

REPORTS

Much Ado About Nothing? Reflections on the European Commission's Proposal for an Inter-institutional Ethics Body

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Abstract

On 8 June 2023, the European Commission published a long-awaited proposal for the establishment of an interinstitutional ethics body, meant to restore the public's faith in the European Union's administration following the Qatargate corruption scandal. Alas, the Commission's proposal outlines a body that lacks investigative and sanctioning powers, has minimal administrative capacity and for the most part relies on the institution's own policing. Put simply, it falls short of the promises made by the Commission's President in her 2019 political guidelines, and much shorter of what was expected as a remedy to the European Union's recent ethics-related scandals. In this short piece, we reflect on the Commission's proposal for an inter-institutional ethics body in light of the overall ethics framework in the Union and provide a brief analysis of the Commission's missed opportunity and of what could have been.

Keywords: EU ethics; EU ethics body; EU institutional politics; good administration

I. Introduction

The European Commission's 2019 political guidelines, by the then-candidate President of the European Commission Ursula von der Leyen, promised increased attention to transparency in the European Union (EU) to restore the faith of the public. Among several promises related to transparency, integrity and democratic scrutiny was the explicit pledge to support the creation of an independent ethics body for all EU institutions.¹ The plan for the establishment of such a body has been in the pipeline ever since it was announced in von der Leyen's campaign speeches in 2019 and the mission letter to Commission Vice-President for Values and Transparency Věra Jourová.² The proposal for working towards an inter-institutional ethics body has recently gained new urgency after the European Parliament's Qatargate corruption scandal, which saw the emergence of

¹ European Commission, "Political Guidelines for the next European Commission 2019–2024" (2019) available at <<https://op.europa.eu/en/publication-detail/-/publication/62e534f4-62c1-11ea-b735-01aa75ed71a1>> (last accessed 10 June 2023) 19.

² European Commission, "President von der Leyen's mission letter to Věra Jourová" (2019) available at <https://commissioners.ec.europa.eu/system/files/2022-10/mission-letter-jourova-2019-2024_en.pdf> (last accessed 14 June 2023) 5.

allegations of criminal organisation, money laundering and bribery against Members of the European Parliament (MEPs), as well as high-profile lobbying scandals.

The long-awaited proposal saw the light of day on 8 June 2023.³ While not entirely crisis-driven, as the intention for this proposal long preceded the Qatargate scandal, the publication of the Commission's proposal can be seen, to a certain extent, as a potential solution to a problem that has put considerable strain on the legitimacy of the EU's administration. The proposal contains several grandiose promises; however, most of them seem to fall short of von der Leyen's original plans and are a far cry from what was expected in the wake of the Qatargate scandal according to several critics,⁴ as the proposed ethics body lacks investigative and sanctioning powers and mostly relies on self-policing. What precisely is the role of this body? How does the Commission aim to live up to its promises from 2019, in light of the recent scandals and with an eye to the future of ethics rules in the Union? In this short reflection piece, we present some critical thoughts on the Commission's proposal for the inter-institutional ethics body, its architecture, its positioning against other actors of EU public ethics and its missed potential as an actor of good administration in the Union.

II. The current context of European Union ethics standards

Let us start from the basics. Scandals aside, why is there even a need for an inter-institutional EU ethics body? What gaps is it supposed to fill? Overall, and as repeatedly brought up in the Commission's proposal for the body, the current ethics framework in the Union is fragmented and differs in several ways – depending on the institution or body or on whether one is a member or staff. In fact, it is not really a framework. Instead, there are several parallel frameworks that operate at different levels, with separate rules and standards, and stemming from various legal sources: for instance, in Article 339 TFEU on professional secrecy for members of the Union's institutions, Article 245 TFEU on the independence, integrity and discretion of Commission members, several articles of the Staff Regulations or Articles 2 and 3 of the European Parliament's Statute on the freedom and independence of MEPs.

The ethics standards and obligations are then entrusted to internal oversight bodies within the EU institutions themselves, who are responsible for monitoring and assessing (in various ways) whether the ethics rules are respected. One manner of achieving this is through own declarations of members or staff (eg through declarations of interests).⁵ According to a recent Special Report by the European Court of Auditors (ECA) on ethics rules in the EU,⁶ the general fragmentation and weakness of the current EU ethics

³ European Commission, "Communication from the Commission to the European Parliament, the European Council, the Council, the European Court of Justice, the European Central Bank, the European Court of Auditors, the European Economic and Social Committee and the Committee of the Regions: Proposal for an interinstitutional ethics body" (2023) COM(2023) 311 final.

