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An EU ethics body

Legal study

The European Union's ethical framework governing the conduct of its staff and members appears more comprehensive than in most Member States. Yet, 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. Acknowledging these far-reaching problems, Commission president Ursula von der Leyen has pledged, when entering office, to create an independent ethics body common to all EU institutions. Likewise, the Council of the EU expressed its support for "the further improvement of harmonised [ethics] frameworks within and across the EU institutions based on closer inter-institutional cooperation and the exchange of best practices with a view to strengthening trust in the EU as a whole".

The revolving door cases of former members of the Commission such as José Manuel Barroso and Neelie Kroes, MEPs such as Sharon Bowles and Holger Krahmer, or staff members such as Adam Farkas and Aura Salla are a stark reminder that the current EU ethics oversight system falls short of reducing the risk of unethical behaviour to a minimum.

Too often investigations fail to lead to a decision and violations of the ethical obligations go unpunished. Indeed, although institutions have, to large extent, adequate ethical frameworks in place, in practice, the EU ethics framework proves incapable to effectively prevent – and adequately sanction – major breaches of EU ethics standards and to make staff – and even more so members – aware of the ethics framework. This ultimately harms EU citizens' trust in democratic institutions and politics.

Against this backdrop, this study discusses how to improve the current EU ethics system, by focusing in particular on the members of the European Parliament and European Commission as well as all EU institutions' staff (officials). First, it identifies its current shortcomings. Second, it provides a concise, comparative analysis of some national ethics oversight frameworks to ascertain the ideal ethics body for the European Union, notably in terms of design and prerogatives. Third and last, it offers a detailed legal analysis of how to set up such a new body under EU law, by identifying a few available legal bases for it. Ultimately, it suggests the conclusion of an Inter-Institutional Agreement (IIA) between two, or more, EU institutions aimed at pooling together – within the framework of their respective procedural autonomy – the monitoring of the respect for the ethical standards to an Interinstitutional Body (IIB), both for members and staff, as well as entrusting to it investigatory and partial sanctioning power. In particular, when it comes to the staff, the present disciplinary system would be split into two procedures, one for ethical violations that would be outsourced to the ethics body – essentially conflict of interests –, and another one for the violation of the remaining professional obligations under the current staff disciplinary

procedure. As for members, the body could only inflict soft penalties, such as reputational or financial and those entailing a change in the position within the EU institution, leaving the irreversible ones (essentially those foreseen by the Treaty for Commissioners and the early termination of an office as in the European Parliament's Rules of Procedure for MEPs) to the present ethics regime as foreseen in the Treaties. The IIA could even foresee the possibility to entrust to the body the verification of the respect of lobbying rules as well as to provide interpretative advice.

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Daniel Freund

Member

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Legal study on an EU ethics body

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