



LEGAL STUDY ON AN EU ETHICS BODY

Alberto Alemanno

HEC Paris

What is the EU Ethics System?

Why it exists?

rationale

Public officials – elected or appointed and their staff – serve the public interest

Yet EU officials are vulnerable to unethical conduct as by nature confronted to external influence and their private interests may diverge from the duties of their position

EU ethics framework exists to prevent and mitigate negative consequences, on the EU financial management and trust in the EU

What are EU ethical standards?

	EU STAFF	MEMBERS		
		PARLIAMENT (EP)	COUNCIL	COMMISSION (EC)
PRIMARY LAW	Art. 339 TFEU (confidentiality, in office + after) + 41 CFR (good administration)			
		Art. 6(1) 1976 Act (independence)		Art. 17(3) TEU + 245 TFEU (independence, integrity, discretion – in office + after)
SECONDARY LAW	Art. 36(3), 61 EU Financial Regulation (conflict of interests)			
	Art. 11, 11a, 12, 12b, 13, 15, 16, 17, 19, 21a, 22a, 27, 40 Staff Regulations (independence, impartiality, loyalty to the Union – in office + after; whistleblowing) European Code of Good Administrative Behaviour (independence)	Art. 2- 3 Statute for MEPs (independence) Rules 2, 10, 11 RoP		Art. 9 RoP (confidentiality)
	(EP) Guide for Members of Parliament, Officials and Staff CoC (independence, impartiality, loyalty to the Union – in office + after; whistleblowing)			
	(Council) Decision on the Code of Conduct for Members of the Council (EC) Decision on the Code of Conduct for Members of the Commission (in office + after) and on transparency of DG's meetings + Guidelines on whistleblowing + Code of Good Administrative Behaviour for staff of the EC, Annex to RoP (independence, impartiality)	EP II lobbying after leaving office)		

STANDARDS

VARIETY of LEGAL SOURCES
INDEPENDENCE, INTEGRITY, CONFIDENTIALITY, DISCRETION

Who **enforce** EU ethical standards?

	EU STAFF	MEMBERS		
		PARLIAMENT (EP)	COUNCIL	COMMISSION (EC)
PRIMARY LAW	Art. 285 et seq. TFEU Court of Auditors (audit)			
	Art. 228 TFEU + 43 CFR EU Ombudsman (maladministration; inquiries, on complaints or own initiative)			
				Art. 17(6+8), 18(4) [= HRVP] TEU + 234, 245, 247 TFEU (central role for President; limited role for EP and ECJ)
SECONDARY LAW	Art. 36(3), 61(2) EU Financial Regulation (internal control, key role for Appointing Authority)			
	EC Decision establishing the European Anti-fraud Office (OLAF)			
	<p>Art. 11, 11a, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 43, 44, 49, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000</p>			
	<p>Regulations Pro 45/2001 (central ity and Discipl jurisdiction, "spe before recruitm</p>			
<p>(EP) Guide to th other servants of the EP/CoE (refers to Staff Regulations)</p>				
(Council) Decisions on administrative inquiries and disciplinary proceedings		(central role for President, acting on its own or informed by third parties, and assisted by Advisory Committee on the Conduct of Members, declaration of interests)	Rule 127 + Art. 2, 6, 9 Annex VII to EP RoP (motion of censure in EP, assessment of declaration of interests by JURI)	
(EC) Decision on outside activities after leaving the Service; General implementing provisions for administrative inquiries and disciplinary proceedings				

VARIETY OF OVERSIGHT MECHANISMS
 ADVISORY COMMITTEES, APPOINTED AUTHORITIES/DISCIPLINARY BOARDS, EU COURTS + OLAF (serious misconducts)

What sanctions?