⁴ See, for instance, J Rankin, "MEPs fear EU ethics body will fall short of Von der Leyen's promises" (*The Guardian*, 11 May 2023) <<https://www.theguardian.com/world/2023/may/11/eu-ethics-body-von-der-leyen-promises-european-parliament>> (last accessed 10 June 2023); P Engelbrecht-Bogdanov, "Transparency International EU: Watered-down EU ethics body lacks credibility" (*Transparency International*, 8 June 2023) <<https://transparency.eu/transparency-international-eu-watered-down-eu-ethics-body-lacks-credibility/>> (last accessed 10 June 2023).

⁵ For an extensive overview of the different enforcement mechanisms tied to ethics rules in the Union, see A Alemanno, "The Greens/EFA in the European Parliament: Legal study on an EU ethics body" (2021) available at <https://www.greens-efa.eu/files/assets/docs/legal_study_eu_ethics_body_web_11012021.pdf> (last accessed 16 June 2023).

⁶ European Court of Auditors, "Special Report: The ethical frameworks of the audited EU institutions: scope for improvement" (no 13) (2019) available at <https://www.eca.europa.eu/Lists/ECADocuments/SR19_13/SR_ethical_frameworks_EN.pdf> (last accessed 16 June 2023).

“frameworks” are coupled with limited training, knowledge and awareness on the side of staff. As the report rightfully points out, these three elements are key to the effective enforcement of ethics rules – especially when those, to a large extent, rely on a common organisational culture and shared understanding of ethical behaviour. Within the institutional frameworks, the ECA study reports that staff members from different positions show hesitation about reporting ethical issues and unethical behaviours due to a perceived lack of appropriate protection.⁷ This creates an issue for procedures that are based on self-reporting and self-assessment as the independence required in performing these exercises might be lacking.

Briefly put, in the Union’s ethics rules frameworks, there are several instances where we can see significant fragmentation – a lot of which is justified in light of the different duties and contexts in which institutions and bodies operate. Certainly, some ethical standards in particular contexts are – to a degree – already addressed by several bodies in Union (eg through the office of the European Ombudsman focusing on maladministration in EU bodies and institutions or the European Anti-Fraud Office (OLAF) focusing on corruption or fraud concerning the Union’s financial interests). While such bodies do play an important part in ensuring the compliance of EU bodies and institutions to a set of standards of ethical behaviour within their particular area of expertise, they are also reactive in nature and architecture and, for the most part, act in terms of complaint handling or investigations on a case-by-case basis. This current institutional set-up leaves a rather substantial “gap” in the establishment of common ethical standards that are applicable across the board and do not relate to a specific case by a specific institution and at a specific time. In short, there are several opportunities for harmonisation and standardisation, and there is ample room for improvement in terms of streamlining information and guidance regarding the existing rules governing ethical behaviour that are in this way separate from improving existing administrative structures or common practices in the Union. Having said that, the proposed ethics body does not address these whatsoever, nor does it attempt to introduce changes that would enhance the effectiveness of things that are already in place. Instead, it represents a standalone addition to the framework.

III. The proposed architecture of the inter-institutional ethics body

In this context, addressing this gap in the Union’s ethics rules, the Commission proposed the setting of the EU inter-institutional ethics body. What is the Commission’s vision for the ethics body and how is it supposed to add on to the Union’s democratic protection system? According to the introduction of the Commission’s proposal, the ethics body is meant to complement the Commission’s work on the rule of law together with the proposed anti-corruption package,⁸ the upcoming “defence of democracy package”⁹ and

⁷ *ibid.*, 33.

⁸ The package, announced on 3 May 2023, includes a Joint Communication to the European Parliament, the Council and the European Economic and Social Committee (EESC) on the fight against corruption, a proposal for a Directive on combating corruption by criminal law and a proposed Common Foreign and Security Policy (CFSP) sanctions framework. For further details on the package, see European Commission, “Anti-corruption: Stronger rules to fight corruption in the EU and worldwide” (2023) press release, available at <https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2516> (last accessed 11 June 2023).

⁹ The defence of democracy package, which is currently in development, builds on the Commission’s European Democracy Action Plan and will include a legislative proposal for the strengthening of the resilience of the EU democratic space to foreign interference (eg in the context of elections) and several supporting measures, such as recommendations on covert interference, secure and resilient electoral processes and civic engagement. See European Commission, “Defending European democracy – Communication” (2023) available at <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13730-Defending-European-democracy-Communication_en> (last accessed 11 June 2023).

the mandatory transparency register.¹⁰ Most intended actions, stemming from the ethics body itself or from other aspects of the above initiatives, are meant to either add on to or harmonise existing ethics rules that apply to the EU institutions. For instance, the proposal repeatedly makes the point that several ethics rules already exist in the Union's institutions – for instance, through rules of procedure or codes of conduct – but are fragmented, misaligned and difficult to understand for the general public. The role of the ethics body here is to come up with common minimum ethical standards for members of the EU institutions and bodies listed under Articles 13(1) and 13(4) TEU¹¹ and to provide a mechanism to coordinate and exchange views and good practice on ethical standards, with due observance to the autonomy and independence of each institution. In short, this would cover the coordination of ethics standards for the European Parliament, the European Council, the Council, the European Commission, the Court of Justice, the European Central Bank, the ECA, the European Economic and Social Committee and the European Committee of the Regions. Starting off, the proposed ethics body seems to have quite a considerable task on its hands.

