. Second, limitations of EU primary law must be respected, as otherwise the Treaties would have to be adapted (see Chapter 5.4).

- **No unlimited discretion**: Such a delegation of powers must "be subject to **precise rules** so as to exclude any arbitrary decisions and to render it possible to review".[457] The core statement of the ECJ refers to this question of the degree of delegated powers, which also addresses some of the other requirements, mentioned in the following (legal review by CJEU): "The consequences resulting from a delegation of powers are very different depending on whether [1.] it involves **clearly defined executive** powers the exercise of which can, therefore, be subject to **strict review** in the light of **objective criteria** determined by the delegating authority, or whether [2.] it involves a **discretionary** power, implying a wide margin of discretion which may, according to the use which is made of it, make possible the execution of actual economic policy. A delegation [ad 1.] of the first kind cannot appreciably alter the consequences involved in the exercise of the powers concerned, whereas [ad 2.] a delegation of the second kind, since it replaces the choices of the delegator by the choices of the delegate, brings about an actual transfer of responsibility."[458] Hence, the IEB's competences (see Chapter 4.3) and tasks (Chapter 4.4) must be clearly described. Such a mandate should use precise language when defining the IEB's competences. However, this is no argument against tasking the IEB to further develop the above-mentioned principles and the EU's common values, which are part of EU primary law anyway (Article 2 TEU).[459] Applying these values and principles to specific cases can be seen as an executive power, not as discretionary.[460]
- **Supervision**: Having in mind that the transfer of powers in *Meroni* was on an entity under private (!) law, the Court stated that "the power of the High Authority to authorize or itself to make the financial arrangements mentioned in Article 53 of the Treaty gives it the right to entrust certain powers to such bodies subject to conditions to be determined by it and subject to its supervision"[461]. Setting up a body, which combines and therefore strengthens the compliance with the EU's values and the EU's existing 'ethical spirit'[462] is also about supervision, but supervision of existing norms via the IEB. A specific supervision of the IEB is not necessary, except for the next aspect.
- **Legal review by CJEU**: Whether a power is exercised by an institution on its own or delegated, the decisions of either entity are "subject to review by the Court of Justice"[463]. This would not

[457] ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, p. 151 (emphasis added).

[458] ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, p. 152 (emphases added). On the question of a wide discretion, see also GC judgement of 19 February 1998, *DIR International Film and Others v Commission*, Joined cases T-369/94 and T-85/95, EU:T:1998:39, para. 52.

[459] Another statement might be less of an issue for the IEB. Article 3 ECSC Treaty had listed six different objectives, comparable to today's Article 3 TEU listing the EU's objectives. This Article 3 ECSC Treaty was mentioned in Article 53 ECSC Treaty, which was about the creation of creation of any type of joint financial body for several undertakings. The problem in *Meroni* was that "reconciling the various objectives laid down in Article 3 implies a real discretion involving difficult choices, based on a consideration of the economic facts and circumstances in the light of which those choices are made"; ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, p. 152. However, this challenge does not arise in case of the IEB.

[460] A discretionary power would be, for instance, to 'invent' new powers. The choices of choices of the delegators (i.e. EU institutions) shall not be replaced by the choices of the delegate (i.e. the IEB).

[461] ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, p. 151.

[462] As depicted in Frischhut (2019).

[463] ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, p. 149. Also emphasising this aspect of judicial control: Wittinger (2008, p. 619).

be a problem, as it is not intended that the IEB should escape the legal control of the CJEU (Article 19 TEU). Article 263 TFEU (action for annulment) tasks the CJEU with 'review of legality' "of acts of bodies, offices or agencies of the Union intended to produce legal effects *vis-à-vis* third parties".[464] Thus, also the IEB would be subject to the CJEU's case-law. Apart from that, it has been mentioned that the CJEU would be responsible for legal control and the IEB for ethical control. This goes hand in hand with the quotation of AG Roemer, which referred to the 'rule of law' and legal protection for individuals. Both aspects must undoubtedly be respected and protected by both the CJEU and the IEB. Likewise, AG Warner has also stressed the aspect of judicial review when dealing with the Meroni-doctrine.[465]

- **Safeguarding the institutional balance**: The institutional balance[466] for the EU (respectively, the ECSC at the time) is what the separation of powers is for nation states. While there is a legislative branch of power (Parliament and the Council; with proposals made by the Commission), an executive branch of power (the Commission, in case EU law is not executed by the Member States) and a clear judiciary branch of power (CJEU), EU institutions are still different from what we typically find in nation states.[467] Against this background and the afore-mentioned "new [!] legal order of international law"[468], the Court has referred to "the **balance of powers** which is characteristic of the institutional structure of the Community a fundamental guarantee granted by the Treaty in particular to the undertakings and associations of undertakings to which it applies"[469]. This institutional balance is set up by the Treaty, and therefore to "delegate a discretionary power, by entrusting it to bodies other than those which the Treaty has established to effect and supervise the exercise of such power each within the limits of its own authority, would render that guarantee ineffective"[470]. The IEB would not change the institutional balance, as the relationship of the institutions to each other is not altered.[471]

In conclusion, it is possible to delegate powers to the IEB, if this is done explicitly and if the requirement is respected that only those powers are delegated, which are currently provided for in the Treaties. These powers must be precisely defined and cannot rule out the legal control by the CJEU. The institutional balance would not be affected by the IEB.

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[464] This is in line with what we have seen earlier, for the CoR: ("The member concerned may bring an action for annulment before the Court of Justice within two months of the notification of the reasoned decision of the Bureau, pursuant to Article 263 TFEU"; Article 8 [7] CoR CoC). On EU agencies and the *Meroni*-doctrine, see Griller and Orator (2010).

[465] Opinion of AG Warner of 20 November 1980, *Romano*, 98/80, EU:C:1980:267, p. 1265. Also emphasising the importance of judicial review, Orator (2017, p. 283).

[466] Cf. Lenaerts and Verhoeven (2002).

[467] See, for instance, concerning the European Commission: Charlemagne (September 5th – 11th 2020).

[468] ECJ judgement of 5 February 1963, *Van Gend en Loos v Administratie der Belastingen*, 26/62, EU:C:1963:1, p. 12.

[469] ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, p. 152 (emphasis added).

[470] ECJ judgement of 13 June 1958, *Meroni v High Authority*, 9/56, EU:C:1958:7, p. 152.

[471] ECJ judgement of 14 April 2015, *Council v Commission (macro-financial assistance to third countries)*, C-409/13, EU:C:2015:217, para. 64: the institutional balance "requires that each of the institutions must exercise its powers with due **regard** for the powers **of the other** institutions". See also ECJ judgement of 26 May 2005, *Tralli v ECB*, C-301/02 P, EU:C:2005:306, para. 46: "In that context and as regards the 'principle of institutional balance', it is sufficient to recall that that principle is intended to apply only to **relations between** Community institutions and bodies". In both cases, emphases added.

In subsequent case-law, the *Meroni*-doctrine has been both **confirmed** and further **clarified**.

- The *Meroni*-doctrine developed within the ECSC Treaty also applies for the **EU**.[472] In the same judgement, the Grand Chamber of the ECJ has clarified that particularly strict criteria apply in case the Community (now: EU) legislature wishes to delegate its power to amend aspects of a **legislative** act.[473] However, this is not the case for the IEB, which is involved in ethical control, not in legislative tasks.
- As emphasised in the introduction of this chapter, *Meroni* was about the delegation to an **entity of private law**. The Court has also stressed that it is "important to point out, in that regard, that, if the Court's reasoning in *Meroni* related to the delegation of powers, for the purpose of putting into effect certain financial arrangements, to bodies established under private law, having a distinct legal personality, a Community institution or body must be entitled to lay down a body of measures of an organisational nature, delegating powers to its own internal decision-making bodies, in particular as regards the management of its own staff".[474] This is another argument in favour of the possibility of establishing the IEB. The "requirements to state reasons and to publish" mentioned in this same judgement should be self-evident for the IEB (see also Article 41 CFR).[475]
- The more recent CJEU case-law referring to *Meroni* has mainly stressed the **institutional balance**, as mentioned above.[476]
- In the Grand Chamber judgement on 'short selling and credit default swaps', the ECJ had to rule on questions of delegation to the European Securities and Markets Authority (ESMA). There, the Court has again emphasised the distinction of executive v discretionary powers: "the consequences resulting from a delegation of powers are very different depending on whether it involves clearly defined **executive** powers the exercise of which can, therefore, be subject to **strict review** in the light of **objective criteria** determined by the delegating authority, or whether it involves a '**discretionary** power implying a **wide margin of discretion** which may, according to the use which is made of it, make possible the execution of actual economic policy'".[477] The IEB would fall within the first category, which "cannot appreciably alter the consequences involved in the exercise of the powers concerned, whereas a delegation of the second kind [i.e. discretionary powers], since it replaces the choices of the delegator by the choices of the delegate, brings about an 'actual transfer of responsibility'"[478]. As mentioned above, the Court also emphasised that "the bodies in question in Meroni v High Authority were entities governed by private law, whereas ESMA is a European Union entity, created by the EU legislature"[479]. This argument can also be found in literature, however not only from legal but

[472] ECJ judgement of 12 July 2005, *Alliance for Natural Health*, Joined cases C-154/04 and C-155/04, EU:C:2005:449, para. 90. This transferability has been argued already in 1993; Lenaerts (1993, p. 41).

[473] ECJ judgement of 12 July 2005, *Alliance for Natural Health*, Joined cases C-154/04 and C-155/04, EU:C:2005:449, para. 90. See also before this judgement, ECJ judgement of 14 May 1981, Romano, 98/80, EU:C:1981:104, para. 20.

[474] ECJ judgement of 26 May 2005, *Tralli v ECB*, C-301/02 P, EU:C:2005:306, para. 42.

[475] ECJ judgement of 26 May 2005, *Tralli v ECB*, C-301/02 P, EU:C:2005:306, para. 43.

[476] See fn. 471.

[477] EJC judgement of 22 January 2014, *UK v Parliament and Council (short selling and credit default swaps)*, C-270/12, EU:C:2014:18, para. 41 (emphases added).

[478] EJC judgement of 22 January 2014, *UK v Parliament and Council (short selling and credit default swaps)*, C-270/12, EU:C:2014:18, para. 42.

[479] EJC judgement of 22 January 2014, *UK v Parliament and Council (short selling and credit default swaps)*, C-270/12, EU:C:2014:18, para. 43.

also policy perspective. As Hatzopoulos mentions, why should the CJEU 'criticise' a delegation of powers to an EU body, if EU institutions decided so.[480]

After a literal interpretation, the quotation from AG Roemer at the beginning of this chapter was also important in terms of a **teleological** interpretation. Jacqué has aptly emphasised, the institutional balance, for the Court, "is a substitute for the principle of the separation of powers that, in Montesquieu's original exposition of his philosophy, aimed to protect individuals against the abuse of power".[481] One of the core tasks of the IEB is to actively work against the abuse of power in terms of conflict of interest, etc. ECJ President Lenaerts has addressed another argument of importance for this study in the context of "transfer of authority to an internal body": the "delegation to an independent body cannot be a threat to the constitutional 'balance of powers' within the Community legal order".[482] The IEB is going to be both an EU body, as well as an independent one.

5.2. Legal basis

As we have seen several times throughout this study, **lobbying** and our topic of **integrity and transparency** are closely related and the latter one can be seen as broader, also concerning several aspects of lobbying. The question for a possible legal basis for a mandatory lobbying register has caused much academic debate. The quest for the appropriate legal basis to establish the IEB can be based on this debate.

