# A Common Ethics Body for EU Institutions: A Glass Half-Full

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## Abstract

In the past, various scandals have undermined citizens' trust in the European Union (EU). Citizens will often not differentiate between the EU institutions affected by a particular scandal, instead they will rather blame the EU as a whole. Almost all EU institutions and advisory bodies (Article 13 TEU) have set up a new Inter-Institutional Agreement (IIA), creating an Inter-Institutional Body for Ethical Standards (IBES). The number of Parties to this IIA is remarkable. The main task of this body is to develop common minimum standards. While this ethics body is a significant first step, this contribution also explains why a more ambitious approach is both possible and desirable in the future. In some cases, this would not even require changes to EU secondary law (for example, Staff Regulations). Arguments often used against a strong ethics body, such as the *Meroni* doctrine on the delegation of powers or concerns about institutional balance, are unconvincing and not supported by an analysis of relevant case-law from the Court of Justice. In conclusion, the IBES can be seen as a half-full glass that could be further filled, particularly in light of a possible legal basis.


**Keywords:** Conflicts of Interest, Ethics, Independence, Integrity, Inter-institutional Agreements, Inter-institutional Body, Legal Basis, Meroni Doctrine, Scandals, Trust

## A. Point of departure and genesis

### I. Trust, scandals, and normative point of departure

As aptly stated by ECJ President *Lenaerts*, "[i]t is said that '[t]rust takes years to build, seconds to destroy and forever to repair'".[1] Numerous incidents that took place in various EU institutions,[2] including the European Commission (for example, concerning *Edith Cresson*,[3] *John Dalli*,[4] *José Manuel Barroso*,[5] or *Günther Oettinger*)[6] and the European Parliament (EP) (for example, 'cash for amendments',[7]

1 *Lenaerts*, CML Rev. 2017/3, p. 838.
2 For some examples concerning staff, see *Chiti*, in: Auby/Breen/Perroud (eds.), p. 258 ff.
3 ECJ, Case C-432/04, *Commission v. Cresson*, judgement of 11 July 2006, ECLI:EU:C:2006:455.
4 ECJ, Case C-615/19 P, *Dalli v. Commission*, judgement of 25 February 2021, ECLI:EU:C:2021:133. See also *Gräßle*, in: Dialer/Richter (Hrsg.), S. 213.
5 *Ad Hoc Ethical Committee*, Request for an opinion concerning the appointment of former President Barroso at Goldman Sachs International, available at: https://commission.europa.eu/document/download/4772890b-acbb-4181-a92b-3ab3586ed190_en?filename=opinion-comite-adhoc-2016-10-26_en.pdf (7/6/2025).
6 *King*, Oettigate: Juncker's depressing spectacle, available at: http://www.politico.eu/article/oettinger-controversy-a-depressing-spectacle/ (7/6/2025).
7 See generally, *Dialer/Richter*, in: Dialer/Richter (Hrsg.), S. 235.

Qatar-Gate,[8] and most recently Huawei-Gate),[9] have most likely decreased the trust of EU citizens.

Against this background, one can already nowadays identify various normative standards to avoid such scandals. In EU law these normative standards will often be found in EU primary law (for example, Article 2 TEU[10] on EU values;[11] Article 245 TFEU for Commissioners (referring to "integrity and discretion"); Article 41 CFR on good administration), Rules of Procedure,[12] the Staff regulations,[13] or related documents. Besides EU law, normative standards can also be found in other disciplines, such as ethics, as one branch of practical philosophy.[14] In EU law, one can find an increasing number of references to ethics.[15]

In ethics, there are three normative theories, deontology that focuses on the action itself (whether it is intrinsically right or wrong), consequentialism on the outcomes of this action, and virtue ethics on the actor.[16] As this can lead to different interpretations of what is considered ethical, another approach is to refer to ethical principles, such as integrity and discretion. Ethical standards will mainly address members or staff of EU entities.[17] In the case of lobbying, such rules can also affect those trying to influence EU entities. Especially in the regulation of lobbying[18] one can identify various ethical principles, such as 'integrity', 'diligence', 'objectivity', 'honesty' or 'accountability'.[19]

8 Resolution (2022/3012(RSP)) on suspicions of corruption from Qatar and the broader need for transparency and accountability in the European institutions, OJ C 177 of 17 May 2023, p. 109; *Alemanno*, The Qatar scandal shows how the EU has a corruption problem, available at: https://www.politico.eu/article/european-union-qatargate-alberto-alemanno-scandal-corruption-corruption-problem/ (7/6/2025).