The proposed composition of the body foresees that each participating institution will designate one full member to the ethics body and one alternate – in principle, at the level of vice-president or equivalent¹² – totalling nine members. According to Article 4 of the proposed agreement, the body will be chaired on a yearly rotating basis by one of the participating institutions.¹³ In addition to the institutional representatives, the body will be supported by independent experts in an advisory role,¹⁴ which will be administratively attached to the Commission and will have the status of Special Adviser,¹⁵ as well as a secretariat, which will consist of heads of unit (or equivalent) responsible for the ethics rules of each participating institution.¹⁶ The resources available for the body, in terms of human, administrative, technical and financial resources, including the appropriate staffing of the Secretariat, will be shared among the institutions and will be agreed on through a memorandum three months after the appointment of the members and experts.¹⁷

With this in mind, let us get to the crux of the matter: what can this body *actually* do? In Articles 6 and 7 of the proposal, outlining the mandate and tasks of the body, there are three main areas of action that are envisioned by the Commission. First, the body is tasked with developing and reviewing common minimum standards applicable to the conduct of the members of the participating institutions, to provide a forum for the exchange of views on each institution's self-assessment of its own internal rules in light of the developed ethics standards and to promote cooperation among the institutions on issues of common interest. Article 7 of the proposal lists these areas of common interest wherein the body is expected to develop standards, which include: interests and assets of the members, external activities during and after the members' term of office and acceptance of gifts, awards, decorations, prizes and honours. The minimum standards in the above areas will

¹⁰ Interinstitutional Agreement of 20 May 2021 between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register (2021) OJ L 207/1.

¹¹ Consolidated Version of the Treaty on European Union (2012) OJ C326/13, Arts 13(1) and 13(4).

¹² European Commission, "ANNEX to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Court of Justice, the European Central Bank, the European Court of Auditors, the European Economic and Social Committee and the Committee of the Regions: Proposal for an interinstitutional ethics body" (2023) ANNEX 1 COM(2023) 311 final, Art 3.

¹³ *ibid*, Art 4.

¹⁴ *ibid*, Art 5(1).

¹⁵ *ibid*, Art 5(6).

¹⁶ *ibid*, Art 15.

¹⁷ *ibid*, Art 16.

be developed and agreed upon by consensus and will be formalised in writing.¹⁸ In addition to substantive standards in these areas, the body will also be tasked with developing actions to raise awareness and promote compliance. So far, so good.

How will the ethics body ensure that the common minimum standards are honoured and followed? The Commission's response to the central question of this matter is, unfortunately, underwhelming: self-assessments and self-policing. Article 9 of the proposal stipulates that each participating institution carries out a written self-assessment report, reflecting on the alignment of its internal rules with the standards developed by the ethics body. The self-assessment report of each institution is meant to be presented by the concerned institution during a meeting of the body, which will then require that the report is subsequently reviewed by the body's team of independent experts, who will then issue an opinion.¹⁹ Upon the issuing of the opinion of the independent experts, which will either dissent to or support the institution's self-assessment, the body will hold an exchange of views with the aim of enabling dialogue between the participating institutions.²⁰ Certainly, while there is value in the common setting of norms and the potential for peer shame and peer praise, the "powers" of the body end there, and neither the exchange of views nor the opinion or report is binding or has any recognised legal effect.²¹

Ultimately, it is up to each individual institution to truthfully and independently assess how its own internal rules measure against the common ethics standards and to fully report on the findings, and it is up to the institution to decide whether or not to take any action related to potential ethical missteps brought up through the self-assessment and the follow-up actions by the body and the independent experts. Other than that, strictly speaking, the body itself is not envisioned to have any power whatsoever to investigate or sanction potential unethical behaviours. The only tangible action in the body's toolbox is the potential to name and shame laggards through its self-assessment reports, opinions and annual reports. Does this make for an effective anti-corruption mechanism? That, to a certain extent, is in the eye of the beholder and still remains to be seen. Yet, one might notice a mismatch between the grandiose promises of the Commission and the end result of this present proposal.

