

RIGHTEOUS GOVERNMENT SERIES

How to Make EU Decision Makers Act Ethically?

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In recent years numerous failures have shown the inability of the EU to hold its politicians and public officials accountable for their unethical conduct. As recently illustrated by the so called Qatargate, the current mechanisms to uphold and enforce ethical standards are fragmented and ineffective. This contribution explores a promising pathway to remedy this issue by proposing the establishment of a new EU Ethics Body common to all European institutions and taming the evergreen phenomenon of revolving doors. As an independent and authoritative body, this renewed integrity system would not only ensure the consistent and rigorous application of ethical rules but also reinforce citizens' trust in the EU.

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Introduction

All political representatives and governmental entities share a common mission: to serve the public interest; hence the need to ensure the public integrity of – and trust in – public officials, whether appointed or elected, paid or unpaid, through the adoption of ethical frameworks.¹

Owing to its perceived distance from citizens' democratic lives, this appears to be even more strongly needed in the framework of the European Union. This explains why the European Union has over time put in place ethical standards governing the conduct of its institutions' staff and members to prevent, or at least mitigate, the risks of unethical behaviours.² It has done so on the assumption that what matters today is not only *what* public institutions do (output legitimacy) but also *how* they do it (throughput legitimacy).³ The resulting EU's ethical and integrity framework appears on average more comprehensive and sounder than in most member states.⁴ Yet, as is often the case, institutional change tends to be driven by exogenous factors.⁵ Indeed, over the past years, multiple cases of unethical behaviour in the EU institutions have revealed significant systemic shortcomings, notably in the framework's current implementation.⁶ These range from Neelie Kroes 'forgetting' to report her board positions before becoming EU Commissioner to her proximity to Uber while responsible for regulating its activities. Last but not

1 See, OECD: *Managing conflict of interest in the public sector*, 2005; OECD, *Recommendation on public integrity*, Paris, 2017.

2 These are essentially framed as rights, duties and qualities of EU members and staff and overall indicate what is considered as appropriate behaviour from them.

3 See, e.g., VA Schmidt, 'Democracy and legitimacy in the European Union revisited: input, output and "throughput"' (2013) 61 *Political Studies* 2, 22.

4 European Court of Auditors, Special Report No 13/2019: 'The ethical frameworks of the audited EU institutions: scope for improvement', Luxembourg.

5 See, e.g., MJ Gorges, 'The new institutionalism and the study of the European Union: the case of social dialogue' (2001) 24(4) *West European Politics* 152, 168.

6 Transparency International, *European Union Integrity System reports*, 2021, available at <https://transparency.eu/euis/>.

least, Qatargate, the influence-buying scandal⁷ that has rocked the EU Parliament, after Belgian authorities raided homes and offices in December 2022, amid allegations Qatar and Morocco handed out cash and gifts to secure favorable treatment in the European Parliament⁸.

Far from being inherently corrupt, the members of the EU institutions and their staff are like any other public official continuously exposed to external influence and often face ethical dilemmas. Moreover, in the absence of a pan-EU media sphere, EU policymakers are not subject to the same level of ex ante public scrutiny as it exists at the national level. The episode of Phil Hogan being forced to step down as EU Commissioner for flouting the COVID rules in his country of origin, Ireland, provides an exception that merely confirms the rule.

The truth is that – owing to the (perceived) greater distance from citizens – EU representatives are particularly vulnerable to unethical conduct. These may arise from personal, representational or other pecuniary or non-pecuniary situations and may not only negatively affect the EU financial management but also – by attracting a high level of public interest – reduce trust in the EU. Indeed, any perceived lack of integrity within the institutions presents a reputational risk not only to the institutions themselves but also to the European project as a whole. A case in point is that of former EU Commission president landing a job at Goldman Sachs in July 2016, after an 18-month cooling-off period during which ex-officials are required to notify the commission of any new jobs and are banned from lobbying. His decision to become a Brexit adviser at Goldman prompted a public furore, especially as the bank had come under fire for its alleged role in the Greek debt crisis that dominated Barroso’s final years in Brussels. More than 150,000 people signed an EU staff petition

7 See <https://www.politico.eu/article/scandal-qatargate-crisis-european-union-corruption-crisis/>.

8 A. Alemanno, The Qatar scandal shows the EU has a corruption problem, Politico Europe, December 11, 2023.

calling for Barroso to lose his EU pension,⁹ while his successor, Jean-Claude Juncker, questioned the choice to work for ‘this bank’.