9 *Roussi/Braun/Griera/Pollet*, Huawei bribery scandal rocks EU Parliament, available at: https://www.politico.eu/article/belgian-police-raid-huawei-lobbyists-as-new-scandal-rocks-eu-parliament/ (7/6/2025).

10 See *Calliess*, in: Calliess/Ruffert (Hrsg.), Art. 2 EUV.

11 For the EU as a Community of values, see *Calliess*, JZ 2004/21, S. 1033.

12 For example, European Parliament decision (2023/2095(REG)), on amendments to Parliament's Rules of Procedure with a view to strengthening integrity, independence and accountability, OJ C/2024/1770 of 22 March 2024 [hereinafter EP decision amendments RoP].

13 Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community, OJ P 45 of 14 June 1962, p. 1385, as amended by OJ L/2025/693 of 12 May 2025 [hereinafter Staff Regulations].

14 See *Frischhut*, Ethical Spirit, p. 9.

15 *Frischhut*, Ethical Spirit, p. 144.

16 See *Frischhut*, Ethical Spirit, p. 21 ff.

17 This term of 'entities' is used as an umbrella term to cover "institutions, bodies, offices and agencies"; cf. Art. 9 TEU (EU citizens and democracy), Art. 15 TFEU (transparency and right of access to documents), Art. 41 CFR (right to good administration), Art. 42 CFR (right of access to documents), etc.

18 See generally, *Chari/Hogan/Murphy/Crepaz*.

19 *Grad/Frischhut*, in: Dialer/Richter (eds.), p. 312 f.

Such normative standards are not enough, if they are not properly enforced. The point of departure in terms of the EU's "ethical infrastructure"[20] can be described as fragmented[21] in the sense of each institution having its own set of rules and enforcement. Besides that, they rely on self-evaluation and this lack of independence[22] can lead to a reduced effectiveness and insufficient enforcement ("birds of a feather flock together").

Non-enforcement can even backfire, as the signal to others would be that rules exist but can be ignored. In the case of a scandal, citizens will often not differentiate between the EU institutions affected by a particular scandal and rather blame the EU as such. Therefore, the number of EU institutions being part of one uniform ethics body is key. The strength of such a body will depend on its members (expertise, independence, etc.), the competences of this body, and if it can only provide advice or also enforce the relevant rules. Can it collect necessary information and verify it? When rendering a decision, is this available to the public, like the judgement of a court? Besides the number of EU institutions affected, another question is whether the body is responsible for members and/or also staff of EU institutions. Of course, it could also be discussed whether to involve lobbyists who try to influence members and/or staff of EU institutions.

As a reaction to these scandals and after a long and difficult road (see below), in 2024 an Inter-Institutional Agreement (IIA)[23] for an Inter-Institutional Body for Ethical Standards (IBES), the IIA-IBES,[24] was finally adopted. The objective of this paper is to analyse how the questions addressed above have been answered in this IIA.

This paper is structured as follows. In EU law, form does not necessarily follow function; rather, the substance is largely determined by the legal basis and its scope. Therefore, after same introductory historical background, the next section (B.) will analyse the IIA-IBES, covering the question of possible legal bases, the substance (Parties to this IIA, people covered, etc.) and this body's tasks. Apart from this

20 *OECD*, Recommendation of the Council on Improving Ethical Conduct in the Public Service Including Principles for Managing Ethics in the Public Service, available at: https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0298 (7/6/2025).

21 *Alemanno*, Eur Law J 2024/30(4).

22 The so-called "Group of Twelve" had suggested independent experts from academia, civil society organisations or equivalent bodies at national level; *Franco-German Working Group on EU Institutional Reform*, Sailing on High Seas: Reforming and Enlarging the EU for the 21st Century, available at: https://www.diplomatie.gouv.fr/IMG/pdf/20230919_group_of_twelve_report_updated14.12.2023_cle88fb88.pdf (7/6/2025).

23 See, more broadly, *Alemann*; *Hummer*, ELJ 2007/1, p. 47; *Hummer*, in: Kietz/Slominski/Maurer/Puntscher (Hrsg.), p. 51; *Kietz/Maurer*, ELJ 2007/1, p. 20; *Martínez Iglesias*, ELJ 2020/1, p. 108; *Monar*, CML Rev. 1994/4, p. 693; *Röttinger*, in: Kietz/Slominski/Maurer/Puntscher Riekmann (Hrsg), p. 297–311; *Slominski*, ELJ 2007/1, p. 2.