The next steps in the process of the proposal are expected to bring about some changes to the current proposed architecture of the body. On the basis of the proposal, the Commission has invited the participating institutions to commence an inter-institutional dialogue and negotiate the make-up, powers and minutiae of the ethics body during a meeting in Brussels, which was set to take place in July 2023. While no new information has been released regarding this meeting, the European Parliament did adopt a resolution on 12 July 2023,²² where it expressly stated that the proposal is lacking in ambition and falls short of a "genuine, independent ethics body".²³

IV. A plaster for a bullet wound? A missed opportunity for improving the enforcement of ethics rules in the European Union institutional system

Where do we go from here? The long-awaited proposal for an EU ethics body seems to fall somewhat short of its original vision as a means of helping maintain or restore the faith of

¹⁸ *ibid*, Arts 7(5) and 7(7).

¹⁹ *ibid*, Arts 9(1)–(4).

²⁰ *ibid*, Art 9(5).

²¹ *ibid*, Art 9(8).

²² European Parliament, "European Parliament resolution of 12 July 2023 on the establishment of the EU ethics body" 2023/2741(RSP) available at <https://www.europarl.europa.eu/doceo/document/TA-9-2023-0281_EN.html> (last accessed 30 October 2023).

²³ *ibid*, para 1.

Europeans in the Union by being a force for ethics, integrity and transparency. While a mandate for creating common standards for ethical behaviour amongst the EU institutions and for harmonising existing internal procedures might be a first step in the right direction and is by all means a welcome development, it is also clear that the Commission's current proposal is lacking in ambition – especially given the context in which it emerged and gained momentum. The distinct lack of investigative and sanctioning powers of the proposed inter-institutional ethics body and the express lack of any binding or legal effect tied to the participating institutions' self-assessment and self-policing exercises are certainly not encouraging. Though the series of events surrounding Qatargate and the Uber scandal, amongst others, prepared the ground for a serious action against corruption and unethical behaviour in the Union institutions, and while the explanatory memorandum of the Commission's proposal certainly does a good job in "selling" the importance of the inter-institutional ethics body, what we are essentially left with in reality is simply the potential for a mild scolding.

It is noteworthy that, in the run-up to the unveiling of the current proposal, the European Parliament has repeatedly asked for investigative powers to be given to any forthcoming EU independent ethics body. In a 2021 resolution,²⁴ which the Commission itself points to in the current proposal, and then again as recently as February 2023,²⁵ the European Parliament set out the powers and organising principles for a common ethics body for the Commission and the Parliament, covering both members and administrative staff and open to future participation from other EU institutions and bodies. Its mandate was meant to extend to "all provisions of codes of conduct and applicable rules on transparency, ethics and integrity" as well as obligations of the participating institutions relating to the Transparency Register, the protection of whistleblowers and the management of conflicts of interest.²⁶ The European Parliament indicated that the ethics body should be tasked with verifying the veracity of declarations of financial interests and compliance with revolving-door rules.²⁷ It also outlined a process whereby investigations into individual cases could be started through its own initiative as well as upon notification from external parties,²⁸ and the ethics body would have the power to request documents,²⁹ liaise with national authorities and EU watchdog institutions (such as OLAF, the European Public Prosecutor's Office (EPPO), the European Ombudsman and the ECA),³⁰ hear the accused individuals and propose sanctions to the responsible institution.³¹

In sum, the European Parliament proposed something akin to a centralised, independent regulatory agency, with significant monitoring and investigative powers. While this represents an ambitious proposal, it is also not a particularly original one, but rather it draws on a popular institutional model, currently in operation in several EU Member States.³² A well-known example is the High Authority for Transparency in Public Life (La Haute Autorité pour la transparence de la vie publique) in France, which checks the asset and interest declarations of public officials, monitors the revolving-door rules for certain categories of public officials and civil servants, manages the digital lobby register

²⁴ European Parliament resolution of 16 September 2021 on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body (2020/2133(INI)) [2022] OJ C 117/159.

²⁵ European Parliament resolution of 16 February 2023 on the establishment of an independent EU ethics body (2023/2555(RSP)).

²⁶ European Parliament Resolution 2020/2133(INI), Art 10.

²⁷ *ibid.*, Art 10.

²⁸ *ibid.*, Art 16

²⁹ *ibid.*, Arts 24 and 43.

³⁰ *ibid.*, Art 8.

³¹ *ibid.*, Art 33.