Both, the **Rules of Procedure**[483] and the **Staff Reg**[484] have not been considered as an appropriate legal basis for setting up a mandatory lobbying register, as they have only internal effect. Both types of legal documents covered in Chapter 2.2 might need to be changed (see below Chapter 5.3). While they support the functioning of the IEB, they are not enough in themselves to establish the IEB.

Another possible legal basis discussed in the context of making the still voluntary lobbying register mandatory is **Article 298 TFEU**, which states as follows: "In carrying out their missions, the institutions, bodies, offices and agencies of the Union shall have the support of an open, efficient and independent European administration" (paragraph 1). As this article mentions openness, efficiency and independence, it seems like a valid legal basis. However, the problem is not that it does not mention integrity, the challenge is rather that this article on '**sound administration**' can only be used for the executive branch of power, but not for the other two. As Gerig and Ritz mention, this article does not include MEPs.[485] As Chari et al. have emphasised, lobbying regulation should cover not only the legislative, but also the executive branch of power,[486] and the same holds true for our topic. Not including Parliament is no alternative. Consequently, Article 298 TFEU aiming for sound administration can also support the ideas behind the IEB, but it is not an appropriate legal basis for setting it up.

[480] Hatzopoulos (2012, p. 325).

[481] Jacqué (2004, p. 384).

[482] Lenaerts (1993, p. 43).

[483] RoP have not been considered an appropriate legal basis, as they can only "include requirements for lobbyists when they interact with the institutions" and can "not impose any penal sanctions for non-compliance", Krajewski (2013, p. 14).

[484] Krajewski (2013, pp. 13–14).

[485] Gerig and Ritz (2014, p. 854).

[486] Chari et al. (2019, p. 198).

In the previous chapter on the *Meroni*-doctrine, we have seen the relevant articles defining the **objectives** of the ECSC and now of the EU (Article 3 TEU). The legislative competences enshrined in the Treaties shall allow the EU to attain these objectives. The 'limits' of the EU's competences "are governed by the principle of conferral" (Article 5 [1] TEU).[487] According to this principle, "the Union shall act only within the limits of the competences conferred upon it by the Member States in the Treaties to attain the objectives set out therein" and "[c]ompetences not conferred upon the Union in the Treaties remain with the Member States" (Article 5 [2] TEU). It was clear for the MS as the 'Masters of the Treaties' that a situation might occur, where a specific legislative competence is missing (a **gap**, so to say) to attain a pre-defined objective in a given situation. **Article 352 TFEU**, the so called 'flexibility'[488] or 'gap-filling clause' has been tailored for such a situation. According to this article, "[i]f action by the Union should prove **necessary**, within the framework of the policies defined in the Treaties, to attain one of the **objectives** set out in the Treaties, and the Treaties have **not provided** the necessary **powers**, the **Council**, acting **unanimously** on a proposal from the Commission and after obtaining the **consent** of the **European Parliament**, shall adopt the appropriate measures" (emphases added); in case "the measures in question are adopted by the Council in accordance with a special legislative procedure, it shall also act unanimously on a proposal from the Commission and after obtaining the consent of the European Parliament" (paragraph 1)[489]. It is not an issue to link the IEB to the objectives of Article 3 TEU, etc.[490] The first paragraph of Article 3 TEU refers to the EU's values, which play an important role for the idea of the IEB. In the debate on a mandatory lobbying register, Nettesheim mentioned the objective of transparency (Article 11 [2] TEU) as a possible trigger to use Article 352 TFEU.[491] An advantage of Article 352 TFEU would also be the possibility of adopting **legal acts binding also on external** individuals. This fact would make Article 352 TFEU an appropriate legal basis for lobbying rules addressed not only at EU institutions, but also on lobbyists. Ideally, this would involve the adoption of an EU regulation according to Article 288 (2)[492] TFEU.[493] Likewise, for the IEB, this would allow to extend the IEB's scope, where necessary, beyond appointed and elected public officials (e.g., national tax authorities, lobbyists). The challenge, however, is the rather high threshold in both Parliament and the Council. From a policy perspective, maybe the consent of Parliament is feasible, but unanimity in the Council can be the big stumbling block. In some MS, such as Germany, additional **constitutional challenges** can arise. The German Constitutional Court, the *Bundesverfassungsgericht* (BVerfG), has raised "constitutional objections", "because the newly worded provision makes it possible substantially

[487] Please note, the 'use' of the EU's competences "is governed by the principles of subsidiarity and proportionality" (Article 5 [1] TEU) as defined in Article 5 (3) (subsidiarity) and Article 5 (4) (proportionality) TEU.

[488] Craig and de Búrca (2020, pp. 120–122).

[489] Paragraph 2 refers to the subsidiarity principle and national parliaments, paragraph 3 excludes harmonization, if excluded elsewhere in the Treaties, and paragraph 4 is on the common foreign and security policy.

[490] Declaration **No 41** on Article 352 of the Treaty on the Functioning of the European Union, OJ C 202, 7.6.2016, p. 350–350 mainly seeks to exclude the application of Article 352 TFEU in the field of the Common Foreign and Security Policy and if only related to Article 3 (1) TEU ("promote peace, its values and the well-being of its peoples"). Declaration **No 42** on Article 352 of the Treaty on the Functioning of the European Union, OJ C 202, 7.6.2016, p. 351–351 clarifies that Article 352 TFEU "cannot be used as a basis for the adoption of provisions whose effect would, in substance, be to amend the Treaties without following the procedure which they provide for that purpose". In contrast to these two declarations, Bogdandy and Spieker (2020) argue for a broader application of the values of Article 2 TEU. However, the **IEB** is not only related to the EU's common values but also to transparency as well as related concepts, and would not amended the EU treaties.

[491] Nettesheim (2014, p. 23).

[492] "A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States".

[493] Nettesheim (2014, p. 23).

to amend treaty foundations of the European Union without the constitutive participation of legislative bodies in addition to the Member States' executive powers."[494]

The aforementioned **Article 11 TEU** on transparency as well as **Article 15 TFEU** cannot be used to set up the IEB, not because they do not directly refer to integrity, but because they do not contain a legislative competence.[495]

Two other possibilities are the implied-powers' doctrine and the doctrine of 'undescribed competences by nature of the matter' (*Natur der Sache*). Both the '**implied-powers**' doctrine[496], as well as the second doctrine[497] have been referred to as too uncertain and vague.[498] Hence, they cannot be recommended for setting up the IEB.

Consequently, let us now turn to **Article 295 TFEU**, which has been enshrined in the EU Treaties by the Lisbon Treaty. According to this provision, the "European Parliament, the Council and the Commission shall consult each other and by common agreement make arrangements for their cooperation. To that end, they may, in compliance with the Treaties, conclude interinstitutional agreements which may be of a binding nature". While such an **interinstitutional agreement (IIA)** "may be of a binding nature"[499], it "cannot give rise to obligations to third parties"[500]. IIAs are binding "on the institutions that have concluded them", unless it is clear from the relevant IIA that the institutions involved did not want the IIA to be binding.[501] That is why, in the field of lobbying, it can be used to regulate various aspects of EU institutions and their staff, but not actions of lobbyists themselves. What is equally clear is that an IIA "may not amend or supplement the provisions of the Treaty".[502] In their power to conclude IIA, the **institutions** are limited by the **principle of conferral** of Article 13 (2) TEU, according to which "[e]ach institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them". This precondition is fulfilled in the case of the IEB, as existing competences used by EU institutions at the moment are taken as a starting point, and put together under the supervision of a common and independent ethics body. The cooperation of various institutions via an IIA can be seen as part of their procedural autonomy. The objective of aiming for the best practises and, thereby taking a more ambitious approach is in line with this

[494] BVerfG judgement of 30 June 2009, *Lisbon Treaty*, 2 BVE 2/08 and Others, ECLI:DE:BVerfG:2009:es20090630.2bve000208, paras. 326-328 (328). N.B. English version available at: https://www.bundesverfassungsgericht.de/entscheidungen/es20090630_2bve000208en.html.

[495] Krajewski (2013, p. 7); European Parliament - Legal Service (2010, paragraphs 32 and 35).

[496] Gerig and Ritz (2014, p. 854).

[497] Nettesheim (2014, p. 23).

[498] Krajewski (2013) has argued for this implied powers doctrine, i.c.w. Article 298 TFEU.

[499] Before this clarification brought by the Lisbon Treaty, Monar (1994, pp. 697–700) has distinguished between IIAs "directly derived from Treaty provisions", and other IIAs. Besides all aforementioned articles on transparency, also Article 41 CFR (right to good administration) could qualify an IEB IIA as an IIA "directly derived from Treaty provisions".

[500] European Parliament - Legal Service (2010, paragraph 46).

[501] Loewenthal (2019, p. 1945). According to Giersdorf (2019, pp. 48–49), the usual tools for interpretation (wording, telos, systematic approach, historic approach) must be taken into account to answer the question of the binding nature of an IIA. See also Bradley (2020, pp. 106-107) on the annulment of an act adopted in contravention to an IIA, also referring to ECJ judgement of 19 March 1996, *Commission v Council (Fishery agreement)*, C-25/94, EU:C:1996:114, para. 49.

[502] Declaration [annexed to the Nice Treaty] on Article 10 of the Treaty establishing the European Community, OJ C 80, 10.3.2001, p. 77. N.B. This Article was seen as the legal basis for IIA before the integration of Article 295 TFEU in EU primary law via the Lisbon Treaty.

requirement of Article 13 (2) TEU. An IIA has also been the Commission's preferred option for setting up a **mandatory transparency register**.[503]

As mentioned above, this **IIA** should be worded in a clear and precise, however uncomplicated way; and for example, not with several cross-references, potentially making it difficult to grasp its message and content. At the same time, a possible circumvention should be avoided, as far as foreseeable. This IIA should comprise a model code of conduct, which could then be further enriched by more specific CoC of the different institutions.

An IIA, concluded and signed by the participating institutions should be **open** to both additional institutions (understood in a broad sense), as well as to possible extensions of its competences and tasks, e.g. in case of future cooperation with national authorities. This could be an issue in case of a stronger cooperation with national tax authorities, as we have seen it for the HATVP.

Rule 148 EP RoP is Parliament's internal legal basis for IIA. According to paragraph 1, Parliament can conclude IIA "with other institutions in the context of the application of the Treaties, or in order to improve or clarify procedures". These preconditions would be fulfilled in the case of the IEB. According to the same provision, an IIA can take the **form** "of joint declarations, exchanges of letters, codes of conduct or other appropriate instruments". In terms of the procedure, an IIA must be examined by Parliament's AFCO committee, approved by Parliament, and signed by its President. Paragraph 2 of the same provision is about the necessary involvement of other committees responsible.[504]

Besides an IIA according to Article 295 TFEU, the **Staff Reg** foresees the possibility in Article 2 (2) that "one or more institutions may entrust to any one of them or to an **inter-institutional body**, the exercise of **some** or **all** of the **powers** conferred on the Appointing Authority other than decisions relating to appointments, promotions or transfers of officials" (emphases added). In addition, Article 9 (1a) Staff Reg allows for the establishment of a "common Joint Committee […] for two or more institutions".

The European Personnel Selection Office (**EPSO**) is one example of "a common interinstitutional body" covering Parliament, the Council, the Commission, the CJEU, the ECA, the ECOSOC, the COR and the EO, "entrusted with the means of selecting officials and other servants to serve the European Communities"[505]. Another example, covering the same institutions except for the European Ombudsman, is the **Publications Office** of the European Union.[506]

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[503] European Commission, Proposal for a Interinstitutional Agreement on a mandatory Transparency Register, COM(2016) 627 final 28.9.2016. Also the Committee of Independent Experts (CIE) has suggested that the "Committee of Standards in Public Life be set up, under an interinstitutional agreement", Committee of Independent Experts (1999, p. 121, pt. 7.7.3).