24 Agreement between the European Parliament, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Central Bank, the European Court of Auditors, the European Economic and Social Committee and the European Committee of the Regions, establishing an interinstitutional body for ethical standards for members of institutions and advisory bodies referred to in Art. 13 of the Treaty on European Union, OJ L/2024/1365 of 17/5/2024.

status quo, the question is whether more would have been possible (C.). This requires an analysis of potential obstacles in order to then identify possible room for improvement.

This contribution focuses on ethics regarding EU institutions, excluding other questions such as possible tensions between national law reflecting ethical principles and EU integration.[25] This contribution will also focus on the status-quo of the IBES and not so much on the fragmented initial situation.[26] To better analyse the status quo, it is necessary to understand what steps forward and backward have been taken so far.

## II. The long and difficult road thus far

EU integration in general follows a step-by-step approach,[27] and the same is true for the establishment of an EU ethics body. While a step-by-step approach can have its benefits, reforms driven by scandals are not proactive and therefore risk creating a system that lacks coherence. Even if the following overview is not exhaustive, it nevertheless provides an outline of some important milestones on the way to the IBES.

The nepotism scandal involving *Edith Cresson* led to the resignation of the *Santer*-Commission in March 1999. In November 2000 the Commission presented a proposal for an "Advisory Group on Standards in Public Life".[28] According to Article 2, this group would have been tasked to "provide advice on standards of professional ethics relating to the functioning of the Parties", providing advice "on general principles of professional ethics". However, even an initiative to establish a purely advisory body could not be implemented.

In 2001, *Dercks* analysed the Commission's proposed reform of "business ethics", proposing a hybrid approach based on both values and compliance, the development of a single code of conduct, and the establishment of a single "Committee on Standards", that is an independent ethics committee.[29] Such a single body would have been an example of a more centralized approach, instead of every institution having its own ethics rules and ways of enforcement. The advantage of a single body is the already mentioned fact that citizens will often not differentiate between the EU institutions affected by a scandal.

25 See, for example, *de Witte*, CML Rev. 2013/6.

26 For a more detailed analyses on the starting point, see *Alemanno*, Eur Law J 2024/30(4), pp. 547 ff.; *Frischhut*, IEB, p. 23 ff.

27 See, for example, *Pescatore*, p. 39.

28 *European Commission*, 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, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1593497891713&uri=CELEX%3A52000SC2077 (7/6/2025).

29 *Dercks*, Business Ethics 2001/4, p. 346, also referencing the various documents that she analysed in this paper.

Ethics in EU entities is also affected by lobbyists trying to influence them. The 2011 'cash for amendments' scandal showcases the perspective of lobbying, which requires rules both for actors and targets of lobbying. In 2014, *Nettesheim* addressed the question of possible legal bases and a possible mandatory transparency register,[30] which is also of relevance for an EU ethics body.

The post-office employment situation ('revolving doors') of *José Manuel Barroso* and also *Günther Oettinger* (2016) led to a strengthening of the Commission's code of conduct.[31] In its resolution of September 2017, the EP called for a mandatory transparency register,[32] more transparency, accountability and integrity in dealing with lobbyists, and rules on conflicts of interest.[33]

Already in July 2019, Commission President *von der Leyen* supported "the creation of an independent ethics body common to all EU institutions", because EU institutions "should be open and beyond reproach on ethics, transparency and integrity".[34] Commissioner *Jourová* has been tasked in her mission letter (from December 2019) "to work together with the European Parliament and the Council on an independent ethics body common to all EU institutions".[35] This was the official kick-off and the EP's Committee on Constitutional Affairs (AFCO) commissioned a study entitled 'Strengthening transparency and integrity via the new 'Independent Ethics Body' (IEB)', published in October 2020.[36] Besides an analysis of the status quo of EU entities, it also carried out a legal comparison covering the French *Haute Autorité pour la transparence de la vie publique* (HATVP), the Irish 'Bill for a Public Sector Standards Commissioner', and the Canadian Conflict of Interest and Ethics Commissioner (CIEC). The EP rapporteur for the IBES had commissioned a study (published in January 2021), which focused especially on the question of how to set up such a body in terms of legal basis.[37]

In September 2021, the EP demanded an "independent EU ethics body" and sketched its understanding of the applicable principles, scope and mandate, the

30 *Nettesheim*.

31 Commission Decision C/2018/0700 on a Code of Conduct for the Members of the European Commission, OJ C 65 of 21 February 2018, p. 7 [hereinafter Commission Code of Conduct].

32 See, now, 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, OJ L 207 of 11 June 2021, p. 1 [hereinafter IIA Mandatory Transparency Register].