³² For a comparative analysis, see A Alemanno, "Towards an EU Ethics Body" (20 November 2020) available at <<https://ssrn.com/abstract=4062961>> (last accessed 15 June 2023).

and offers ethics trainings as well as on-request ethics guidance for individual cases.³³ In Ireland, the Standards of Public Office Commission receives complaints and conducts formal investigations regarding possible wrongdoing relating to ethics rules and standards of conduct for public officials (elected and appointed), political party financing and lobby registration and disclosure.³⁴ There are examples also from Eastern Europe – for instance, the Romanian National Integrity Agency (Agenția Națională de Integritate) conducts systematic checks on the asset declarations of all elected public officials and undertakes administrative inquiries regarding conflicts of interest, incompatibilities and unjustified assets.³⁵

We mention these examples not as an argument for the efficacy of a centralised ethics agency with investigative powers – in reality, the performance varies widely from one national setting to another – but simply to illustrate that this is a commonly encountered institutional model. This makes the European Commission’s refusal to consider it a controversial choice. Its stance appears to be justified by the principle that dealing with ethics issues is and should remain squarely within the sphere of autonomy of each EU institution. Thus, the Commission notes that “the institutions cannot renounce to exercise their respective powers which are entrusted to them by the Treaties”, and, in particular, they “cannot delegate the responsibility for the conduct of their members and their prerogative to react to breaches of ethical rules by individual members”.³⁶ It is beyond the scope of this short insight piece to analyse this legal principle and its interpretation by the Commission, although we do suggest the latter can be subject to debate.

V. An ethics talking shop? Assessing the proposed inter-institutional ethics body

Having said this, it is worth considering the Commission’s proposal on its own merits rather than decrying the lost opportunities for improved enforcement of ethics rules across the EU institutions. As we explained earlier, what the Commission has put on the table is a light-touch approach, whereby EU institutions are offered a platform to achieve regulatory approximation through dialogue, best-practice sharing and standard-setting. In the remainder of this paper, we show that, even when judged against this more modest objective, the Commission’s proposal is unlikely to deliver results.

Firstly, the proposed inter-institutional agreement (IIA) covers not fewer than nine participating EU institutions and bodies, with very different mandates and domains of activity and subject to different accountability frameworks. While the ambitious scope is laudable, it also means that agreement around ethics standards and rules will be more difficult to reach, and, to the extent that agreement is found, it will be around the lowest common denominator. Even if we account for the provision that the contents of the IIA should not “under any circumstance, constitute grounds for lowering the standards

³³ See, for instance, the ethics guide produced by the High Authority for Transparency in Public Life, “Ethics Guide: Handbook for public managers and Ethics Officers” (2019) available at <https://www.hatvp.fr/wordpress/wp-content/uploads/2019/09/EthicsGuide_WEB.pdf> (last accessed 16 June 2023).

³⁴ Standards in Public Office Commission, “Information for person wishing to make a complaint” (2023) available at <<https://www.sipo.ie/resources/person-wishing-to-make-a/>> (last accessed 15 June 2023).

³⁵ Law no 144/2007 for the establishment, organisation and functioning of the National Integrity Agency (republished).

³⁶ European Commission, “ANNEX to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Court of Justice, the European Central Bank, the European Court of Auditors, the European Economic and Social Committee and the Committee of the Regions: Proposal for an interinstitutional ethics body” (2023) ANNEX 1 COM(2023) 311 final, 6.

already applied by a party”,³⁷ the general dynamic is likely to be one that leans towards rewarding laggards and frustrating leaders. This is not a trivial aspect, because there are areas where inter-institutional differences are indeed remarkable. For instance, while so-called “cooling-off” periods apply to both the President of the European Council (eighteen months) as well as the College of Commissioners (two years for Commissioners and three years for the Commission President), MEPs are not subject to cooling-off periods at all.³⁸

Secondly, the proposal fails to leverage the full potential of a peer-review system. The standards developed by the ethics body are expressly not legally binding, which renders their application entirely dependent on the goodwill and “sincere cooperation” of the participating institutions. This is reminiscent of the approach taken by bodies such as the European Ombudsman or the ECA, which rely on the application of “soft” power instead of legal force to persuade those concerned to act in a certain manner. In such scenarios, compliance can still be leveraged through a robust practice of public naming and shaming, which relies on independent assessments of the participating parties against commonly agreed goalposts. However, the Commission’s proposal misses the mark in two regards: firstly, by putting the EU institutions in charge of assessing themselves, with the panel of five independent experts reduced to merely responding to self-assessments; and secondly, by not endowing the ethics body with the necessary authority over EU institutions that could effectively motivate them to change their behaviour and comply with the developed ethics standards.

Although Article 9(7) of the Commission’s proposal stipulates that the participating institutions should update their internal rules in accordance with the conclusions of the self-assessment exercise, it does not impose any follow-up reporting requirements, let alone any (symbolic) penalties for failing to follow through. This effectively means that we will not know whether or to what extent the recommendations issued by the ethics body will actually be implemented by the participating institutions. In fact, the entire exercise of institutional self-assessment – followed by the opinion of independent experts – is not foreseen as a regular re-occurring process but rather as one-off or sporadic at best.³⁹ Also significant is that the entire process is devoid of any comparative element. The self-assessments and the corresponding reports are published on the ethics body’s website, but there is no single document to take stock of the performance of the participating parties in a horizontal way, to identify good and bad practices and to single out both leaders and laggards. This missing comparative element is in fact the key to activating the socialisation and social pressure mechanisms (ie naming and shaming) that give any peer-review mechanism a chance to be effective.⁴⁰ The institutional design choices outlined above all disempower the EU ethics body and make it much more likely to simply rubber stamp the institutions’ ethics self-assessments rather than provide

³⁷ European Commission, “ANNEX to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Court of Justice, the European Central Bank, the European Court of Auditors, the European Economic and Social Committee and the Committee of the Regions: Proposal for an interinstitutional ethics body” (2023) ANNEX 1 COM(2023) 311 final, Point 11 in the recital.