[504] "Where such agreements necessitate changes to existing procedural rights or obligations, establish new procedural rights or obligations for Members or bodies of Parliament, or otherwise necessitate amendment or interpretation of the Rules of Procedure, the matter shall be referred to the committee responsible for the subject matter for its consideration in accordance with Rule 236(2) to (6) before the agreement is signed".

[505] Decision (2002/620/EC) of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office - Declaration by the Bureau of the European Parliament, OJ L 197, 26.7.2002, pp. 53–55 (recital 1). Unlike Article 2 (3) leg. cit., the decision authority should be transferred to the IEB. See also Decision (2002/621/EC) of the Secretaries-General of the European Parliament, the Council and the Commission, the Registrar of the Court of Justice, the Secretaries-General of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, and the Representative of the European Ombudsman of 25 July 2002 on the organisation and operation of the European Communities Personnel Selection Office, OJ L 197, 26.7.2002, pp. 56–59, as amended by OJ L 26, 30.1.2010, pp. 24–25.

[506] Decision (2009/496/EC, Euratom) of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions of 26 June 2009 on the

In its Communication from May 2002 on "A new type of office", the Commission sketched various types of offices: the 'Inter-institutional office', the 'Commission office', as well as 'a new type of offices'. As it is mentioned therein, "[u]nlike the establishment of an agency, the creation of an office represents an organisational act of the Institution(s), formalised through a decision of the Commission (or joint decision of the Institutions in case of inter-institutional offices)"[507]. EU **agencies**, on the other hand, do enjoy legal personality, they are created by secondary law, and are permanent and 'relatively independent' bodies.[508] For instance, the European Union Agency for Fundamental Rights has been established by a Council **regulation**[509], based on what is now the aforementioned 'gap-filling clause' of **Article 352 TFEU**, which requires unanimity in the Council. Hence, establishing the IEB via an IIA seems easier to implement.

The IIA for **setting up** the IEB can take the form of a **joint decision** (as in the case of EPSO or the Publications Office), where ideally a large number of institutions take part right from the beginning, based on their 'institutional autonomy'.[510] However, a possibility for the subsequent accession of further institutions should be foreseen. Besides this joint decision (i.e. the IIA), each institution would have to accordingly **amend** its **existing** RoP, codes of conduct, or other documents (i.e. those mentioned in Chapter 2.2), accordingly. This covers both the existing institutional rules, and the substantive ones (e.g., on COI, DOI) as for the sake of uniformity, it is preferable to have them all in one place, that is to say in the model code of conduct annexed to the IIA. The institutions can transfer those competences, which are enshrined in these existing documents. They may also delegate powers that are vested in them, but which they have not yet exercised. The existing documents must be adopted (basically, status quo minus powers transferred) and **transitional provisions** have to guarantee a smooth transition from the existing regimes to the IEB. While the publication of an IIA in the Official Journal of the EU is not constitutive,[511] it is recommended.

5.3. Changes of EU secondary law

In order to set up the IEB, the following **changes** in existing EU secondary law are **required**:

- The **documents** mentioned in Chapter 2.2 of those institutions participating in this project of the IEB (codes of conduct, rules of procedure, or similar documents) would have to be **changed accordingly**. Either they are completely replaced[512] by the IIA establishing the IEB, or they are

organisation and operation of the Publications Office of the European Union, OJ L 168, 30.6.2009, pp. 41–47, as amended by OJ L 179, 11.7.2012, pp. 15–16.

[507] European Commission, A new type of office for managing support and administrative tasks at the European Commission, COM(2002) 264 final 28.5.2002, p. 6.

[508] Griller and Orator (2010, pp. 6-10).

[509] Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22.2.2007, pp. 1–14.

[510] Another possibility would be an 'arrangement'. Cf. Arrangement between the European Parliament, the European Council, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Central Bank, the European Court of Auditors, the European External Action Service, the European Economic and Social Committee, the European Committee of the Regions and the European Investment Bank on the organisation and operation of a computer emergency response team for the Union's institutions, bodies and agencies (CERT-EU), OJ C 12, 13.1.2018, pp. 1–11.

[511] Giersdorf (2019, p. 52).

[512] This possibility is less likely as some topics might not be related to the competences and tasks of the IEB. N.B. This statement concerns the content of these documents, not the question of formal amendment.

amended with due consideration of the IIA. For instance, the rules on ethics officers in the relevant institutions, operating as a link to the IEB, might require adaptations in the respective RoP for this type of cooperation. We have seen the example of the ECB, **consolidating** various codes into a single document (for high-level officials).

- So far, mainly the **Presidents** of EU institutions are in charge of implementing the advice of the relevant ethics committees. These tasks would be **transferred to** the **IEB**. Similarly, as for EPSO, the Presidents and the Secretaries-General of the participating institutions "shall by mutual agreement take the measures necessary to implement"[513] the documents setting up the IEB (in particular, the new IIA).
- Both in the relevant documents of the institutions as well as in the Staff Reg, it might be necessary to provide that officials **may refer to the advice** of the IEB within their institution. This ethical advice cannot of course be formally binding on the CJEU, which is in charge of legal control.[514]
- All possible '**investigation** tools', which go beyond the existing rules of the Staff Reg, etc. would require adjustments of EU secondary law. As the recommended legal basis is an IIA, it is clear that this can only bind EU officials (e.g., to direct a person to attend before the IEB to give evidence, to provide documents), but not external persons.
- Amendments of secondary law will be necessary in case tools concerning **tax information** are desired, similar to what we have seen in the case of France. As mentioned above, an IIA would not suffice to bind 'externals'. This challenge would apply in case of a possible obligation of national tax authorities, but not in the case of an obligation directed to the **person concerned** to deliver information to the IEB. The EU could require its members and staff **directly** to lay open tax-related information originating from tax authorities. If, in a **first** step, the information thus provided by the person her- or himself has to be verified, a release from the confidentiality obligation would be necessary in a **second** step. While this approach might help to avoid competence-related challenges, a **structured cooperation** between the EU level and national levels would be necessary.[515] One possibility would be to adapt an existing EU directive in this field.[516] This directive covers both direct and indirect taxes (recital 6), except for those mentioned in Article 2 (e.g., value added tax and customs duties). It only aims at minimum harmonisation (recital 21), which would allow for higher standards. However, the cooperation relates to that between the MS and not between the MS and EU. Consequently, this directive would have to be adopted accordingly. According to Article 47 CFR, the rights to an effective remedy and to a fair trial must be respected in this context, as recently confirmed by the ECJ.[517]

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[513] Decision (2002/620/EC) of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office - Declaration by the Bureau of the European Parliament, OJ L 197, 26.7.2002, pp. 53–55 (Article 5).

[514] The IEB would of course also be subject to the EO in case of maladministration.

[515] See also the analysis concerning the French HATVP, above fn. 277.

[516] Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, pp. 1–12, as amended by OJ L 204, 26.6.2020, pp. 46–48.

[517] ECJ judgement of 6 October 2020, *État luxembourgeois (Droit de recours contre une demande d'information en matière fiscale)*, Joined cases C-245/19 and C-246/19, EU:C:2020:795. Without going into details, the rights of taxpayers subject to an investigation (and of third persons concerned by the information in question) are less extensive compared to other persons holding information that is requested by the national administration.

- Article 3 (3) EO Statute, which foresees the MS authorities' obligation to provide the Ombudsman via the Permanent Representations of the MS "with any information that may help to clarify instances of maladministration", could be supplemented accordingly.
- As Article 22c Staff Reg provides "each institution shall put in place a procedure for the handling of complaints made by officials" in the field of **whistle-blowing**. Hence, the relevant rules such as Parliament's internal implementation rules for whistle-blowers should be adopted, respectively.
- For the questions of **support** by and **cooperation** with the **European Ombudsman** (in charge of maladministration), Article 5 EO statute only foresees cooperation with national authorities of the same type (paragraph 1) as well as with those "in charge of the promotion and protection of fundamental rights" (paragraph 2). A cooperation with other EU institutions is missing and could be enshrined in this document.[518] Already in 2001, Dercks argued to link the EO to the then proposed 'Committee on Standards in Public Life'.[519] In the case of the **Court of Auditors** (in charge of financial control), Article 7 (4) ECA ImpRoP provides for cooperation with OLAF "in the context of enquiries undertaken by the latter with regard to the fight against fraud, corruption or any other illegal activity which might be prejudicial to the financial interests of the Union". Another example for cooperation between two entities working in a similar field can be found in Article 101 of the **EPPO** Regulation, which foresees "close relationship with OLAF based on mutual cooperation within their respective mandates and on information exchange".[520] The IEB could be added wherever necessary to allow for a similar type of cooperation. Nevertheless, a participation of the EO, the ECA and OLAF (see below) in the IIA would be ideal. However, safeguards (such as a firewall) might be necessary to avoid conflict of interest situations of these institutions (understood in a broad sense) supporting the IEB, and being subject to its control at the same time.

In order to set up the IEB, **changes** in existing EU secondary law are **possible** (although not strictly necessary) in the following fields:

- **Support** of **OLAF** (in particular in charge of fraud, corruption) for and **cooperation** with the IEB would not necessarily require an amendment of Commission Decision (1999/352/EC, ECSC, Euratom). According to Article 2 (1) leg. cit., "[t]he Office may be entrusted with investigations in other areas by the Commission or by the other institutions or bodies". The IEB would be such a body.
- Article 11 (3) Staff Reg stipulates that **before recruitment** "the appointing authority shall examine whether the candidate has any personal interest such as to impair [their] independence or any other conflict of interest. To that end, the candidate, using a specific form, shall inform the appointing authority of any actual or potential conflict of interest". According to this wording, the appointing authority can be supported by the IEB, explicitly clarifying this support might make sense. If the appointing authority should be replaced by the IEB in this regard, an amendment of the Staff Reg would be necessary.

[518] However, the following provision is already in place: Article 1 (5) EO Statute states that the EO "may advise the person lodging the complaint to address it to another authority".

[519] Dercks (2001, p. 354).

[520] See fn. 429.

- In both the Staff Reg, as well as the other documents covered, an obligation to **cooperate** with the IEB could be integrated.
- Article 86 Staff Reg i.c.w. Annex IX provides for possible **penalties** in the case of EU staff. As mentioned above, the IEB's written advice could be integrated in the interpretation of the current wording, an explicit mention of the IEB would of course make its role even clearer.
- As we have seen various times throughout this study, **lobbying** can be seen as one part of the bigger circle of transparency and integrity. That is why the existing rule on lobbying could be integrated into this project of the IEB. If this option is chosen, which makes perfect sense, appropriate changes would of course be necessary.

In order to set up the IEB, **no changes** in existing EU secondary law are required in the following fields:

- Enforcement via **information** of IEB opinions and decisions to superiors as well as publication on the IEB's **website** should not require changes in EU secondary law. Publication of IEB opinions in the **Official Journal** of the EU is possible in the 'C Series'.
- Rules on **gifts** can only be binding on EU public officials, of course not on externals. However, this should not be an issue as gifts may not be accepted, and, if desired, rules could also be laid down on whether gifts may be offered at all, and if so, which ones.
- **COI** rules should not be an issue in terms of the necessity to change EU secondary law. Incoming situations are already covered. The term of office when serving as a member or staff in the EU poses no problem, and post-term activities would be covered under the existing rules of both secondary EU law (in particular Staff Reg), or EU primary law (e.g., Article 245 [2] TFEU, Commission members' obligation to behave with integrity and discretion).
- In either case, changes are of course possible if striving for a higher level.
- As the analysis of the ***Meroni* case-law** has shown, a delegation of powers is possible, even if not explicitly foreseen. However, the delegation as such must occur explicitly, hence in the IIA. Obviously, not more competences (*nemo plus iuris* …) can be transferred to the IEB than what can be found in the participating EU institutions. The **IIA** would have to address the IEB's competences and tasks in a clear and precise manner, thus aiming at the 'executive', not the 'discretionary' approach. However, this should not be an issue, as the IEB would be 'constrained' by the EU's values and the aforementioned principles, which have been identified on the basis of existing EU law, both primary and secondary law, as well as both hard- as well as soft-law. The institutional balance, as the relationship of the institutions towards each other, would not be changed. The IEB is not involved in EU legislation, as emphasised in later *Meroni* case-law. As mentioned several times, the IEB would be subject to the case-law of the CJEU, which cannot (and should not) be excluded under existing EU primary law. Such an exclusion via primary law should not be sought, even in the event of a possible Treaty amendment.