	EU STAFF	MEMBERS		
		PARLIAMENT (EP)	COUNCIL	COMMISSION (EC)
SANCTIONS				<p>Individual/collective resignation, compulsory retirement/removal from post, financial sanctions (Article 17(6+8), 18(4) [= HRVP] TEU + 234, 245, 247 TFEU)</p>
	SECONDARY LAW	Relieve from responsibility (Art. 36(3), 61(2) EU Financial Regulation)		
	<p>Written warning, reprimand, relieve from responsibility, deferment of advancement, relegation, downgrading, suspension, transfer, removal from post, financial sanctions/damages (Art. 11, 11a, 12b, 13, 15, 16, 17a(2), 22, 26, 43, 44, 49, 86, 90-91a + Annex IX to Staff Regulations Procedure 2018/2975(RSP) + Reg. 45/2001)</p> <p>(EP) Guide to the obligations of officials and other servants of the EP/CoC (refers to Staff Regulations)</p> <p>(Council) Decisions on administrative inquiries and disciplinary proceedings</p> <p>(EC) General implementing provisions for administrative inquiries and disciplinary proceedings</p>	<p>Call to order, deny right to speak, exclusion, reprimand, temporary suspension, limited access to information, no representation, terminate office, financial sanctions (Rules 21, 175-177, 236 RoP + Art. 8 CoC, Annex I to RoP)</p>		<p>Relocation of file, sale/placing in a blind trust financial interests, reprimand (public or not) (Art. 3, 4, 11-13 + Annex I to CoC)</p> <p>Collective resignation (Rule 127 + Art. 2, 6, 9 Annex VII to EP RoP)</p>

•(I) REPUTATIONAL (II) POSITION WITHIN THE INSTITUTION (III) IRREVERSIBLE SANCTION (IV) FINANCIAL

How **good** the EU Ethics System is?



EUROPEAN
COURT
OF AUDITORS

EU Court of Auditors in 2019 concluded that:

“to a large extent, the EU had established adequate ethical frameworks
with room for improvement”

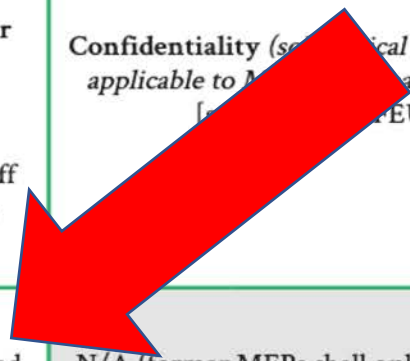
However, it focused only on the law in the books **not in action**

A vintage telescope with a silver barrel and brass accents is mounted on a metal stand on a rooftop. The telescope is angled towards the right, overlooking a vast cityscape under a dramatic, cloudy sky at dusk or dawn. The city buildings are densely packed and appear in soft focus. The overall mood is contemplative and forward-looking.

When you look at enforcement....

	MEMBERS					
	PARLIAMENT (EP)			COMMISSION (EC)		
Name	Jean-Luc DEHAENE	Louis MICHEL	Rachida DATI	Edith CRESSON	Neelie KROES	John DALLI
Year	2012	2013	2013	1999	2000-2009	2012
Committee / Portfolio	BUDG (sub. AFCE)	LIBE (sub. DEVE)	ECON (sub. ITRE)	Research, Science and Technology	Competition, then Digital Agenda	Health and Consumers Policy
Facts	Undeclared stock options from ABInBev	Submission of 200+ amendments drafted by lobby groups	Consultancy with GDF Suez	Appointment of a friend as visiting scientist to DG RTD and later JRC	Undeclared directorship of Mint Holdings Limited	Secret meetings with tobacco industry + kickbacks
Ethical standard(s) concerned* *Rules currently in force	Independence, dignity, honesty, impartiality, openness, transparency [see Art. 17(3) TEU + Art. 6(1) 1976 Act + Art. 2- 3 Statute for Members + Rules 2, 10, 11 RoP + Art. 1-3, 4(6), 5 + Annex I to RoP]			Integrity, dignity, good administration [see Art. 245 TFEU + Art. 41 CFR + Art. 2, 6 + Annex I to CoC]		Integrity, declaration of interests [see Art. 245 TFEU + Art. 3, 4, Annex I to CoC]
Sanction	Declared but no measure taken to avoid conflict	Advisory Committee: breach but no follow-up sanction by President		ECJ : breach but no sanction	EC: accepted Ms KROES' apologies	'Voluntary' resignation