³⁸ European Court of Auditors, “Special report on the ethical frameworks of the audited EU institutions: scope for improvement” (2019) available at <https://www.eca.europa.eu/Lists/ECADocuments/SR19_13/SR_ethical_frameworks_EN.pdf> (last accessed 15 June 2023).

³⁹ Namely, self-assessments are to be carried out after the ethics body adopts the initial set of common ethics standards and whenever the standards are updated (the decision of whether to update the standards is again fully within the discretion of the ethics body).

⁴⁰ V Carraro, T Conzelmann and H Jongen, “Fears of Peers? Explaining Peer and Public Shaming in Global Governance” (2019) 54 *Cooperation and Conflict* 335; R De Ruiter, “Full Disclosure? The Open Method of Coordination, Parliamentary Debates and Media Coverage” (2013) 14 *European Union Politics* 95.

authentic, comprehensive and systematic appraisals of their ethics frameworks or any kind of substantive and reliable incentives to improve.

Equally important, the proposed ethics body will also probably be robbed of the epistemic legitimacy that successful peer-review bodies enjoy owing to their independence and subject expertise.⁴¹ It is doubtful that the independent experts associated with the ethics body will be truly independent. They are to be appointed “by common agreement” by the participating institutions, according to a procedure as yet unspecified, but in practice they will be administratively attached to the European Commission as Special Advisers. There seems to be little to safeguard the experts’ independence once appointed. For instance, the draft IIA does not substantially address how they can be dismissed, but we do know that the European Commission enjoys a great deal of discretion in appointing, dismissing and setting the terms of activity for its Special Advisers, an issue that has drawn criticism before.⁴² Furthermore, the independent experts are not explicitly involved in the development of the common ethics standards enumerated in Article 7 of the proposal, nor in the decision to update those standards. This is an important omission that brings into doubt the legitimacy of said standards, but this also raises the question of why the proposed IIA envisages independent experts at all, given that they are not utilised for the one key activity where their expertise is directly relevant.

Finally, there is no research capacity to support the work of the EU ethics body. If this is to be a standard-setting body, then a research capacity is crucial, as ethics standards do not exist in a vacuum but are constantly evolving in relation not only to frameworks set by international institutions such as the Organisation for Economic Co-operation and Development (OECD) or the Group of States against Corruption (GRECO) but also relative to broad societal values. The panel of five experts is unlikely to be able to cope with the required work by itself, especially given the deficiencies discussed above. Just to put things into perspective, it is useful to look at the example of the UK Committee on Standards in Public Life (CSPL), which, much like the envisaged EU ethics body, serves a purely advisory function. While the CSPL is not a regulator and does not investigate individual complaints, it does advise the UK Prime Minister on ethical standards “across public life” by commissioning periodic assessments on the ethical standards landscape in UK central and local government but also through evidence-gathering into a variety of other topical issues (eg election finance laws, the impact of artificial intelligence on public standards, the outside interests of Members of Parliament, intimidation and bullying in public institutions).⁴³ This research and evidence-gathering work is essential to grounding the CSPL in its mission and to building up its epistemic legitimacy. The UK example shows that it is possible to have a functional inter-institutional ethics body with just advisory functions, but it has to be adequately resourced and to enjoy a significant degree of autonomy.

⁴¹ See H Jongen, “The authority of peer reviews among states in the global governance of corruption” (2018) 25 *Review of International Political Economy* 909.

⁴² See C Demmke, M Sanz and R Blomeyer, “Special Advisers to the Commission (2014–2019) – Study Requested by the CONT committee” (2021) available at <[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689327/IPOL_STU\(2021\)689327_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/689327/IPOL_STU(2021)689327_EN.pdf)> (last accessed 15 June 2023); Decision of the European Ombudsman setting out suggestions following her strategic inquiry OI/6/2016/AB on the Commission’s Special Advisers (2017) available at <<https://www.ombudsman.europa.eu/fr/decision/en/80338>> (last accessed 15 June 2023).