These statements, also covering EU primary law, lead us to the next chapter.

5.4. Changes of EU primary law

Knowing about the difficulties of Treaty changes, the IEB has been sketched with the intention **not to require** changes in EU primary law. However, in the course of one of the next Treaty changes, the IEB should be included in the Treaties. This would be in line with the step-by-step approach mentioned several times. Likewise, in France, the HATVP has also been established via a *loi organique*.

Most (possible) changes in EU secondary law mentioned above were about EU staff. The role of **members of EU institutions** is mainly enshrined in EU primary law. For instance, in case of the Commission, Article 245 (2) TFEU (obligation to behave with integrity and discretion) or Article 247 TFEU (serious misconduct). Hence, no substantive changes of their position can occur without changing EU primary law. In this field, the IEB would simply take over the **existing** tasks via an IIA. Still, the tasks that can be transferred to the IEB do not necessarily have to be those currently exercised by the institutions, rather those powers can be transferred, which **could be exercised** under the Treaties.

In order to set up the IEB, **no changes** in existing EU primary law are required in the following fields:

- The **values** are enshrined in Article 2 TEU, hence no changes are necessary. The **principles** proposed in Figure 6 are a consolidation of existing EU primary (e.g., transparency, proportionality) and secondary (documents covered in Chapter 2.2) law, where we have seen considerable overlap also with France, Ireland and Canada.
- No changes are necessary concerning **Article 263 TFEU** (action for annulment), as the IEB can be qualified as a 'body', which falls under the CJEU's review of legality "of acts of bodies, offices or agencies of the Union intended to produce legal effects vis-à-vis third parties".[521] Likewise, Article 265 TFEU (failure to act) also refers to "bodies, offices and agencies of the Union".
- The **ethical advice** of the IEB given to public officials should **not** be legally **binding on** the **CJEU**. The latter is in charge of the legal control and could of course come to a different conclusion, which prevails over a possibly divergent ethical opinion of the IEB.
- While the **free mandate of MEPs** could be brought up as an argument against the IEB, this new body would only take over the tasks currently enjoyed by the ACCM, respectively, extended as long as in line with EU law.[522] Besides this, the free and independent mandate is not absolute.[523]

In order to set up the IEB, the following changes in EU primary law are **optional**:

- In order to strengthen the independence of the IEB members, it could be foreseen in primary EU law that they can only be **removed** from office by the CJEU (cf. also Article 8 EO Statute). Likewise, the IEB members could give a solemn undertaking before the CJEU (cf. Article 9 [2] EO Statute).[524]

[521] As mentioned above (Chapter 5.1), this is important in the light of the *Meroni*-doctrine.

[522] As mentioned above, the IEB could have more powers than currently exercised, provided that these powers are vested in them.

[523] See, in the context of a mandatory transparency register, Alemanno (2017, p. 8), quoting a legal opinion of Parliament.

[524] Cf. recently CJEU press release No 118/20 from 28 September 2020 on the inauguration of the European Public Prosecutor's Office.

In order to set up the IEB, the following **changes** in existing EU primary law **could be required**:

- If the IEB should be able to impose sanctions of '**EU criminal law**', the relevant provisions (now: Articles 82 to 86 TFEU) would have to be changed to include breaches in particular of DOI obligations, as at the moment these articles only cover certain "particularly serious crime", which also have to have "a cross-border dimension".

6. CONCLUSION

Already in 2005, the European Transparency Initiative called for "common European 'ethical space'"[525] and in 2008 Demmke et al. called on the MS and the European institutions "to improve the effectiveness of their ethics infrastructure".[526] Ethics in the EU has evolved incrementally[527] following the aforementioned **step-by-step** approach. As mentioned earlier, now seems a good time to take the next step by setting up the IEB. It is important to have an **independent** ethics body, not only a self-regulation committee.[528] As Saint-Martin has convincingly argued that someone in charge of supervising ethics and who is not independent "may have a conflict of interest of his own."[529]

According to Năstase "the concept of '**ethics infrastructure**', i.e., an umbrella term coined by the OECD (1996), which designates the sum of institutional structures and procedures, which, taken together, act as incentives for good behaviour and disincentives for unethical conduct".[530] While even a solid ethics infrastructure is no guarantee against scandals, "an ethics framework makes them less likely and less damaging".[531] Such an 'ethics infrastructure' "comprises three main elements: guidance, management and control"[532]. The IEB, the IEB's ethics officer, as well as decentralised ethics officers would establish an institutional ethics **lattice** (or infrastructure), where also the Presidents of the participating institutions should be involved in terms of meetings and conferences in the field of future challenges. As mentioned in the context of the HATVP, "a lattice of bodies is necessary to achieve the goal of ethics becoming "an integral part of the ethos of public officials".[533] This 'ethos'[534] leads us to the next topic.

In the case of ethics management, literature often distinguishes between the '**compliance** approaches', which emphasises "the importance of external controls on the behavior of public servants" and the '**integrity** approach', which "focuses on internal control—self-control exercised by each individual public servant", sometimes also called the 'low road' vs the 'high road'.[535] As others have also stated, these two approaches should be "combined and considered complementary".[536] The model code of conduct annexed to the IIA setting up the IEB should comprise rules and values as well as principles. As mentioned before, this would be an IIA that is intended to be binding. The soft-law elements (in particular ethics) should be seen as aiming for a more ambitious approach than the mere legal requirements, which must be adhered to anyway. As former Commission Vice-President Kallas has stated, meeting "the **highest** standards of professional ethics is of paramount importance with respect to the accomplishment of the Institution's tasks and its credibility and reputation".[537]

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525 European Commission (2005, pp. 5 and 7).

526 Demmke et al. (2008, p. 4).

527 Năstase (2013, p. 78).

528 For an overview on the differences in those two concepts, see the table in Demmke et al. (2007, p. 86). See also, Demmke et al. (2020, pp. 110 and 143).

529 Saint-Martin (2003, p. 198).

530 Năstase (2013, p. 67).

531 Cini (2007, p. 213).

532 European Court of Auditors (2019, p. 6).

533 See at fn. 274.

534 On the 'ethos of Europe', see Williams (2010); Williams (2009).

535 Maesschalck (2004, p. 22).

536 Maesschalck (2004, p. 22).

537 European Commission (2008, p. 2); emphasis added.

In general, the Commission has the right of initiative (Article 294 [2] TFEU), and Parliament (Article 225 TFEU) and the Council (Article 241 TFEU) can only 'invite' the Commission to draft a proposal. Loewenthal mentions that in the case of IIAs, it is also "the Commission's responsibility to take the initiative to conclude" an IIA.[538] However, the wording of Article 295 TFEU provides nothing in this regard, and therefore the **impetus** can originate from any institution.

This study **proposes** a strong and independent body, the IEB. The **personal scope** of the IEB should cover not only the Commission, Parliament and the Council, but ideally all those institutions covered in Chapter 2.2 (including members and staff, both current and previous ones), as well as additional entities, such as EU agencies. This 'integrity branch' shall safeguard both **transparency and integrity**, rejecting a 'self-regulatory approach'. This independent body would be set up by an **IIA** and a **model code of conduct** annexed to it. The seven permanent **members** and four reserve members would be supported by a **staff** of approximately 50 persons, including one 'ethics officer'. IEB members should by selected for **six or seven years** (renewable) by a selection committee based on their competence, experience, independence, professional qualities, wisdom and foresight, as well as their previous functions. The IEB would be part of an '**ethics lattice**'[539] comprising decentralised ethics officers in each corresponding institutions, also involving the Presidents of these institutions. The IEB would be in charge of **prevention** (including an advisory function), **monitoring** and **investigation**, as well as **enforcement**. The **scope** of the IEB would cover all types of conflict of interest (gifts; revolving-doors, including external activities during the job; lobbying) as well as declaration of interests. The IEB should be able to act on its **own initiative** (also comprising whistle-blowing rules), on request, and based on information in particular from individuals, civil society, the media and NGOs. **Cooperation** with the EO, ECA and OLAF will strengthen the IEB. The **scope** of the IEB should cover all branches of power, including both members of EU institutions and other bodies as well as the staff. On a timeline, the IEB should cover incoming **members and staff**, current ones, and those who are leaving or have already left. Besides more detailed rules , the IIA should also be backed up by **principles** identified in the existing documents (integrity, independence, impartiality, dignity at work, honesty, transparency, and discretion) as well as the EU's common **values** (Article 2 TEU), including the **CFR**.

According to EU law and the CJEU's ***Meroni*-doctrine**, a delegation of powers to the IEB via an IIA is possible, making clear that it is subject to the 'legal control' of the CJEU. The IIE should be open to both additional institutions, as well as to possible extensions of its competences and tasks, e.g. in case of future cooperation with national authorities. Setting up the IEB via an IIA would require some amendments to EU secondary law. Setting up the IEB would not require amendments of EU primary law, which could be a 'mission impossible'.

IIAs have been referred to as "a form of 'constitutional glue' through which the major institutions can resolve high-level issues [and] provide guiding principles", which "have been made on topics of constitutional significance".[540] The ideas for such an IIA are on the table,[541] they are tailored in a way so that they can be implemented. Now it is up to the EU to **take** an important **step** in (re-)gaining citizens' trust. In doing so, the EU has to 'walk the talk'. An outside body shall guarantee stricter application of the current or strengthened rules in order to avoid criticism, as addressed in October 2020 by Corporate

[538] Loewenthal (2019, p. 1945).

[539] See also the idea expressed above concerning the French HATVP; see, fn. 278.

[540] Craig and de Búrca (2020, p. 140).

[541] Besides the information in Chapters 4 and 5, additional 'food for thought can be found in Chapter 3.

Europe Observatory[542] with regard to ineffective 'revolving-doors' rules ("only 0.62% revolving door moves rejected") under the Staff Reg.

[542] Corporate Europe Observatory (2020).