	STAFF			MEMBERS						
				PARLIAMENT (EP)			COMMISSION (EC)			
Name	Reinald KRUEGER	Adam FARKAS	Aura SALLA	Sharon BOWLES	Holger KRAHMER	George LYON	Neelie KROES	José Manuel BARROSO	Jonathan HILL	Günther OETTINGER
Year	2019	2019	2020	2014	2014	2015	2015	2016	2017	2020
Position or portfolio when in office	Official working on telecom. market regulation at the EC	Executive Director of the European Banking Authority	Member of EC VP J. Katainen's Cabinet then EPSC/IDEA	Chair of ECON	Member of ENVI (worked on car industry regulation)	Member of AGRI	Competition, then Digital Agenda	President	Financial Stability, Financial Services and CMU	Digital Economy and Society, then Budget and HR
Occupation after leaving office	Lobbyist for Vodafone (on leave from EC)	Non-Executive member of the Board of Directors of TheCityUK Limited (inter alia)	Public Policy Director, Head of EU Affairs at Facebook	Non-Executive Director of the London Stock Exchange Group (inter alia)	Gov. Affairs Director at Opel Group, then Head of EU Affairs Automotive at Daimler	Agri-business Senior Consultant at Hume Brophy	Member of the Advisory Board of Bank of America Merrill Lynch (inter alia)	Chairman and Non-Executive Director of Goldman Sachs International (inter alia)	Senior Project Manager at Freshfields Bruckhaus Deringer (inter alia)	Member of Advisory Council of Deloitte Deutschland (inter alia)
Ethical standard(s) concerned* *Rules currently in force	Integrity and discretion as regards the acceptance of certain appointments, loyalty to the EU institutions Obligation not to lobby his/her former institution (1 year limit) Confidentiality [see Art. 339 TFEU + Art. 16-17, 40 Staff Regulations + EC Decision on outside activities]			Confidentiality (see <i>Confidentiality standard still applicable to Members leaving office</i>) [see Art. 16 TFEU]			Integrity and discretion as regards the acceptance of certain appointments Obligation not to lobby new Members nor their staff (2-3 years) Confidentiality, collegiality and discretion [see Art. 245, 339 TFEU + Art. 2, 5, 11 CoC]			
Decision* *Concerning the occupation above-mentioned only	Authorised	Forbidden before 1 February 2022	Authorised with specific conditions	N/A (former MEPs shall only since 2018 "inform" the EP) [see Art. 6 CoC, Annex I to RoP]			Authorised Ethical committee not consulted	<i>Absence of notification</i> Ethical committee consulted	Authorised with specific conditions Ethical committee consulted	



DIAGNOSIS of EU ethics framework applicable to members and staff

FRAGMENTATION OF EU ETHICS OVERSIGHT
(CoA + Council)

WEAK ENFORCEMENT MECHANISMS
limited independence & investigatory powers
(outside of serious misconducts)

LIMITED AWARENESS & GUIDANCE

although *de iure* “adequate ethical frameworks”

in practice, the EU ethics framework **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.

A EU ETHICS BODY?

- I want you to work with the other institutions to bring **more transparency to the legislative process**. You will lead the negotiations on behalf of the Commission for a Transparency Register for the Parliament, Council and Commission.



I want you to work together with the European Parliament and the Council on an **independent ethics body common to all EU institutions**.

- Europeans should have a greater say in decision-making, and more of an ability to influence it. In this spirit, you will be responsible for improving the way the **European Citizens' Initiative** works. The registration of every new Citizens' Initiative will be discussed by the College, and any decisions taken will be fully explained.