33 Resolution (2015/2041(INI)) on transparency, accountability and integrity in the EU institutions, OJ C 337 of 20 September 2018, p. 120.

34 *European Commission*, Political guidelines of the Commission 2019-2024, available at: https://ec.europa.eu/info/strategy/priorities-2019-2024_en (7/6/2025).

35 *von der Leyen*, Mission letter of the President of the European Commission to Věra Jourová, available at: https://commissioners.ec.europa.eu/document/download/2ffcc63a-42ea-4a02-9edf-55ac88de72ea_en?filename=mission-letter-jourova-2019-2024_en.pdf (7/6/2025).

36 *Frischhut*, IEB.

37 *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025). Other studies have been drafted but are not publicly available. On file with the author.

body's competences and powers, and its composition and relevant procedures.[38] In EU integration, steps forward are often triggered by crises, or in this context scandals. Against the background of the Qatar-scandal (2022)[39] affecting some members of the EP, the EP again called for an EU Ethics Body in February 2023.[40]

All of this led to the Commission's proposal in June 2023 for an "interinstitutional ethics body" (Proposal IIA-IBES),[41] which had been judged by the EP as "unsatisfactory and not ambitious enough".[42] However, a criticism of the substance (powers of the body, composition, etc.) also has to be seen against the background of a possible legal basis and what it enables (see below). Finally, in mid-May 2024, the IIA-IBES was signed in Brussels and published in the Official Journal (O.J.). Despite Huawei-Gate (March 2025), as of beginning of June 2025 the IBES still only exists on paper. Nonetheless, in the following the status quo of the IBES will be analysed.

### B. Analysis of the status quo of the Ethics body

This analysis will cover the already mentioned question of possible legal bases and the question, which entities can be bound by the respective rules established on the relevant legal basis (B.I.). In the next section, the composition and related substantive questions (B.II.) of the IIA-IBES will be depicted and analysed. Which entities are Parties to this IIA and who is covered (members and/or staff). This also covers the requirement of 'independence' as enshrined in EU primary law and conflict of interest situations. What are the tasks of this body, what are its competencies, and based on which substantive standards shall this body act? Does acting refer to providing advice, taking binding decisions, and enforcement (B.III.)?

38 Resolution (2020/2133(INI))on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body OJ C 117 of 11 March 2022, p. 159 [hereinafter EP resolution IBES 2021].

39 See above note 8. See also, Resolution (2023/2571(RSP)) on following up on measures requested by Parliament to strengthen the integrity of the European institutions, OJ C 283 of 11 August 2023, p. 27.

40 Resolution (2023/2555(RSP)) on the establishment of an independent EU ethics body, OJ C 283 of 11 August 2023, p. 31 [hereinafter EP resolution IBES Feb. 2023].

41 *European Commission*, Proposal for an interinstitutional ethics body, COM(2023) 311 final.

42 Resolution (2023/2741(RSP)) of 12 July 2023 on the establishment of the EU ethics body available at: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0281_EN.html (7/6/2025), pt. 1 [hereinafter EP resolution IBES July 2023]. See also, on a broader scale, Resolution (2023/2034(INI)) of 13 July 2023 on recommendations for reform of European Parliament's rules on transparency, integrity, accountability and anticorruption available at: https://www.europarl.europa.eu/doceo/document/TA-9-2023-0292_EN.html (7/6/2025).

## I. Legal bases

Choosing the right legal basis is always key, also in EU law. On the long path to this body, a significant part of the debate has focused on identifying the most suitable legal basis, as the possible substance depend very much on this. In the end, the decision was made in favour of an IIA. To answer the question of whether a more ambitious content would have been possible, the preliminary question of whether there would have been alternative legal bases must be answered first.

There would be a quite 'strong' legal basis and one might wonder, why it has not been chosen. As mentioned above, both for a mandatory transparency (or lobbying) register[43] and for an Ethics Body,[44] the question of the possible legal bases has been discussed. For a mandatory transparency register, *Nettesheim* has suggested Article 352 TFEU. This flexibility-[45] or gap-filling clause can be triggered if within the framework of the policies defined in the Treaties there is a necessity "to attain one of the objectives set out in the Treaties", but the legal power is missing. The promotion of the EU's values (Article 3(1) TEU) would be such an objective, but only if combined,[46] for example, with Article 11(2) TEU.[47] This possibility might be an alleviation against the background of the principle of conferral (Article 5[1] TEU). On the flipside, it requires unanimity in the Council and therefore remains challenging, not only if at least one Member State tries to link the topic at hand to any other issue it deems important. The advantage would be the possibility to also bind third parties. In the past, Article 352 TFEU has also been used to create other EU entities.[48] In conclusion, Article 352 TFEU would be legally possible and also desirable, but is currently politically unrealistic (unanimity).