REFERENCES

REFERENCES: LEGAL DOCUMENTS

1. EU primary law and related documents

- Treaty on European Union (TEU), consolidated version: OJ C 202, 7.6.2016, p. 13.
- Treaty on the Functioning of the European Union (TFEU), consolidated version: OJ C 202, 7.6.2016, p. 47.
- Charter of Fundamental Rights of the European Union (CFR), consolidated version: OJ C 202, 7.6.2016, p. 389. N.B. First, solemn proclamation in December 2000 in Nice (OJ C 364, 18.12.2000, pp. 1–22), then in December 2007 in Strasbourg (OJ C 303, 14.12.2007, pp. 1–16).
- Explanations relating to the Charter of Fundamental Rights, OJ C 303, 14.12.2007, pp. 17–35.
- Protocol No 14 on the Euro Group, OJ C 202, 7.6.2016, p. 283–283.
- Declaration No 18 in relation to the delimitation of competences, OJ C 202, 7.6.2016, pp. 344–345.
- Declaration No 41 on Article 352 of the Treaty on the Functioning of the European Union, OJ C 202, 7.6.2016, p. 350–350.
- Declaration No 42 on Article 352 of the Treaty on the Functioning of the European Union, OJ C 202, 7.6.2016, p. 351–351.
- Lisbon Treaty, OJ C 306, 17.12.2007, pp. 1–271.
- Protocol [annexed to the Nice Treaty] on the financial consequences of the expiry of the ECSC Treaty and on the research fund for coal and steel, OJ C 80, 10.3.2001, pp. 67–68.
- Declaration [annexed to the Nice Treaty] on Article 10 of the Treaty establishing the European Community, OJ C 80, 10.3.2001, p. 77

2.1. EU regulations

- Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53, 22.2.2007, pp. 1–14.
- Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283, 31.10.2017, pp. 1–71.
- Council Regulation (EU) No 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions, OJ L 287, 29.10.2013, pp. 63–89.
- Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145, 31.5.2001, pp. 43–48.

- Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, […], OJ L 295, 21.11.2018, pp. 39–98.
- Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union […], OJ L 193, 30.7.2018, pp. 1–222.
- Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, OJ L 248, 18.9.2013, pp. 1–22, as amended by OJ L 317, 23.11.2016, pp. 1–3.
- Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ 45, 14.6.1962, pp. 1385–1386, as amended by OJ C 420, 13.12.2019, p. 22–22.

2.2. EU directives

- Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC, OJ L 64, 11.3.2011, pp. 1–12, as amended by OJ L 204, 26.6.2020, pp. 46–48.
- Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, pp. 29–41
- Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305, 26.11.2019, pp. 17–56. N.B. Commission statement regarding Directive (EU) 2019/1937 […], OJ C 270I, 17.8.2020, p. 1–1.
- Directive 2011/24/EU of the European Parliament and of the Council of 9 March 2011 on the application of patients' rights in cross-border healthcare, OJ L 88, 4.4.2011, pp. 45–65.
- Directive 98/44/EC of the European Parliament and of the Council of 6 July 1998 on the legal protection of biotechnological inventions, OJ L 213, 30.7.1998, pp. 13–21.

2.3. Commission documents (COM)

- European Commission, A new type of office for managing support and administrative tasks at the European Commission, COM(2002) 264 final 28.5.2002.
- European Commission, Green Paper - European transparency initiative, COM(2006) 194 final 3.5.2006.
- European Commission, Proposal for a Council Directive laying down provisions for strengthening fiscal responsibility and the medium-term budgetary orientation in the Member States, COM(2017) 824 final 6.12.2017.

- European Commission, Proposal for a Interinstitutional Agreement on a mandatory Transparency Register, COM(2016) 627 final 28.9.2016.
- European Commission, Strengthening whistleblower protection at EU level, COM(2018) 214 final 23.4.2018.

2.4. Decisions (N.B. For decisions adopting rules of procedure and codes of conduct, see below at 2.5, respectively, 2.6)

- Commission Decision (1999/352/EC, ECSC, Euratom) of 28 April 1999 establishing the European Anti-fraud Office (OLAF), OJ L 136, 31.5.1999, pp. 20–22, as amended by OJ L 333, 19.12.2015, pp. 148–149.
- Commission Decision (2014/838/EU, Euratom) of 25 November 2014 on the publication of information on meetings held between Directors-General of the Commission and organisations or self-employed individuals, OJ L 343, 28.11.2014, pp. 19–21.
- Commission Decision (2014/839/EU, Euratom) of 25 November 2014 on the publication of information on meetings held between Members of the Commission and organisations or self-employed individuals, OJ L 343, 28.11.2014, pp. 22–24.
- Commission Decision (EU) 2016/835 of 25 May 2016 on the renewal of the mandate of the European Group on Ethics in Science and New Technologies, OJ L 140, 27.5.2016, pp. 21–25.
- Commission Decision establishing horizontal rules on the creation and operation of Commission expert groups, C(2016) 3301 final 30.5.2016.
- Council Decision (2012/245/EU) of 26 April 2012 on a revision of the Statutes of the Economic and Financial Committee, OJ L 121, 8.5.2012, pp. 22–24.
- Council Decision (EU) 2016/1316 of 26 July 2016 amending Decision 2009/908/EU, laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council, OJ L 208, 2.8.2016, pp. 42–44.
- Council Decision of 1 December 2009 laying down the conditions of employment of the President of the European Council, OJ L 322, 9.12.2009, p. 35–35.
- Decision (2002/620/EC) of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office - Declaration by the Bureau of the European Parliament, OJ L 197, 26.7.2002, p. 53–55.
- Decision (2002/621/EC) of the Secretaries-General of the European Parliament, the Council and the Commission, the Registrar of the Court of Justice, the Secretaries-General of the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, and the Representative of the European Ombudsman of 25 July 2002 on the organisation and operation of the European Communities Personnel Selection Office, OJ L 197, 26.7.2002, pp. 56–59, as amended by OJ L 26, 30.1.2010, pp. 24–25.
- Decision (2009/496/EC, Euratom) of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the

Committee of the Regions of 26 June 2009 on the organisation and operation of the Publications Office of the European Union, OJ L 168, 30.6.2009, pp. 41–47, as amended by OJ L 179, 11.7.2012, pp. 15–16.

- Decision (94/262/ECSC, EC, Euratom) of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties, OJ L 113, 4.5.1994, pp. 15–18, as amended by OJ L 189, 17.7.2008, pp. 25–27.
- Decision of the Council (General Affairs) of 1 December 2009 establishing the list of Council configurations in addition to those referred to in the second and third subparagraphs of Article 16(6) of the Treaty on European Union, OJ L 315, 2.12.2009, pp. 46–47, as amended by OJ L 263, 6.10.2010, p. 12–12.
- Decision of the European Ombudsman adopting Implementing Provisions, OJ C 321, 1.9.2016, pp. 1–6.
- European Data Protection Supervisor Decision of 3 December 2015 establishing an external advisory group on the ethical dimensions of data protection ('the Ethics Advisory Group'), OJ C 33, 28.1.2016, pp. 1–4.

2.5. Rules of Procedure

- Council Decision (2009/937/EU) of 1 December 2009 adopting the Council's Rules of Procedure, OJ L 325, 11.12.2009, pp. 35–61, as amended by OJ L 294, 8.9.2020, pp. 1–2.
- Decision (2004/257/EC) of the European Central Bank of 19 February 2004 adopting the Rules of Procedure of the European Central Bank (ECB/2004/2), OJ L 80, 18.3.2004, pp. 33–41, as amended by OJ L 141, 1.6.2017, pp. 14–17.
- Decision (EU) 2015/433 of the European Central Bank of 17 December 2014 concerning the establishment of an Ethics Committee and its Rules of Procedure (ECB/2014/59), OJ L 70, 14.3.2015, pp. 58–60.
- European Council Decision of 1 December 2009 adopting its Rules of Procedure, OJ L 315, 2.12.2009, pp. 51–55.
- Rules of Procedure of the Commission, OJ L 308, 8.12.2000, pp. 26–34, as amended by OJ L 127I , 22.4.2020, pp. 1–2.
- Rules of Procedure of the Committee of the Regions, OJ L 65, 5.3.2014, pp. 41–64.
- Rules of Procedure of the Court of Auditors of the European Union, OJ L 103, 23.4.2010, pp. 1–6.
- Rules of Procedure of the European Data Protection Supervisor, OJ L 204, 26.6.2020, p. 49.
- Rules of Procedure of the European Economic and Social Committee — March 2019, OJ L 184, 10.7.2019, pp. 23–59.
- Rules of Procedure of the European Parliament, 9th parliamentary term - June 2020, https://www.europarl.europa.eu/doceo/document/RULES-9-2020-06-30-TOC_EN.html.
- Rules of Procedure of the Supervisory Board of the European Central Bank, OJ L 182, 21.6.2014, pp. 56–60, as amended by OJ L 241, 27.7.2020, pp. 43–45.

2.6. Codes of conduct (N.B. the EP CoC is Annex I of EP RoP)

- Code of Conduct for high-level European Central Bank Officials, OJ C 89, 8.3.2019, pp. 2–9.
- Code of Conduct for Members and former Members of the Court of Justice of the European Union, OJ C 483, 23.12.2016, pp. 1-5.
- Code of Conduct for Members of the European Committee of the Regions, OJ L 20, 24.1.2020, p. 17.
- Code of Conduct for the members of the Governing Council, OJ C 123, 24.5.2002, pp. 9–10.
- Code of Conduct for the Members of the Supervisory Board of the European Central Bank, OJ C 93, 20.3.2015, pp. 2–7.
- Commission Decision of 31 January 2018 on a Code of Conduct for the Members of the European Commission, OJ C 65, 21.2.2018, p. 7.

2.7. Other EU secondary law

- Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation, OJ L 277, 19.9.2014, pp. 11–24.
- Arrangement between the European Parliament, the European Council, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Central Bank, the European Court of Auditors, the European External Action Service, the European Economic and Social Committee, the European Committee of the Regions and the European Investment Bank on the organisation and operation of a computer emergency response team for the Union's institutions, bodies and agencies (CERT-EU), OJ C 12, 13.1.2018, pp. 1–11.
- Council Conclusions on Common values and principles in European Union Health Systems, OJ C 146, 22.6.2006, pp. 1–3.
- Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 20 July 1998 concerning the expiry of the Treaty establishing the European Coal and Steel Community, OJ C 247, 7.8.1998, pp. 5–6.
- Supplementary Code of Ethics Criteria for the members of the Executive Board of the European Central Bank (in accordance with Article 11.3 of the Rules of Procedure of the European Central Bank), OJ C 104, 23.4.2010, pp. 8–9.
- The ethics framework of the ECB […], OJ C 204, 20.6.2015, pp. 3–16. Updated (after the finalisation of this study), see: Amendment to the ethics framework of the ECB […], OJ C 375, 6.11.2020, pp. 25–41.

3. CJEU case-law (in chronological order)

- Joined opinion of Advocate General Roemer of 19 March 1958, *Meroni* v *High Authority of the European Coal and Steel Community*, 9/56 and 10/56, EU:C:1958:4.
- ECJ judgement of 13 June 1958, *Meroni* v *High Authority*, 9/56, EU:C:1958:7.
- ECJ judgement of 13 June 1958, *Meroni* v *High Authority*, 10/56, EU:C:1958:8.