⁴³ For a comprehensive overview of research undertaken and commissioned by the CSPL, visit the body’s research repository, available at <[https://www.gov.uk/search/research-and-statistics?organisations\[\]=the-committee-on-standards-in-public-life&parent=the-committee-on-standards-in-public-life](https://www.gov.uk/search/research-and-statistics?organisations[]=the-committee-on-standards-in-public-life&parent=the-committee-on-standards-in-public-life)> (last accessed 15 June 2023).

VI. The place of the inter-institutional ethics body in the accountability framework of the European Union

Before concluding, it is important to assess the proposed inter-institutional ethics body within the broader oversight and accountability framework of the EU. How can its distinctive added value be understood?

From one perspective, the answer is that it actually brings very little (if any) added value, particularly when it comes to enforcement. The first impediment is that it lacks its own investigative powers – as envisaged in the Commission’s proposal, the ethics body cannot even advise or be (formally) consulted with regard to the application of ethics rules in individual cases. The existing EU watchdog bodies⁴⁴ that are endowed with investigative powers cannot comprehensively address the enforcement of ethics rules in the EU institutional system. When considering OLAF and EPPO, the first impediment is that both of their mandates are explicitly tied to offences that affect the financial interests of the EU, whereas unethical behaviour need not necessarily have financial implications. The second impediment is that, while OLAF and EPPO can investigate the various categories of staff and the members of EU institutions and bodies, they only handle serious offences. EPPO deals with criminal activity,⁴⁵ while OLAF conducts administrative investigations, including into “suspicions of serious misconduct by EU staff and members of the EU institutions”.⁴⁶ However, unethical or ethically questionable behaviour need not necessarily constitute “serious misconduct”, or indeed even be illegal, for it to lead to public scandals and to damage citizens’ trust in EU institutions.⁴⁷ Finally, less serious cases may be handled by the European Ombudsman, who inquires into maladministration in EU institutions and bodies but cannot impose sanctions. This short overview shows that there would have been ample place for a powerful watchdog body dedicated specifically to ethics, as the European Parliament had proposed.

On the other hand, the proposed inter-institutional ethics body has better chances of bringing added value regarding the management of ethics within the EU institutions and bodies, thus helping to prevent rather than punish unethical (or ethically questionable) conduct. From this perspective, its mandate partially overlaps with the activities of the European Ombudsman and the ECA, both of which can and indeed have issued recommendations on ethics matters to the EU institutions. The ECA has done this through the instrument of special reports, while the European Ombudsman has used primality strategic investigations, as well as standalone standard-setting documents like the Code of

⁴⁴ We use the term “watchdog body” to refer to independent public bodies whose function is to scrutinise the activities of other public-sector entities. Watchdogs are exclusively dedicated to oversight, unlike other institutions, such as courts or parliaments, which perform oversight in addition to other functions. See MBA Wille, “Indexing watchdog accountability powers a framework for assessing the accountability capacity of independent oversight institutions” (2020) 15 Regulation & Governance 856.

⁴⁵ Different types of fraud, including value-added tax (VAT) fraud with damages above €10 million, money laundering and corruption. See 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 [2017] OJ L 198/29, Arts 2–4.

⁴⁶ European Anti-Fraud Office, “Investigations relating to EU staff” (2023) available at <https://anti-fraud.ec.europa.eu/investigations/investigations-relating-eu-staff_en> (last accessed 22 October 2023).

⁴⁷ An illustrative example of this is the case of former Commission President José Manuel Barroso, who was appointed in late 2016 as chairman and senior adviser at the international arm of the US-based Goldman Sachs. The move was in compliance with the eighteen-month cooling-off period stipulated by the EU Commissioners’ Code of Conduct but nevertheless was widely portrayed in the media as suspicious, and it even sparked internal protests within the European Commission, with more than 75,000 people signing an EU staff petition that called on Barroso to forfeit his pension for bringing the EU into disrepute. See J Rankin, “EU staff petition attacks Barroso over Goldman Sachs job” (*The Guardian*, 29 August 2016), available at <<https://www.theguardian.com/world/2016/aug/29/eu-staff-petition-attacks-former-ec-president-over-goldman-sachs-job>> (last accessed 22 October 2023).

Good Administrative Behaviour and the Public Service Principles for the EU Civil Service. While the work done by the European Ombudsman and the ECA in terms of ethics standard-setting remains patchy and thus does not invalidate the need for a specialised body with a more comprehensive mandate, like the proposed inter-institutional ethics body, it is also evident that a mechanism of cooperation between these three watchdogs would be required – this is, however, not foreseen in the Commission’s proposal.