NOT A NEW IDEA

52000SC2077

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 */



**TRANSPARENCY
INTERNATIONAL**

the global coalition against corruption

Proposal for an Agreement between the European Parliament
Court of Auditors, the Economic and Social Committee and the Committee of the Regions establishing an Advisory
Group on Standards in Public Life

(presented by the Commission)

EXPLANATORY MEMORANDUM

In its White Paper on Administrative Reform [1] adopted on 1 March 2000 the Commission stressed the key principles of a service-oriented European Public Administration: independence, responsibility, accountability, efficiency and transparency.

In the meantime

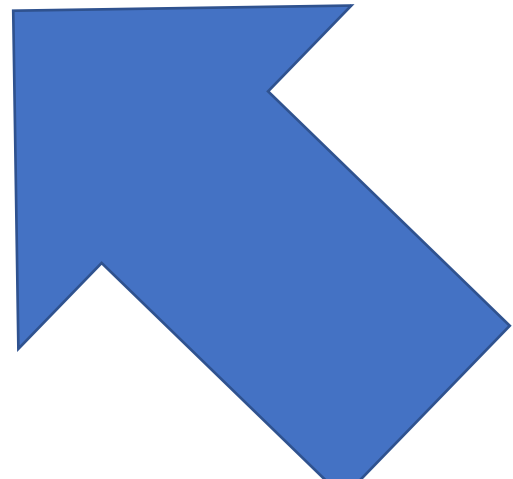


Brussels, 26 November 2019
(OR. en)

14548/1/19
REV 1

STAT 17

5. **SUPPORTS** the further improvement of harmonised frameworks within and across the audited 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; these frameworks must accommodate the institutions' particular roles and needs;



WHAT SORT OF EU ETHICS BODY?



HOW DOES IT COMPARE WITH OTHER ETHICS BODIES?

	FRANCE HATVP	IRELAND PSSC (as envisaged to replace SIPO)	UNITED KINGDOM CSPL	CANADA CIEC	EU		
					STAFF AA/DB	EP Advisory Com.	EC IEC
SCOPE: members + staff	YES	YES	YES	YES	NO	NO	NO
INDEPENDENCE	YES: mix of members selected by highest courts, houses of Parliament, government and president	YES selected by the President on the advice of the government following a resolution passed by both houses of Parliament	Central role of PM	Central role of HoC	Central role of the hierarchy in same institution	Central role of Presidents	
MONITORING ROLE	YES	YES	YES*	YES	YES	NO	NO
RIGHT OF INITIATIVE (on individual cases)	YES	YES	NO	YES	YES	NO	NO
ADVISORY ROLE	YES	YES	YES*	YES	YES	YES	YES* on request of the President only
INVESTIGATORY POWERS (on individual cases)	YES	YES	NO*	YES	YES	Hear the Member	Hear the Member + ask for info.
SANCTIONING POWERS (on individual cases)	Formal notices/Orders (possibly public) to comply Public registry Public (special) reports Referral of matters of criminal offence to judiciary (imprisonment + fine) (Post-employment) Prohibition or imposition of binding employment conditions in case of conflict with former position	Confidential advice or general guidance (Fixed payment) notice Prosecute offences summarily or refer to DPP Censure, warning, order and/or recommendation for a suspension or removal from office Disqualify from any new appointment (if failure to be tax compliant)	Public recommendations, reports, reviews, blogs and articles but of non-individual nature *No remit to comment, monitor, give advice nor investigate on individual cases.	Compliance orders (incl. divestment or recusal) Notice with public adm. monetary penalties Public registry (Post-employment) Waiver or reduction of limitations, order not to deal with a former public office holder (MPs) Recommend sanctions publicly, terminate a trust	Written warning Reprimand Relieve from responsibility Deferment of advancement, relegation, downgrading, suspension, transfer Removal from office Financial sanctions/damages	Recommendations to the President Public annual anonymised reports	Public opinions to the EC Public annual anonymised reports
BUDGET (2020)	7,294,355 €	N/A	£ 348,424	C\$ 8,020,000 (actual spending)	N/A	N/A	Reimb. of expenses
STAFF (2020)	57 FTP	N/A	5 FTP + 1 Press	50 employees	N/A	Secretariat support	

one-stop shop

Scope:

staff + members

Mandate:

ethics standards + lobbying

advice

Autonomous monitoring capacity

(via standardized scrutiny of declarations)