Another legal basis would be possible but not desirable, as it does not cover enough institutions. Article 298 TEFU refers to "an open, efficient and independent European administration" and allows the EP and the Council to adopt regulations in accordance with the ordinary legislative procedure. Unfortunately, this provision

43 *Nettesheim*.

44 *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025).

45 *Craig/Búrca*, p. 120 ff.

46 According to Declaration No 41 on Art. 352 TFEU, OJ C 202 of 7/6/2024, p. 350, it is "excluded that an action based on Art. 352 [TFEU] would only pursue objectives set out in Article 3(1) [TEU]".

47 Art. 11(2) TEU requires an "open, transparent and regular dialogue with representative associations and civil society". Arguing for a sufficient transparency objective for a mandatory transparency register, *Nettesheim*, p. 23 f. The ECJ seems to be more liberal in this regard. See ECJ, Case C-402/05 P, *Kadi and Al Barakaat International Foundation v. Council and Commission*, judgement of 3 September 2008, ECLI:EU:C:2008:461, paras 206–236.

48 *Streinz*, in: Streinz (Hrsg.), Art. 352 AEUV, p. 2670 f. For example, the EU Agency for Fundamental Rights (FRA) was based on the predecessor provision of Art. 308 TEC. Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, OJ L 53 of 22 February 2007, p. 1, as amended by OJ L 108 of 7 April 2022, p. 1.

does not cover the EP acting in its legislative capacity.[49] An Ethics Body that ideally comprises as many EU entities as possible cannot reasonably be based on Article 298 TFEU.

Other possibilities are too uncertain, such as the implied powers-doctrine[50] and the doctrine of undescribed competences by nature of the matter (*Natur der Sache*).[51] Both Article 11 TEU (participation of citizens) and Article 15 TFEU (transparency and right of access to documents) do not contain legal competences in themselves[52] to adopt binding rules.[53] The above-mentioned 'staff regulations'[54] are binding on staff only, not on members and also not on external parties (for example, in the case of lobbying).

Article 352 TFEU would be legally possible and desirable, but is politically unrealistic, Article 298 TFEU does not cover all relevant stakeholders, and other approaches are not legally stable enough. This explains why the IBES was realised via an IIA. IIAs have already been concluded before the Lisbon Treaty.[55] Nowadays, introduced by the Lisbon Treaty, Article 295 TFEU foresees that the three main EU institutions, the EP, the Council of the EU, and the European Commission, can conclude IIAs for their cooperation,[56] "which may be of a binding nature". For example, the IIA Mandatory Transparency Register[57] has been published in the L series of the Official Journal and mentions in Article 15(1) that it "shall be of a binding nature for the signatory institutions". Although Article 295 TFEU mentions these three institutions, one can assume that not all three of them need to be part of an IIA.[58] In case more institutions want to be part of an IIA, then they would have to rely on their own procedural autonomy or self-organization. In the past, various EU institutions and other EU entities have concluded IIAs, as aptly analysed and displayed by *Hummer*, mentioning examples of up to eight parties.[59]

49 *Gerig/Ritz*, EuZW 2014/22, p. 853; *Krajewski*, Legal Framework for a Mandatory EU Lobby Register and Regulations, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2284843 (7/6/2025).
50 *Gerig/Ritz*, EuZW 2014/22, p. 854.
51 *Nettesheim*, p. 23; *Krajewski*, Legal Framework for a Mandatory EU Lobby Register and Regulations, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2284843 (7/6/2025), i.c.w. Art. 298 TFEU.
52 Above note 46.
53 *Krajewski*, Legal Framework for a Mandatory EU Lobby Register and Regulations, available at: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2284843 (7/6/2025); *Nettesheim*, p. 14.
54 Above note 13.
55 Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community, OJ C 306 of 17 December 2007, p. 1 [hereinafter Treaty of Lisbon].
56 Not only this provision refers to the "cooperation" between them as a more general obligation; Art. 13(2) foresees an obligation of "mutual sincere cooperation". On the vertical relation of the EU and the Member States, see Art. 4(3) TEU.
57 Above note 32.
58 Cf. opinion A.G. *Wathelet*, Case C-425/13, *Commission v. Council*, ECLI:EU:C:2015:174, at para. 83.
59 *Hummer*, Kietz/Slominski/Maurer/Puntscher (Hrsg.), p. 67.