- ECJ judgement of 5 February 1963, *Van Gend en Loos* v *Administratie der Belastingen*, 26/62, EU:C:1963:1.
- ECJ judgement of 15 July 1964, *Costa* v *E.N.E.L.*, 6/64, EU:C:1964:66.
- ECJ judgement of 12 November 1969, *Stauder* v *Stadt Ulm*, 29/69, EU:C:1969:57.
- ECJ opinion of 26 April 1977, *Accord relatif à l'institution d'un Fonds européen d'immobilisation de la navigation intérieure*, Avis 1/76, EU:C:1977:63.
- Opinion of AG Warner of 20 November 1980, *Romano*, 98/80, EU:C:1980:267.
- ECJ judgement of 14 May 1981, *Romano*, 98/80, EU:C:1981:104.
- ECJ judgement of 24 November 1982, *Commission* v *Ireland (Buy Irish)*, 249/81, EU:C:1982:402.
- ECJ judgement of 11 March 1986, *Conegate* v *HM Customs & Excise*, 121/85, EU:C:1986:114.
- ECJ judgement of 23 April 1986, *Les Verts* v *Parliament*, 294/83, EU:C:1986:166.
- ECJ judgement of 19 March 1996, *Commission* v *Council (Fishery agreement)*, C-25/94, EU:C:1996:114.
- GC judgement of 19 February 1998, *DIR International Film and Others* v *Commission*, Joined cases T-369/94 and T-85/95, EU:T:1998:39.
- GC judgement of 18 October 2001, *X v ECB*, T-333/99, EU:T:2001:251.
- ECJ judgement of 13 December 2001, *Commission* v *France (BSE)*, C-1/00, EU:C:2001:687.
- GC judgement of 11 September 2002, *Alpharma* v *Council*, T-70/99, EU:T:2002:210.
- ECJ judgement of 26 May 2005, *Tralli* v *ECB*, C-301/02 P, EU:C:2005:306.
- ECJ judgement of 12 July 2005, *Alliance for Natural Health*, Joined cases C-154/04 and C-155/04, EU:C:2005:449.
- ECJ judgement of 11 July 2006, *Commission* v *Cresson*, C-432/04, EU:C:2006:455.
- ECJ judgement of 26 June 2007, *Ordre des barreaux francophones and germanophone and Others*, C-305/05, EU:C:2007:383.
- GC judgement of 17 June 2008, *FMC Chemical and Arysta Lifesciences* v *EFSA*, T-311/06, EU:T:2008:205.
- ECJ judgement of 9 November 2010, *Volker und Markus Schecke and Eifert*, C-92/09, EU:C:2010:662.
- EJC judgement of 22 January 2014, *UK* v *Parliament and Council (short selling and credit default swaps)*, C-270/12, EU:C:2014:18.
- ECJ judgement of 14 April 2015, *Council* v *Commission (macro-financial assistance to third countries)*, C-409/13, EU:C:2015:217.
- ECJ judgement of 4 May 2016, *Philip Morris Brands and Others*, C-547/14, EU:C:2016:325.
- ECJ judgement of 20 September 2016, *Ledra Advertising* v *Commission and ECB*, C-8/15 P, EU:C:2016:701.
- ECJ judgement of 14 May 2019, *M (Révocation du statut de réfugié)*, Joined cases C-391/16, C-77/17 and C-78/17, EU:C:2019:403.

- ECJ judgement of 11 June 2020, *Commission* v *Dôvera zdravotná poist'ovňa*, Joined cases C-262/18 P and C-271/18 P, EU:C:2020:450.
- GC judgement of 17 July 2020, *Wagenknecht* v *European Council*, T-715/19, EU:T:2020:340.
- GC order of 25 August 2020, *Czech Republic* v *Commission*, T-76/20, EU:T:2020:379.
- Opinion of AG Szpunar of 22 September 2020, *Dalli* v *Commission*, C-615/19 P, EU:C:2020:744.
- ECJ judgement of 6 October 2020, *État luxembourgeois (Droit de recours contre une demande d'information en matière fiscale)*, Joined cases C-245/19 and C-246/19, EU:C:2020:795.

4.1. France: relevant legal documents

- *LOI organique n° 2013-906 du 11 octobre 2013 relative à la transparence de la vie publique* (FR01), available at: https://www.legifrance.gouv.fr/eli/loi_organique/2013/10/11/2013-906/jo/texte.
- *LOI n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique* (FR02), available at: https://www.legifrance.gouv.fr/eli/loi/2013/10/11/2013-907/jo/texte.
- *Règlement intérieur de la Haute Autorité pour la transparence de la vie publique* (FR03), available at: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000039131341&categorieLien=id.
- *Loi n° 83-634 du 13 juillet 1983 portant droits et obligations des fonctionnaires. Loi dite loi Le Pors* (FR04), available at: https://www.legifrance.gouv.fr/affichTexte.do;jsessionid=B0D41940F14FB31E50F8B1200D2C5A7D.tplgfr34s_2?cidTexte=LEGITEXT000006068812&dateTexte=20210101 (consolidated version as of 1 January 2021).
- *Décret n° 2013-1204 du 23 décembre 2013 relatif à l'organisation et au fonctionnement de la Haute Autorité pour la transparence de la vie publique* (FR05), available at: https://www.legifrance.gouv.fr/eli/decret/2013/12/23/2013-1204/jo/texte.
- French Constitution; available at: https://www.legifrance.gouv.fr/loda/id/JORFTEXT000000571356/2020-09-17.

4.2. Ireland: relevant legal documents

- Public Sector Standards Bill 2015 (IE01), available at: https://www.oireachtas.ie/en/bills/bill/2015/132/?tab=bill-text.
- Ethics in Public Office Act (EPOA) 1995, updated to 21 November 2018 (IE02), available at: http://www.irishstatutebook.ie/eli/1995/act/22/enacted/en/html.
- Standards in Public Office Act (SPOA) 2001, updated to 13 April 2017 (IE03), available at: http://www.irishstatutebook.ie/eli/2001/act/31/enacted/en/html.
- Regulation of Lobbying Act (RLA) 2015, updated to 1 May 2019 (IE04), available at: http://www.irishstatutebook.ie/eli/2015/act/5/enacted/en/print.html.
- Local Government Act 2001, updated to 16 April 2019, available at: http://www.irishstatutebook.ie/eli/2001/act/37/enacted/en/html.

4.3. Canada: relevant legal documents

- Parliament of Canada Act (R.S.C., 1985, c. P-1) (CAN01), available at: https://laws-lois.justice.gc.ca/eng/acts/p-1/FullText.html.
- Conflict of Interest Act (S.C. 2006, c. 9, s. 2) (CAN02), available at: https://laws-lois.justice.gc.ca/eng/acts/C-36.65/.
- Conflict of Interest Code for Members of the House of Commons (= Appendix I to 'Standing Orders of the House of Commons, including appendices, consolidated version as of April 20, 2020') (CAN03), available at: https://www.ourcommons.ca/About/StandingOrders/SOPDF.pdf.
- Code of Values for Employees of the Conflict of Interest and Ethics Commissioner (CAN04), available at: https://ciec-ccie.parl.gc.ca/en/About-APropos/Documents/Code%20of%20Values%202019.pdf.
- Standards of Conduct (CAN05), available at: https://ciec-ccie.parl.gc.ca/en/About-APropos/Documents/Standards%20of%20Conduct.pdf.
- CIEC Annual Report 2019-2020, in respect of the Conflict of Interest Act, available at: https://ciec-ccie.parl.gc.ca/en/publications/Pages/ARAct201920-RALoi201920.aspx.
- CIEC Quarterly Statistical Report 2020-2021, Q1 – April to June 2020, available at: https://ciec-ccie.parl.gc.ca/en/About-APropos/Pages/QuarterlyStatReport20-21Q1-RapportStatTri20-21Q1.aspx.

4.4. Other national legislation

- *Bundesgesetz über den Obersten Gerichtshof*, BGBl 328/1968, as amended by BGBl I 112/2007.
- *Lobbying- und Interessenvertretungs-Transparenz-Gesetz*, BGBl I 64/2012.

5. National case-law

- BVerfG judgement of 30 June 2009, *Lisbon Treaty*, 2 BVE 2/08 and Others, ECLI:DE:BVerfG:2009:es20090630.2bve000208. N.B. English version available at: https://www.bundesverfassungsgericht.de/entscheidungen/es20090630_2bve000208en.html.
- Conseil constitutionnel Decision No. 2016-741 DC of 8 December 2016.

REFERENCES: LITERATURE AND OTHER RESEARCH

- Ackerman, B. (2000). The new separation of powers. *Harvard Law Review*, *113*(3), 633–725.
- Ad Hoc Ethical Committee. (2016, October 26). *Request for an opinion concerning the appointment of former President Barroso at Goldman Sachs International*.
- Advisory Committee on the Conduct of Members. (2012). *Rules of Procedure: Adopted by the Advisory Committee on 7 March 2012; revised on 9 October 2012*. http://www.europarl.europa.eu/pdf/meps/Rules_of_Procedure_EN.pdf
- Alemanno, A. (2017, May 15). *Legal Opinion on the Proposed Inter-Institutional Agreement for a Mandatory Transparency Register in the European Union: HEC Paris Research Paper No. LAW-2017-1218*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2996619
- Alemanno, A., & Oana, S. (2014). Openness at the Court of Justice of the European Union: Toppling a taboo. *Common Market Law Review*, *51*(97 – 139).
- Ammann, O. (2020, forthcoming). Transparency at the Expense of Equality and Integrity? Present and Future Directions of Lobby Regulation in the European Parliament. *European Papers*.
- Ariès, Q. (2016, July 11). José Manuel Barroso's new job at Goldman Sachs angers EU. *Politico*. https://www.politico.eu/article/jose-manuel-barrosos-new-job-at-goldman-sachs-angers-eu/
- Ashford, E. (2000). Utilitarianism, Integrity, and Partiality. *The Journal of Philosophy*, *97*(8), 421. https://doi.org/10.2307/2678423
- Beauchamp, T. L., & Childress, J. F. (2019). *Principles of biomedical ethics* (8th edition). Oxford University Press.
- Bobek, M. (2015). Epilogue: Searching for the European Hercules. In M. Bobek (Ed.), *Selecting Europe's judges: A critical review of the appointment procedures to the European courts* (pp. 279–309). Oxford University Press.
- Bogdandy, A. v., & Spieker, L. D. (2020). Reverse Solange 2.0: Die Durchsetzung europäischer Werte und die unions- und strafrechtliche Verantwortung nationaler Richter. *Europarecht (EuR), 55*(3), 301–331.
- Borowsky, M. (2019). Titel I Würde des Menschen: Vorbemerkungen. In J. Meyer & S. Hölscheidt (Eds.), *Charta der Grundrechte der Europäischen Union* (5th ed., pp. 81–100). Nomos; Stämpfli; Facultas.
- Bradley, K. (2020). Legislating in the Europan Union. In C. Barnard & S. Peers (Eds.), *European Union Law* (3rd ed., pp. 101–153). Oxford University Press.
- Buge, É., & Caron, M. (2017). Quatre années d'activité de la haute autorité pour la transparence de la vie publique au service d'une démocratie plus exemplaire. *Revue Française D'administration Publique*, *162*(2), 385–398. https://doi.org/10.3917/rfap.162.0385
- Calliess, C. (2004). Europa als Wertegemeinschaft: Integration und Identität durch europäisches Verfassungsrecht? *Juristenzeitung (JZ)*, *59*(21), 1033–1084.
- Carens, J. H. (2015). *The ethics of immigration*. Oxford University Press.
- Chari, R., Hogan, J., Murphy, G., & Crepaz, M. (2019). *Regulating Lobbying: A Global Comparison* (2nd edition). Manchester University Press.