A final question concerns the legal value of the common minimum standards adopted by the proposed ethics body. The draft IIA specifies a commitment of the participating institutions to implement the standards “in their internal rules on the conduct of their members”,⁴⁸ and the IIA itself is of a binding nature for the parties.⁴⁹ The minimum standards are therefore foreseen to have some legal weight, but it would be incorrect to consider them *de facto* legally binding, as there is no real mechanism of enforcement. As previously shown, the only way to check whether the standards are implemented (and respected) is through the reports that the ethics body produces based on the institutions’ self-assessments. However, these reports are expressly not meant to have “any binding or legal effect”.⁵⁰ In practice, this means that the common ethics standards, and indeed any decision of the ethics body, have symbolic value more than anything else.

This is not a unique situation for an EU watchdog body. Both the European Ombudsman and the ECA face similar challenges, as neither of them can impose sanctions on the institutions that they investigate or otherwise constrain them to change their behaviour. Instead, they rely on their persuasion capital, which they build up by adopting cooperative styles of control and by using strategically their relationship with the European Parliament, which can be recruited to put pressure on uncooperative institutions.⁵¹ However, the new ethics body will not have this type of lever at its disposal. What is more, as shown in the previous section, it also lacks the needed attributes to activate the “softer” social pressure mechanism of naming and shaming. Therefore, from both legal and practical political perspectives, the ethics body simply does not have the necessary authority or status over the EU institutions to apply sufficient pressure and effectively motivate behavioural change.

VII. Some early conclusions

The European Commission’s proposal for an inter-institutional EU ethics body represents a missed opportunity to strengthen the application of ethics rules across EU institutions and to fill an important gap in the enforcement landscape of the Union. What is more, the success of the proposed ethics body as a standard-setting advisory forum remains uncertain, as it lacks the necessary attributes to leverage institutional change through the “softer” social pressure mechanism of naming and shaming. While such mechanisms might have proven more effective (although not entirely) for bodies such as the ECA or the European Ombudsman, we must not forget that the proposed ethics body lacks a key element that could facilitate this approach: status. Both from legal and political

⁴⁸ European Commission, “ANNEX to the Communication from the Commission to the European Parliament, the European Council, the Council, the European Court of Justice, the European Central Bank, the European Court of Auditors, the European Economic and Social Committee and the Committee of the Regions: Proposal for an interinstitutional ethics body” (2023) ANNEX 1 COM(2023) 311 final, Art 7(7).

⁴⁹ *ibid*, Art 21(1).

⁵⁰ *ibid*, Art 9(8).

⁵¹ See A Năstase and C Neuhold, “The Court of Auditors and the European Ombudsman: The EU’s ‘Watchdogs’” in DHU Puetter, S Saurugger and J Peterson (eds), *The Institutions of the European Union* (Oxford, Oxford University Press 2021).

perspectives, the ethics body simply does not have the necessary authority over the EU institutions to apply sufficient pressure and effectively motivate behavioural change.

It is worth remembering that the project of an inter-institutional ethics body is not new. In 2000, the Commission proposed an Advisory Group on Standards in Public Life, also based on an IIA, with similar coverage in terms of institutions (minus the European Council and the European Central Bank) and with a similar mission “to provide advice on standards of professional ethics relating to the functioning of the Parties”.⁵² The development of common standards was not foreseen back then, nor was the Advisory Group given any role in assessing the ethics frameworks of the participating institutions. Still, the proposal never took off, as the European Parliament had no appetite for it at the time.⁵³ However, the situation is very different nowadays, when it is the Parliament asking for an inter-institutional ethics body, and not merely a “talking shop”, but one with investigative powers. Surely this had the potential to embolden the Commission to come up with a more ambitious proposal rather than dusting off an old, ill-fated idea.

The political challenges of getting nine EU institutions to participate in a common ethics body (of any sort) are undeniably daunting and therefore require some expectation management from the side of critics. Still, it remains to be seen whether the body, within itself and in the context of the Commission’s further efforts in this area, will have the resources and capacity to be a force for good, or whether it will simply be an act of window-dressing. Of course, at this stage, no general conclusions can be drawn, as the IIA is at this stage merely a proposal that is destined to be criticised and amended before taking its final shape – if ever. Certainly, our aim here is not to provide any prediction about the overarching development of the EU ethics framework in light of the Commission’s proposal. Instead, our intention is to open up a discussion on the basis of this proposal regarding the rules that govern the ethical behaviour of the Union’s administration.

Competing interests. The authors declare none.

⁵² Proposal for an Agreement between the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee and the Committee of the Regions establishing an Advisory Group on Standards in Public Life (SEC/2000/2077 final), Art 2.

⁵³ In fact, it was in the European Parliament’s interest to keep strictly to a self-regulatory approach when it came to ethics rather than open up to external scrutiny and thus lose its moral high ground vis-à-vis the Commission (participation in the Advisory Group would have facilitated such an outcome). See M Cini, “EU Decision-Making on Inter-Institutional Agreements: Defining (Common) Rules of Conduct for European Lobbyists and Public Servants” (2013) 36 *West European Politics* 1143.