For IIAs surpassing the three EU institutions mentioned in Article 295 TFEU, the question arises as whether they are legally binding. Based on an analysis of their content and the right to procedural autonomy or self-organization, also other EU entities could be part of such an IIA.[60] Article 295 TFEU also states the obvious by requiring that IIAs have to be "in compliance with the Treaties". This might rather be a problem for questions of the EU decision-making process, where agreements could hamper the institutional cooperation between these three EU institutions, as foreseen in the Treaties. In our context, an IIA on an Ethics Body could rather fill various provisions related to ethics (etc.) of EU primary[61] and secondary law (Rules of Procedure, etc.) with life. *Alemanno* mentions that in this case, such an IIA could be qualified as one "directly derived from Treaty provisions" and therefore makes it "legally binding".[62] Therefore, such an IIA would enjoy a legal mezzanine-rank between EU primary and secondary law.[63] This qualification has important consequences in case EU institutions are reluctant to adopt their rules of procedure or related documents following an IIA.[64]

The above-mentioned right of procedural autonomy or self-organization could be used by various EU entities to set-up such an inter-institutional body. These EU entities could bind themselves, but not the authorities of Member States or third parties. The signature or later accession to an IIA by one EU entity would require that, as the case might be, it adapts its internal Rules of Procedure, or related documents.[65] EU agencies could voluntary join an IIA or be bound to an IIA by changing their underlying EU regulation.

60 See also *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025).

61 For example, Art. 245 TFEU on integrity and discretion of Commissioners; similar Art. 268(4) TFEU concerning the Court of Auditors, Art. 4(3) of Protocol No 3 on the Statue of the CJEU, OJ C 202 of 7/6/2016, p. 10.

62 *Monar*, CML Rev. 1994/4, p. 697.

63 *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025).

64 See below at note 129.

65 In the case of the above-mentioned (note 63) mezzanine-rank, one could argue that this is not necessary. Nonetheless, it would clearly be advisable to have both an agreement to the IIA and an adaptation of the EU entity's internal documents.

Such inter-institutional bodies are not new and have been created via an "arrangement"[66] or via a "decision".[67] They can be seen as "an entity which does not form an integral part of one of the Institutions and is designed to carry out tasks that are common to several or all Institutions"; their advantage can be seen in an "accumulation of know-how, of economies of scale (especially for smaller entities) and of a coherent practice throughout the Institutions".[68]

As other legal bases are legally possible (and desirable) but politically unrealistic (Article 352 TFEU), legally uncertain (e.g., implied powers-doctrine), or do not cover all relevant stakeholders (Article 298 TFEU), in the end the IBES was realised via an IIA. The IIA-IBES does not explicitly mention Article 295 TFEU (or any other legal basis). For all Parties to the IIA-IBES, procedural autonomy or self-organization can be seen as the legal basis. For the Commission, the EP and the Council, one could have also used Article 295 TFEU.

## II. Substance

The finally adopted IIA-IBES raises the question of the institutions participating, or Parties (e.g. Council), as well as the question, which 'members of the Parties' are subject to this ethics body (e.g. only the High Representative). As the terminology is similar, it is important to distinguish the 'members of the Parties' from the IBES members. Next, how are the latter appointed, how is the body composed, what are the requirements concerning their qualifications, how independent are they, especially what is foreseen to avoid possible conflicts of interest?

66 Arrangement between the European Parliament, the European Council, the Council of the European Union, the European Commission, the Court of Justice of the European Union, the European Central Bank, the European Court of Auditors, the European External Action Service, the European Economic and Social Committee, the European Committee of the Regions and the European Investment Bank on the organisation and operation of a computer emergency response team for the Union's institutions, bodies and agencies (CERT-EU), OJ C 12 of 13/1/2018, p. 1.

67 Decision 2009/496/EC, Euratom of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee and the Committee of the Regions of 26 June 2009 on the organisation and operation of the Publications Office of the European Union, OJ L 168 of 30/6/2009, p. 41, as amended by OJ L 179 of 11/7/2012, p. 15. Decision 2002/620/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions and the European Ombudsman of 25 July 2002 establishing a European Communities Personnel Selection Office, OJ L 197 of 26/7/2002, p. 53. Decision 2005/118/EC of the European Parliament, the Council, the Commission, the Court of Justice, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions and the Ombudsman of 26 January 2005 setting up a European Administrative School, OJ L 37 of 10/2/2005, p. 14.

68 *European Commission*, Communication 'A new type of office for managing support and administrative tasks at the European Commission', COM(2002) 264 final, p. 6.