As stated by the EU Ombudsman called upon to judge this conduct, “Much of the recent negative sentiment around this issue could have been avoided if the commission had at the time taken a formal decision on Mr Barroso’s employment with Goldman Sachs. Such a decision could at least have required the former president to refrain from lobbying the commission on behalf of the bank”.

It is precisely to minimize such risk that the EU has developed over time its own integrity system. This strives to preventively govern and frame individual conduct through a set of norms (ethical standards)¹⁰ and mechanisms (ethical oversight bodies), as well as penalties.

Yet the revolving door cases of other former members of the Commission such as Neelie Kroes, Members of the European Parliaments (hereinafter, MEPs), such as Sharon Bowles¹¹ and Holger Krahmer¹² or staff members such as Adam Farkas (then Chief Executive Officer at Association for Financial Markets in Europe)¹³ and Aura Salla (then Public Policy Director, META)¹⁴ are a

9 www.theguardian.com/business/2016/oct/11/eu-petition-on-barroso-goldman-sachs-job-signed-by-150000.

10 These are essentially framed as rights, duties and qualities of EU members and staff and overall indicate what is considered as appropriate behaviour from them.

11 Ms. Bowles accepted a job as a non-executive director at the London Stock Exchange after her tenure as Chair of the Committee on Economic and Monetary Affairs at the European Parliament. See also ‘Sharon Bowles, “side-shifter”’, *Financial Times*, 28 August 2014.

12 After leaving the European Parliament, Mr Krahmer became a corporate lobbyist for Hanover Communication and then the Opel Group, working on policy issues closely related to his previous activity as an MEP. See also ‘NGO raises alarm on “aggressive” tobacco lobbying’, *EU Observer*, 9 July 2013.

13 Mr Farkas took a job in a financial lobby group after having worked for the European Banking Authority as executive director. See also ‘EU banking agency criticised over director’s move to lobby group’, *Financial Times*, 11 July 2020.

14 Ms Salla was a civil servant at the European Commission dealing with cyber policy, misinformation and elections before becoming Meta’s Head of EU Affairs. See

stark reminder that the current EU ethics oversight system falls short of reducing the risk of unethical behaviour to a minimum. While none of these former EU appointees and officials have formally been found in breach of EU ethics rules, their conduct raises serious public concerns, thus highlighting the inadequacy of the current applicable framework and its application.

Acknowledging these far-reaching problems, EU Commission President Ursula von der Leyen has pledged to take action and has promised in the political guidelines to her candidacy to create a single, independent ethics body common to all EU institutions.¹⁵ Such a body has also prominently been called for by civil society organizations, notably Transparency International, as well as French President Macron and appears among the priorities of the Vice President of the European Commission for Values and Transparency. Since then, a series of cases, such as the failed confirmation of three EU Commissioners by the European Parliament and Phil Hogan's resignation have further highlighted the limits of the current EU ethics oversight system.

Against this backdrop, this contribution discusses **how to improve the current EU ethics system** by focusing on the establishment of the first ever created EU Ethics Body common to all European institutions. If well designed, it could offer a model for the entire European Union's members and beyond of how to tame unethical behaviours in government and police them with the aim of preventing their recurrence.

also 'Facebook's top EU lobbyist sends Brussels a friend request', *Politico Europe*, 21 December 2020.

15 President von der Leyen's mission letter to Věra Jourová, p. 5 ("I want you to work together with the European Parliament and the Council on an independent ethics body common to all EU institutions."). Available at https://ec.europa.eu/commission/commissioners/sites/comm-cwt2019/files/commissioner_mission_letters/mission-letter-jourova-2019-2024_en.pdf.

The problem

When it comes to the current state of play, the EU ethics system applicable to members – be they elected or appointed – appears highly fragmented, with each EU institution having its own dedicated framework, limited in its independence, lacking adequate investigatory powers and whose sanctioning powers are seldom used. This is further aggravated by limited awareness and guidance regarding the ethics standards applicable to EU institutions' members and staff, which inevitably translates into limited, lax enforcement.

While the Treaties merely contain references to legal principles such as independence, integrity, confidentiality and discretion, other sources translate them into more concrete and tangible standards of conduct. A common core of ethics principles – applicable throughout and after¹⁶ the end of the term of office – exists.¹⁷ It consists of (i) independence; (ii) integrity and discretion in office; (iii) obligation of professional secrecy; (iv) integrity and discretion post mandate.