- Charlemagne (September 5th – 11th 2020). The contradiction at the heart of the European Commission. *The Economist*. https://www.economist.com/europe/2020/09/03/the-contradiction-at-the-heart-of-the-european-commission
- Cini, M. (2007). *From integration to integrity: Administrative ethics and reform in the European Commission. Europe in change*. Manchester University Press.
- Cini, M. (2008). European Commission reform and the origins of the European Transparency Initiative. *Journal of European Public Policy*, *15*(5), 743–760. https://doi.org/10.1080/13501760802133245
- Cini, M. (2013). Institutional Change and Ethics Management in the EU's College of Commissioners. *The British Journal of Politics and International Relations*, *16*(3), 479–494. https://doi.org/10.1111/1467-856X.12008
- Cini, M. (2016). Good Governance and Institutional Change: Administrative Ethics Reform in the European Commission. *Journal of Contemporary European Research*, *12*(1), 441–454.
- Cini, M. (2019). Institutional change in the European Parliament: balancing legislative ethics and parliamentary independence. *The Journal of Legislative Studies*, *25*(2), 314–330. https://doi.org/10.1080/13572334.2019.1603265
- CJEU. (2020). *Members' code of ethics*. https://curia.europa.eu/jcms/jcms/p1_743290/en/
- Committee of Independent Experts. (1999, September 10). *Second report on Reform of the Commission Analysis of current practice and proposals for tackling mismanagement, irregularities and fraud*. European Parliament.
- Cooper, H. (2017, August 9). Ireland's tough lobbying rules spark cries for similar laws elsewhere. *Politico*. https://www.politico.eu/article/ireland-lobbying-clampdown-model-for-europe/
- Corporate Europe Observatory. (2020, October 22). *From Facebook friends to lobby consultants*. https://corporateeurope.org/en/2020/10/facebook-friends-lobby-consultants
- Council of the EU. (2015, July 30). *Code of Conduct for the President of the European Council: SN 4357/1/15 REV 1*.
- Council of the EU. (2020a). *Eurogroup*. https://www.consilium.europa.eu/en/council-eu/eurogroup/
- Council of the EU. (2020b). *Treaty on Stability, Coordination and Governance in the Economic and Monetary Union*. https://www.consilium.europa.eu/en/documents-publications/treaties-agreements/agreement/?id=2012008
- Craig, P., & Búrca, G. de. (2020). *EU Law: Text, cases, and materials* (7th edition). Oxford University Press.
- Demmke, C., Bovens, M., Henökl, T., & Moilanen, T. (2008). *Regulating conflicts of interest for holders of public office in the European Union: A comparative study of the rules and standards of professional ethics for the holders of public office in the EU-27 and EU institutions*. A study carried out for the European Commission. European Institute of Public Administration.
- Demmke, C., Bovens, M., Henökl, T., van Lierop, K., Moilanen, T., Pikker, G., & Salminen, A. (October 2007). *Regulating Conflicts of Interest for Holders of Public Office in the European Union: A Comparative Study of the Rules and Standards of Professional Ethics for the Holders of Public Office in the EU-27 and EU Institutions* [A study carried out for the European Commission Bureau of European Policy

Advisers (BEPA)]. European Institute of Public Administration; Utrecht School of Governance; University of Helsinki; University of Vaasa.

- Demmke, C., Paulini, M., Autioniemi, J., & Lenner, F. (2020). *The Effectiveness of Conflict of Interest Policies in the EU- Member States: Study commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the JURI Committee*.
- Dercks, L. (2001). The European Commission's business ethics: a critique of proposed reforms. *Business Ethics: A European Review*, *10*(4), 346–359. https://doi.org/10.1111/1467-8608.00251
- Dialer, D., & Richter, M. (2014). « Cash-for-Amendments » Skandal: Europaabgeordnete unter Generalverdacht. In D. Dialer & M. Richter (Eds.), *Lobbying in der Europäischen Union: Zwischen Professionalisierung und Regulierung* (pp. 235–255). Springer.
- Dratwa, J. (2014). How values come to matter at the European Commission: Ethical experimentations of Europe. *Politique Européenne*(45), 86–121.
- Driessen, B. (2012). *Transparency in EU institutional law: A practitioner's handbook* (2nd. edition). Wolters Kluwer.
- Dumbrovský, T., Petkova, B., & van der Sluis, M. (2014). Judicial appointments: The Article 255 TFEU Advisory Panel and selection procedures in the Member States. *Common Market Law Review*, *51*(2), 455–482.
- EC. (2020). *Code of Conduct for the Members of the European Commission: Members of the Commission are required to follow rules regarding ethics and integrity*. https://ec.europa.eu/info/about-european-commission/service-standards-and-principles/ethics-and-good-administration/commissioners-and-ethics/code-conduct-members-european-commission_en
- ECA. (2011). *Ethical guidelines for the European Court of Auditors: Adopted by the European Court of Auditors on 20 October 2011*. https://www.eca.europa.eu/Lists/ECADocuments/ETHICALGUIDE/ETHICALGUIDE_EN.PDF
- ECA. (2012, February 8). *Code of Conduct for the Members of the Court*. https://www.eca.europa.eu/Lists/ECADocuments/CODEOFCONDUCT_MEMBERS/CODEOFCONDUCT_MEMBERS_EN.PDF
- ECA. (2016, as amended 2018). *Decision No 38-2016 laying down the rules for implementing the rules of procedure of the Court of Auditors: As amended lastly by the Court at its meetings of 14 September 2017 and 13 December 2018*. https://www.eca.europa.eu/Lists/ECADocuments/IMPLEMENTING_RULES_2016/IMPLEMENTING_RULES_2016_EN.pdf
- ECA. (2020). *Ethics*. https://www.eca.europa.eu/en/Pages/Transparency-ethics.aspx
- ECB. (2020a). *Ethics – working with integrity*. https://www.ecb.europa.eu/ecb/orga/ethics/html/index.en.html
- ECB. (2020b). *European Central Bank Staff Rules: Latest amendments apply from 31 January 2020*. https://www.ecb.europa.eu/careers/what-we-offer/contract/fixed/html/index.en.html
- Ethics Advisory Group. (2018). *Towards a digital ethics: Report by the Ethics Advisory Group established by the European Data Protection Supervisor, the EU's independent data protection authority*. European Commission. https://edps.europa.eu/sites/edp/files/publication/18-01-25_eag_report_en.pdf

- EUCO. (2020). *Code de conduite du Président ou de la Présidente du Conseil Européen*. https://www.consilium.europa.eu/media/45399/code-de-conduite.pdf
- European Commission. (2005, November 8). *Communication to the Commission from the President, Ms Wallström, Mr Kallas, Ms Hübner and Ms Fischer Boel: Proposing the launch of a European Transparency Initiative. SEC(2005)1300/5*.
- European Commission. (2008, March 5). *Communication from Vice-President Kallas to the Commission on enhancing the environment for professional ethics in the Commission: SEC(2008) 301 final.*
- European Commission. (2012, December 6). *Communication from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing: SEC(2012) 679 final*.
- European Commission. (2018, June 29). *Decision of 29.6.2018 on outside activities and assignments and on occupational activities after leaving the Service: C(2018) 4048 final*.
- European Commission. (2019, July 16). *Political guidelines of the Commission 2019-2024*. https://ec.europa.eu/info/strategy/priorities-2019-2024_en
- European Court of Auditors. (2019). *The ethical frameworks of the audited EU institutions: scope for improvement: Special Report No 13/2019, OJ 2019 C 247/28*.
- European Data Protection Supervisor. (2016, May 3). *Code of conduct for the European Data Protection Supervisor and the Assistant Supervisor*. https://edps.europa.eu/data-protection/our-work/publications/other-documents/code-conduct-supervisors-%E2%80%93-transparency_en
- European Data Protection Supervisor. (2019, November 12). *Decision of the European Data Protection Supervisor on the adoption of an Ethics Framework and the appointment of an Ethics Officer*. https://edps.europa.eu/data-protection/our-work/publications/other-documents/edps-ethics-framework_en
- European Ombudsman. (2017a, June 30). *European Ombudsman Internal Charter of Good Practice: Ref. Ares(2017)3677524 - 20/07/2017*.
- European Ombudsman. (2017b, July 5). *Guide on Ethics and Good Conduct for the Ombudsman's Staff: Ref. Ares(2017)3627318 - 18/07/2017*.
- European Ombudsman. (2017c, July 17). *Ombudsman asks nine questions on handling of Commissioners' post-mandate jobs: Press release no. 7/2017*. https://www.ombudsman.europa.eu/en/press/release.faces/en/81383/html.bookmark
- European Ombudsman. (2020). *Code of Conduct for the European Ombudsman*. https://www.ombudsman.europa.eu/en/emily-oreilly/ethics-and-conduct/code-of-conduct/en
- European Parliament - Legal Service. (2010, March 25). *Legal Opinion Re: Possibility and modalities of mandatory registration of lobbyists - Status of churches in relation to the register of interest representatives - Exempetions from registring - Situations of law firms: SJ-0012/10*. European Parliament.
- European Parliament. (2015, December 4). *Internal Rules Implementing Article 22c of the Staff Regulations*.
- European Parliament. (2017, September 14). *Resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI))*. https://www.europarl.europa.eu/doceo/document/TA-8-2017-0358_EN.html

- European Parliament. (2020, October 8). *Report with recommendations to the Commission on a framework of ethical aspects of artificial intelligence, robotics and related technologies (2020/2012(INL)): A9-0186/2020*. https://www.europarl.europa.eu/doceo/document/A-9-2020-0186_EN.html
- Frischhut, M. (2003). *Die Rolle der Judikative in der Ausformung der Verbandsgewalt supranationaler Organisationen: EuGH, Andengerichtshof, Supreme Court und Conseil Constitutionnel im Vergleich*. Peter Lang.
- Frischhut, M. (2015a). « EU »: Short for « Ethical » Union? The Role of Ethics in European Union Law. *Heidelberg Journal of International Law (HJIL)*, *75*(3), 531–577.
- Frischhut, M. (2015b). Aktuelle (Weiter-)Entwicklungen des Rechts der Unionsbürger auf Dokumentenzugang. *Europarecht (EuR)*(Beiheft 1), 207–231.
- Frischhut, M. (2017). Standards on quality and safety in cross-border healthcare. In A. d. Exter (Ed.), *Cross-border health care and European Union law* (pp. 59–86). Erasmus University Press.
- Frischhut, M. (2019). *The Ethical Spirit of EU Law*. Springer International Publishing. https://doi.org/10.1007/978-3-030-10582-2
- Frischhut, M., & Werner-Felmayer, G. (2020). A European perspective on medical ethics. *Medicine*, *48*(10), 634–636. https://doi.org/10.1016/j.mpmed.2020.07.001
- Frischhut, M. (2020, forthcoming). EU Values and Ethical Principles for AI and Robotics with Special Consideration of the Health Sector. In M. Hengstschläger & Austrian Council for Research and Technology Development (Eds.), *Digital Transformation and Ethics* (pp. 246–276). Ecowin Verlag.
- General Secretariat of the Council. (2013). *Rules for the organisation of the proceedings of the Euro Summits*. Publications Office of the European Union.
- Gerig, M., & Ritz, C. (2014). Pläne für ein neues EU-Lobbyregister - kommt Zeit, kommt Rat. *Europäische Zeitschrift für Wirtschaftsrecht (EuZW)*(22), 853–858.
- Giersdorf, F. (2019). *Der informelle Trilog: Das Schattengesetzgebungsverfahren der Europäischen Union. Schriften zum Europäischen Recht*. Duncker et Humblot.
- Grad, J., & Frischhut, M. (2019). Legal and Ethical Rules in EU Decision-Making: "Soft Law" for Targets and Actors of Lobbying. In D. Dialer & M. Richter (Eds.), *Lobbying in the European Union: Strategies, Dynamics and Trends* (pp. 305–327). Springer. https://doi.org/10.1007/978-3-319-98800-9_22
- Gräßle, I. (2014). Der Fall Dalli: Die europäische Tabaklobby im Visier. In D. Dialer & M. Richter (Eds.), *Lobbying in der Europäischen Union: Zwischen Professionalisierung und Regulierung* (pp. 213–234). Springer.
- Griller, S., & Orator, A. (2010). Everything under control? The « way forward » for European agencies in the footsteps of the Meroni doctrine. *European Law Review (E.L.Rev.)*, *35*(1), 3-35.
- Hallstein, W. (1979). *Die Europäische Gemeinschaft* (5. Auflage). Econ.
- Hatzopoulos, V. (2012). *Regulating services in the European Union*. Oxford University Press.
- Herrnfeld, H.-H., Brodowski, D., & Burchard, C. (2020). *European Public Prosecutor's Office: Article-by-Article Commentary*. Nomos; Hart Publishing; C.H.Beck.
- Holzinger, G. (2017). Was kann das Recht bei der Herstellung des (Rechts-)Friedens leisten? *Journal Für Rechtspolitik (JRP)*, *25*(4), 206–213.