### 1. Parties to the IIA and 'members of the Parties'

The number of Parties to this IIA is clearly remarkable. Looking back at the related topic of lobbying, only the EP and the Commission started this project in 2011, with the reluctant Council joining the IIA Mandatory Transparency Register only in 2021. For the IBES, the Commission had initially proposed to include all EU institutions plus the two advisory bodies (Article 13[4] TEU), the Economic and Social Committee (ECOSOC) and the Committee of the Regions (CoR). In the end, now all of them except for the European Council (EUCO) are on board. Given the current fragmentation of ethics standards, it should be welcomed that besides the three main EU institutions for decision-making (EP, Council, Commission), a big number of Parties is part of this IIA.

Other Parties could join in the future. Article 20 IIA-IBES provides for an opening clause for the voluntary involvement of Union bodies, offices, and agencies, other than the Parties, who must notify the Body of their wish to join. In case they wish to join, they have to accept the entire set of common minimum standards. Hence, no cherry-picking concerning current or future common minimum standards is permitted.

Apart from the IIA Parties themselves (e.g. ECOSOC), another important question concerns their members (i.e. 'members of the Parties') covered by this IIA (e.g. only in exercise of members' EU mandate). First, the IIA-IBES only covers 'members of the Parties' and not staff. It will be elaborated below if staff could have been included.[69] Concerning 'members of the Parties', the final IIA falls short of the Commission's proposal on several occasions. The EUCO is not covered, although the proposal would have only covered its President. Another major difference concerns the Council of Ministers, where the Commission would have foreseen "the representatives at ministerial level of the Member State holding the Presidency of the Council", whereas the final IIA-IBES only covers the High Representative of the Union for Foreign Affairs and Security Policy (Article 18 TEU), including in her or his function as President of the Foreign Affairs Council. Both the EUCO and the Council could and should be covered, including all members.

One institution that is not listed in Article 2 IIA-IBES anymore is the Court of Justice of the EU (CJEU).[70] For the author, this is the one exception that is justified on the basis of the "independence of the judiciary", as mentioned in recital 5.[71] Therefore, the CJEU is a Party of the IIA-IBES, but its members are not listed in

69 See below section C.II.1.

70 This means that in this regard, the final IIA falls behind the Commission's proposal.

71 *Alemanno*, Eur Law J 2024/20(4), p. 553 argues that the Court could be bound in its administrative function and that even the Court's judicial function would not be affected. See also *Alemanno*, in: Alemanno (ed.), p. 282.

Article 2, as the CJEU's role in in the context of this IIA is "limited to that of an observer" (recital 5; Article 1[2] IIA-IBES).[72]

One challenge can be how to deal with bodies located at the national and EU interface. This concerns two that are not (EUCO) or only partially (Council) covered, as well as the two advisory bodies. For the latter two, the IIA-IBES has found the following solution.[73] Going in a similar direction, one can first find a positive wording in case of the members of the ECOSOC ("in relation to the exercise of their European Union mandate"). Second, one can find a negative one concerning the members (and alternates) of the CoR ("except in relation to the exercise of their local or regional mandate"). In the future, one of these two solutions could also be envisaged for the Council and the EUCO.

## 2. IBES members and their independence

Inside the IBES, each Party is represented by one high-level member, at the level of a Vice-President or at an equivalent level,[74] and the IBES decides by consensus[75] (Article 3 IIA-IBES). This is reminiscent of the EUCO, who also decides by consensus. As one knows from the Council of Ministers,[76] the Chair[77] of the body is also based on a rotating system. Only that in this case it is easier, because one can simply refer to the order in Article 13 TEU, and in the case of the IBES the presidency lasts one year (Article 4 IIA-IBES), not just six months as in the Council of the EU.

The question of the independence of the IBES members warrants a comparison to another ethics body at EU level, even if the latter has a different role. In the case of the Ethics Body advising the European Commission on ethical issues in field of biotechnology and new technologies at large, the so-called European Group on Ethics in Science and New Technologies (EGE), its members are independent

72 The CJEU "shall attend the meetings of the Body, without participating in the decision-making process, and shall receive the information made available to the members of the Body, insofar as those meetings and that information relate to the application of [the development of common minimum standards]" (Art. 1[2] IIA-IBES). According to Art. 17(2) IIA-IEBS (entitled 'resources'), the observer status of the CJEU shall be taken into account financially "through a downward adjustment of its contribution by 50%".