As both members and staff are expected to act solely in the public interest and refrain from obtaining or seeking any direct or indirect financial benefit or reward, the concept of conflict of interest is central to the application of these principles. This emerges wherever public officials are, or are perceived to be, confronted with a situation where their private interests diverge from the duties of their position.¹⁸

16 Except for MEPs.

17 Except for the Council.

18 This definition is offered by Art. 3(1) of the Code of Conduct for MEPs, whereas Art. 2(6) of the Code of Conduct for Members of the Commission, as reformed in 2018, reads: "A conflict of interest arises where a personal interest may influence the independent performance of their duties. Personal interests include, but are not limited to, any potential benefit or advantage to Members themselves, their spouses, partners or direct family members. A conflict of interest does not exist where a Member is only concerned as a member of the general public or of a broad class of persons."

Such a situation of conflict may arise during or after¹⁹ the term of the mandate or service but also in relation to situations that occurred before.²⁰

There are specific regimes defining, inter alia, a gift policy, outside activities and assignments while in office, that help members and staff to preventively know what conducts are compatible with the office.

Thus, while cross-institutional harmonization might not always be warranted, some common approaches might be needed, such as a commonly agreed definition of conflict of interest, to start with.²¹

In addition, should specific formal obligations be imposed on EU institutions' members and staff in regard to their relations with organized interests (i.e. lobbying), respect for those rules would benefit from being entrusted to a single EU Ethics Body. At the moment, those are essentially imposed on organized interest representatives, with a few requirements for EU Commissioners, members of their cabinets and Directors General as well as MEPs (with a specific provision on rapporteurs).²²

19 A duty to notify the relevant institution within 2 years of leaving the service applies to the staff as well as members of the Commission (3 years for the president). This is because they continue to be subject to certain obligations, such as integrity and discretion. Despite receiving a transitional allowance, former MEPs have no limitation on their future employment.

20 While members are required to make a declaration of interests, the staff should merely inform the institution of any potential or actual conflict via 'a specific form'. Based on the latter information, the Appointing Authority should verify whether the candidate has a personal interest impairing their independence or any conflict. See Art. 11 of the Staff Regulations.

21 See supra note 10.

22 See Art. 7 of the Code of Conduct for Members of the Commission, Rule 11 of the European Parliament Rules of Procedure and Art. 4(6) of the code of conduct for MEPs. See, also, Commission Decision 2014/838/EU of 25 November 2014 on the publication of information on meetings held between Directors-General of the Commission and organizations or self-employed individuals, *OJ L 343, 28.11.2014, pp. 19-21*, available at https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.343.01.0019.01.ENG.

Respect for these ethical standards and integrity obligations is entrusted to a variety of oversight mechanisms of different nature, including ad hoc advisory committees – such as the EU Parliament Advisory Committee on the Conduct of Members (PACCM)²³ and the EU Commission Independent Ethical Committee (CIEC).²⁴ In the case of EU officials, the Statute foresees institution-by-institution appointed authorities helped by disciplinary boards, whose decisions are subject to the judicial review of the General Court of the EU (following the suppression of the EU Civil Service Tribunal). Last but not least, the Court of Justice enjoys an exclusive competence in determining the unethical conduct of the Members of the European Commission.²⁵ In addition, OLAF investigates serious matters relating to the discharge of professional duties constituting a dereliction of the obligations of EU officials liable to result in disciplinary or, as the case may be, criminal proceedings or an equivalent failure to discharge obligations on the part of members of institutions and bodies.²⁶ However, the disciplinary recommendations issued

23 The Advisory Committee on the Conduct of Members is the body responsible for giving members guidance on the interpretation and implementation of the Code of Conduct. At the request of the president, the Advisory Committee also assesses alleged breaches of the Code of Conduct and advises the president on possible action to be taken. The Advisory Committee is composed of five members, who are appointed by the president on the basis of their experience and of political balance between Parliament's political groups. Each of the five members serves as chairperson for six months, on a rotating basis. The president also nominates one reserve member for each political group not otherwise represented in the Advisory Committee. See Code of Conduct for Members of the European Parliament with respect to Financial Interests and Conflicts of Interest, available at www.europarl.europa.eu/pdf/meps/Code%20of%20Conduct_01-2017_EN.pdf.