AN IDEAL EU ETHICS BODY

Right of initiative

Enhanced investigatory powers

Penalties

How to set
up such an
EU Ethics
Body?

Pre-existing EU
institutions or bodies

Novel entity

Pre-existing EU institutions or bodies



EUROPEAN
COURT
OF AUDITORS

INDIRECT ROLE
- how EU Inst. enforce ethics standards

NOT LEGALLY BINDING

REVISION OF STATUTE



PARTIAL ROLE
- Internal admin. investigations

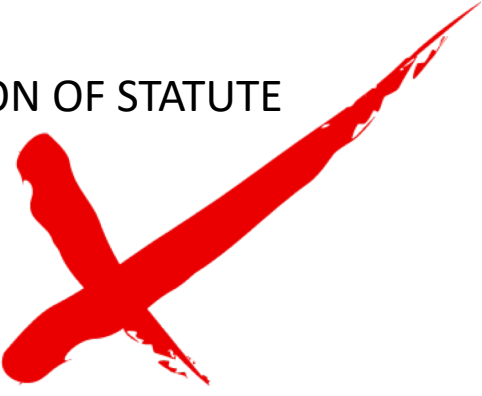
NO DIRECT POWER

REVISION OF STATUTE



ABOUT AUDITS not ethics

REVISION OF STATUTE



Novel entity

EU Ethics Body: what legal basis?

298 TFEU: EU Public Administration
(open, efficient, independent)

352 TFEU: Flexibility Clause
(in areas where competence not explicitly
granted)

295 TFEU: Inter-Institutional
Agreement
(binding agreement among EU Institutions)

298 TFEU:

EU Public Administration



Only for staff, not members

352 TFEU:

Flexibility Clause



Unanimity in the Council

295 TFEU:

Inter-Institutional Agreement

- Voluntary arrangement open to any institution
- Based on procedural autonomy
- Not compromised rights / obligations
- Best legal template

IIA → basic arrangement entrusting respect of ethics to

IIB → to ensure coherent practice throughout EU institutions by replacing pre-existing bodies



one-stop shop

Scope: staff + members

NO LEGAL BASIS AVAILABLE FOR AN IDEAL EU ETHICS BODY

Mandate: ethics standards + lobbying + advice

Autonomous monitoring capacity
(via standardized scrutiny of declarations)

Right of initiative

Enhanced investigatory powers

Penalties

IIA-powered EU Ethics Body

One single, permanent oversight body tasked with respect of ethics

Scope: members + staff

(via enabling clause / won't replace staff disciplinary procedure for non-ethical obligations, such as residence / harassment)

Composition: IIA may defined mixed model (e.g. HATVP)

Enforcement:

- autonomous **monitoring** capacity (centralized collection/scrutiny)
- right of **initiative** and **investigation** in sync with OLAF (residual)
- **investigatory** power within limits of CFR
- **sanctioning** power:
 - staff: replace AA via enabling clause
 - members: 'soft' penalties (reputational + affecting position), not irreversible (termination as belong to EP / CJEU)

Judicially reviewable + administrative control by EU Ombudsman

Added value of a EU Ethics Body

Close the gap between the ethics standards & their actual enforcement

Pool together existing monitoring, investigatory, sanction powers into

SINGLE, PERMANENT and INDEPENDENT BODY favoring

common approaches and **new** administrative, possibly political, **culture**