- Houillon, G. (2014). Corruption and conflicts of interest: Future prospects on lobbying. In J.-B. Auby, E. Breen, & T. Perroud (Eds.), *Corruption and conflicts of interest: A comparative law approach* (pp. 53–66). Edward Elgar.
- HuffPost (2016, October 5). Le sénateur LR Bruno Sido, premier condamné depuis les lois post-Cahuzac sur la transparence. *HuffPost*. https://www.huffingtonpost.fr/2016/04/12/bruno-sido-condamnation-definitive-haute-autorite-transparence_n_9673166.html
- International Organization of Supreme Audit Institutions. (2019). *Code of Ethics: ISSAI 130*. https://www.intosai.org/fileadmin/downloads/documents/open_access/ISSAI_100_to_400/issai_130/ISSAI_130_en.pdf
- Ipsen, H. P. (1972). *Europäisches Gemeinschaftsrecht*. Mohr.
- Jabloner, C. (2019). Was ist rechtlich am Soft Law? In E. Bernat, C. Grabenwarter, B. Kneihs, M. Pöschl, K. Stöger, E. Wiederin, & J. Zahrl (Eds.), *Festschrift Christian Kopetzki: Zum 65. Geburtstag* (241-251). Manz Verlag Wien.
- Jacqué, J.-P. (2004). The principle of institutional balance. *Common Market Law Review*, *41*(2), 383–391.
- Kant, I. (2014). *Groundwork of the Metaphysics of Morals: Edited and translated by Mary Gregor and Jens Timmermann*. Cambridge University Press.
- Klamert, M. (2014). *The Principle of Loyalty in EU law*. Oxford University Press.
- Krajewski, M. (2013, May 25). *Legal Framework for a Mandatory EU Lobby Register and Regulations: Legal Study*. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2284843
- Krajewski, M. (2014). Rechtsfragen der Regulierung von Lobbying gegenüber EU-Institutionen. In D. Dialer & M. Richter (Eds.), *Lobbying in der Europäischen Union: Zwischen Professionalisierung und Regulierung* (pp. 269–282). Springer.
- Lenaerts, K. (1993). Regulating the Regulatory Process: Delegation of Powers in the European Community. *European Law Review (E.L.Rev.)*, *18*(1), 23–49.
- Lenaerts, K., & Verhoeven, A. (2002). Institutional Balance as a Guarantee for Democracy in EU Governance. In C. Joerges & R. Dehousse (Eds.), *The collected courses of the Academy of European Law: Vol. 11,2. Good governance in Europe's integrated market* (35-89). Oxford University Press.
- Loewenthal, P.-J. (2019). Article 295 TFEU. In M. Kellerbauer, M. Klamert, & v. Tomkin (Eds.), *Commentary on the EU Treaties and the Charter of Fundamental Rights: Digital Pack: Digital* (pp. 1945–1946). Oxford University Press.
- Maesschalck, J. (2004). Approaches to Ethics Management in the Public Sector: A Proposed Extension of the Compliance-Integrity Continuum. *Public Integrity*, *7*(1), 20–41. https://doi.org/10.1080/10999922.2004.11051267
- Mandry, C. (2009). *Europa als Wertegemeinschaft: Eine theologisch-ethische Studie zum politischen Selbstverständnis der Europäischen Union. Denkart Europa: Vol. 9*. Nomos.
- Monar, J. (1994). Interinstitutional Agreements: The Phenomenon and its New Dynamics after Maastricht. *Common Market Law Review*, *31*(4), 693–719.

- Montesquieu, C. d. S. Baron de. (1927). *De L'esprit des Loix: Avec des notes de Voltaire, de Crevier, de Mably, de la Harpe, etc.* Nouvelle édition entièrement refondue. Tome premier. Librairie Garnier Frères.
- Müller, T. (2014). Soft Law im europäischen Wirtschaftsrecht – unionsverfassungsrechtliche Grundfragen. *Journal für Rechtspolitik (JRP)*, *22*(112-122).
- Năstase, A. (2013). Managing Ethics in the European Commission Services. *Public Management Review*, *15*(1), 63–81. https://doi.org/10.1080/14719037.2012.664016
- Năstase, A. (2014). Catering to Organizational Needs in Ethics Management: The Case of the European Commission. *International Journal of Public Administration*, *37*(2), 93–105. https://doi.org/10.1080/01900692.2013.836668
- Năstase, A. (2017). *Public ethics at the European Commission: Politics, reform and individual views*. Routledge.
- Năstase, A., & Muurmans, C. (2018). Regulating lobbying activities in the European Union: A voluntary club perspective. *Regulation & Governance*, *14*(2), 238–255. https://doi.org/10.1111/rego.12200
- Nettesheim, M. (2014). *Interest Representatives' Obligation to Register in the Transparency Register: EU Competences and Commitments to Fundamental Rights: In-depth analysis for the AFCO Committee, PE 493.038*. European Parliament.
- Neuhold, C., & Năstase, A. (2017). Transparency Watchdog: Guarding the Law and Independent from Politics? The Relationship between the European Ombudsman and the European Parliament. *Politics and Governance*, *5*(3), 40–50. https://doi.org/10.17645/pag.v5i3.958
- Obradovic, D. (2011). Regulating Lobbying in the European Union. In D. Coen & J. Richardson (Eds.), *Lobbying the European Union: Institutions, actors, and issues* (pp. 298–334). Oxford University Press.
- Orator, A. (2017). *Möglichkeiten und Grenzen der Einrichtung von Unionsagenturen* (1. Aufl.). *Studien zum europäischen und deutschen Öffentlichen Recht*. Mohr Siebeck.
- Organization For Economic Cooperation And Development (2014). Lobbyists, Governments and Public Trust: Implementing the OECD Principles for Transparency and Integrity in Lobbying (Volume 3).
- Organization For Economic Cooperation And Development. (2003). *Managing Conflict of Interest in the Public Service: OECD Guidelines and Overview*. OECD Publishing. https://doi.org/10.1787/9789264104938-en
- Organization For Economic Cooperation And Development. (2009, April 23). *Towards a Sound Integrity Framework: Instruments, Processes, Structures and Conditions for Implementation* [GOV/PGC/GF(2009)1].
- Petrick, J. A. (2008). Integrity. In R. W. Kolb (Ed.), *Encyclopedia of Business Ethics and Society* (1141-1144). Sage Publications.
- Piris, J.-C. (2010). *The Lisbon Treaty: A legal and political analysis*. Cambridge University Press.
- Pirs, M., & Frischhut, M. (2020). Ethical Integration in EU Law: The prevailing normative theories in EGE opinions. In N. Ryder & L. Pasculli (Eds.), *Corruption, Integrity and the Law: Global Regulatory Challenges* (pp. 286–311). Routledge.

- Plomer, A. (2008). The European Group on Ethics: Law, Politics and the Limits of Moral Integration in Europe. *European Law Journal*, *14*(6), 839–859. https://doi.org/10.1111/j.1468-0386.2008.00447.x
- Potacs, M. (2016). Wertkonforme Auslegung des Unionsrechts? *Europarecht (EuR), 51*(2), 164–176.
- Rawls, J. (1971). *A theory of justice*. Belknap Press of Harvard University Press.
- Reimer, F. (2003). Wertegemeinschaft durch Wertenormierung? Die Grundwerteklausel im europäischen Verfassungsvertrag. *Zeitschrift Für Gesetzgebung*, 208–217.
- Repasi, R. (2017). Court of Justice Judicial protection against austerity measures in the euro area: Ledra and Mallis. *Common Market Law Review*, *54*(4), 1123–1155.
- Rohde, J. (2012, March 1). *Declaration of financial interest: Document received by Parliament on 19 March 2012*. http://www.europarl.europa.eu/ep-dif/96710_01-03-2012.pdf
- Rosenthal, A. (2006). The effects of legislative ethics law: An institutional perspective. In D. Saint-Martin & F. Thompson (Eds.), *Research in public policy analysis and management: Volume 14. Public ethics and governance: Standards and practices in comparative perspective* (pp. 155–177). Elsevier JAI.
- Saint-Martin, D. (2003). Should the Federal Ethics Counsellor Become an Independent Officer of Parliament? *Canadian Public Policy / Analyse De Politiques*, *29*(2), 197–212. https://doi.org/10.2307/3552455
- Saint-Martin, D. (2006). Path dependence and self-reinforcing processes in the regulation of ethics in politics: Toward a framework for comparative analysis. In D. Saint-Martin & F. Thompson (Eds.), *Research in public policy analysis and management: Volume 14. Public ethics and governance: Standards and practices in comparative perspective* (5-27). Elsevier JAI.
- Sandel, M. J. (2010). *Justice: What's the right thing to do?* Farrar, Straus and Giroux.
- Sandel, M. J. (2020). *The Tyranny of Merit: What's become of the Common Good?* Farrar, Straus and Giroux.
- Sauvé, J.-M. (2011, January 26). *Pour une nouvelle déontologie de la vie publique: Rapport de la Commission de réflexion pour la prévention des conflits d'intérêts dans la vie publique, remis au Président de la République*.
- Sauvé, J.-M. (2015). Selecting the European Union's Judges: The Practice of the Article 255 Panel. In M. Bobek (Ed.), *Selecting Europe's judges: A critical review of the appointment procedures to the European courts* (pp. 78–85). Oxford University Press.
- Spencer, J. R., & Csúri, A. (2020). EU criminal law. In C. Barnard & S. Peers (Eds.), *European Union Law* (3rd edition, pp. 792–825). Oxford University Press.
- Staffler, L. (2020). Kapitel 20: Nationales, Europäisches und Internationales Unternehmensstrafrecht. In R. Soyer (Ed.), *Handbuch Unternehmensstrafrecht* (pp. 623–684). Manz Verlag.
- Tallacchini, M. (2015). To bind or not bind? European ethics as soft law. In S. Hilgartner, C. A. Miller, & R. Hagendijk (Eds.), *Genetics and society. Science and Democracy: Making knowledge and making power in the biosciences and beyond* (pp. 156–175). Routledge, Taylor & Francis Group.
- White, S. (2014). Footprints in the sand: Regulating conflict of interest at EU level. In J.-B. Auby, E. Breen, & T. Perroud (Eds.), *Corruption and conflicts of interest: A comparative law approach* (pp. 272–287). Edward Elgar.

- Williams, A. T. (2009). Taking Values Seriously: Towards a Philosophy of EU Law. *Oxford Journal of Legal Studies*, *29*(3), 549–577. https://doi.org/10.1093/ojls/gqp017
- Williams, A. T. (2010). *The ethos of Europe: Values, law and justice in the EU*. *Cambridge studies in European law and policy*. Cambridge University Press.
- Wittinger, M. (2008). « Europäische Satelliten »: Anmerkungen zum Europäischen Agentur(un)wesen und zur Vereinbarkeit Europäischer Agenturen mit dem Gemeinschaftsrecht. *Europarecht (EuR)*, *44*(5), 609–626.

This study, commissioned by the European Parliament's Policy Department for Citizens' Rights and Constitutional Affairs at the request of the AFCO Committee, provides an overview of transparency and integrity-related elements in the current EU setting, covering both substantive elements (including, in particular, conflict of interest and revolving-doors) as well as the body in charge of ethical control and guidance. Based on a comparison covering France, Ireland and Canada, this study proposes an 'Independent Ethics Body' (IEB) via a new interinstitutional agreement.

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