24 The members of the Committee serve for terms of three years, renewable once, and are appointed by the president of the European Commission. They advise the Commission on whether the planned activities of commissioners after leaving office are compatible with the Treaties. The president may also seek the advice of the Independent Ethical Committee on any other ethical question relating to the Code of Conduct for the members of the European Commission. See Advisory Committee on the Conduct of Members - Rules of Procedure available at www.europarl.europa.eu/pdf/meps/Rules_of_Procedure_EN.pdf.

25 Arts. 245 and 247 TFEU.

26 Art. 5 of the OLAF decision read considering Art. 3 of the same decision, and Art. 5 of the OLAF regulation.

by OLAF exclusively concern ‘serious misconduct’ of EU staff or members of the EU institutions and are directed to the authority having disciplinary powers in the institution concerned. Therefore, the primary responsibility for the enforcement vis-à-vis members belongs to the president of each EU institution, who may refer to advisory ethical committees, as mentioned previously for advice. In particular, in the case of the EU Commission, the president may ask a commissioner to step back any time,²⁷ and when infringements qualify as ‘serious misconducts’ by a member of the Commission, the College of Commissioners may seize the Court of Justice.²⁸ When it comes to the members of the European Parliament, it is the president who is tasked, with the assistance of PACCM and – in case of appeal – the Bureau,²⁹ to impose penalties. However, when it comes to the suspension or removal from one or more of the offices of an MEP,³⁰ the rules of procedure entrust this power to the president (right of initiative), Conference of Presidents (decision to proceed) and the Parliament itself (actual sanction). Ultimately, the institutional role played by the presidents of these two institutions, combined with their respective political colour and the fact that they are both party and judge of the ethics regime, casts doubt on the suitability of their offices to exercise such an oversight.³¹

What EU ethics system for the Union?

The national ethics frameworks enacted in France, UK and Canada and the one proposed in Ireland offer some ideas on how to address and

27 Art. 17(6) TEU (‘A member of the Commission shall resign if the President so requests’).

28 Arts. 245 and 247 TFEU.

29 Art. 72 of the Decision of the Bureau of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament, OJ C 159, 13.7.2009, pp. 1-24.

30 Rule 21, Rules of Procedure of the EU Parliament.

31 This is true also for advisory ethics bodies whose composition and appointment procedure raise questions about their independence. Members are appointed by the Commission, on a proposal from the president. In the case of Parliament the Committee is only composed of MEPs and not independent ethics professionals.

overcome some of these flaws. First, these countries' systems suggest that it is possible to pool into one single and permanent oversight body – be it a collegial or one-person entity – the task of ensuring respect for ethical standards. Second, in so doing and by diversifying their composition and selection procedure, they show that is possible to guarantee a greater independence of such an oversight body. Third, they prove that it is equally possible to have such a body cover both members and staff and even expand its scope to cover their respect for lobbying rules as well as to provide interpretative advice. Fourth, they show the importance of monitoring, investigatory and enforcement powers to render the system effective in preventing and effectively sanction ethical breaches.

Towards an EU Ethics Body

It is against this backdrop that it is proposed to establish an EU ethics system common to all EU institutions capable of investigating and sanctioning unethical conduct. The main argument in support of this proposal is as follows. First, unlike any of the existing EU ethics bodies, the newly established body would be independent and competent to ensure the enforcement of unethical behaviour committed by both appointed/elected members and staff. By agreeing on a stronger mechanism to control the declaration of interests of the members and staff of the EU institutions and monitor their respect, this new system of enforcement of ethics requirements would be not only more effective than the current EU institutions' individual frameworks – through new additional powers – but also more independent and permanent.

Second, one of the advantages of such a construct is that – as the relevant EU institutions and bodies would act within the framework of their respective procedural autonomy and come under the purview of the ethics body on a voluntary basis – it would facilitate a more coherent, effective practice throughout the institutions.

Third, the stronger the EU ethics system, the higher the level of trust in the operation of the Union. This is because any unethical behaviour by staff and members of the EU institutions and bodies attracts high levels of public scrutiny and reduces trust in the Union as a whole.

Fourth, high ethical standards contribute not just to output-oriented (*what*) legitimacy but also to throughput legitimacy (*how*).

Fifth, by preventing and mitigating the risk of ethical misconduct, a strong and credible EU dedicated ethics system could become a model for other public administrations and political bodies within and across the Union.

Ultimately, if hope has traditionally been pinned on civil society actors to uphold respect for ethical standards, the time has come for the EU institutions themselves to take those standards and their enforcement more seriously, while still relying on civil society's monitoring and reporting.