73 See also Article 1(4) IIA-IBES.

74 In this context, "each Party shall appoint a representative and an alternate representative who shall sit as a member of the Body when the representative is absent or impeded. The representatives and their alternates shall be appointed at the maximum 2 months after the date of entry into force of this Agreement. Each Party shall strive to ensure gender balance in the appointment of its representatives and alternate representatives" (para. 1 *leg. cit.*).

75 Unless the Rules of Procedure (cf. Art. 14 IIA-IBES) explicitly provide otherwise.

76 Council Decision (EU) 2016/1316 amending Decision 2009/908/EU, laying down measures for the implementation of the European Council Decision on the exercise of the Presidency of the Council, and on the chairmanship of preparatory bodies of the Council, OJ L 208 of 2 August 2016, p. 42.

77 See also Art. 12 IIA-IBES.

experts from the relevant disciplines.[78] In the case of the IBES, the high-level members are only "assisted by five independent experts who shall attend all meetings of the Body as observers and shall advise the members of the Body on any ethical question related to the mandate of the Body" (Article 5[1] IIA-IBES). Hence, we have the CJEU as an observer, without Article 1(2) IIA-IBES specifying the number of persons, as well as these assisting independent experts participating also as observers. They shall designate a "speaker" among them. Note the symbolic wording: a speaker could be seen less than a Chair, and a Chair less than a President, as we have also seen in the case of the EGE's history.[79]

While the IIA-IBES does not stipulate qualitative but only hierarchical (Vice-President or equivalent) criteria for its members, it does foresee criteria for the independent experts. These independent experts "shall be appointed taking into account their competence, experience, independence and professional qualities" and "shall have an impeccable record of professional behaviour as well as experience in high-level positions in European, national, or international public organisations" (Article 5[2] IIA-IBES). Comparing the IBES to the EGE, the latter also requires "wisdom and foresight".[80] The independent experts shall be selected upon a proposal by a Party and by consensus of the Parties (cf. also Article 3[4] IIA-IBES) following a procedure which consists of seeking in a transparent manner the best available individuals, where the Parties can reach consensus.[81] This procedure is clearly not as far-reaching but at least to some extent reminiscent of the selection panel foreseen in Article 255 TFEU for candidates for Judge or Advocate-General at the ECJ and the General Court.[82]

Other than described so far, Article 22 IIA-IBES foresees a different method of appointment for the first round of independent experts. In the year in which the Body is set up, the independent experts are appointed amongst current or former members of the Parties. This side-lines the (external) independent experts in an initial phase, but it can make sense to consolidate the status quo and define the

78 See *Busby/Hervey/Mohr*, EL Rev. 2008/33, p. 803. On the new mandate, see *Frischhut*, The new mandate of the European Commission's ethics advisory body for science and new technologies. Further developments and larger context, available at: http://eulawanalysis.blogspot.com/2021/04/the-new-mandate-of-european-commissions.html (7/6/2025).

79 See *Plomer*, ELJ 2008/6, p. 846. See also *Frischhut*, Ethical Spirit, p. 104.

80 Commission Decision (EU) 2016/835 on the renewal of the mandate of the European Group on Ethics in Science and New Technologies, OJ L 140 of 27 May 2016, p. 21, Art. 4(6)(a) (this is the previous mandate). While the current mandate, Commission Decision (EU) 2021/156 on renewing the mandate of the European Group on Ethics in Science and New Technologies, OJ L 46 of 10 February 2021, p. 34, as amended by OJ L/2024/1997 of 24 July 2024, does not mention these two criteria, they can be found in the corresponding call for applications. In addition to these qualifications, the IIA Parties "shall strive to ensure gender balance and geographical diversity" (Art. 5[4] IIA-IBES).

81 The details of the procedure shall be laid down by the Body.

82 See *Dumbrovský/Petkova/van der Sluis*, CML Rev. 2014/2, p. 455; *Sauvé*, in: Bobek (ed.), p. 78; *Bobek*, in: Bobek (ed.), p. 279. See also recently, ECJ, Case C-119/23, *Valančius*, judgement of 29 July 2024, ECLI:EU:C:2024:325.

common minimum standards before taking the next step.[83] Hence, even within the IIA-IBES one can identify a step-by-step approach.

It is consistent that the independent experts themselves "shall observe the highest ethical standards, at least equivalent to the common minimum standards" (Article 5[1] IIA-IBES), to be elaborated by the IBES.[84] The term of the independent experts shall be three years, renewable once (Article 5[5] IIA-IBES). Obviously, a longer term of office without a possible renewal could increase the independence of these experts.

A body without appropriate resources[85] could be seen as a 'toothless tiger'. Therefore, Article 17 provides that the Body should receive the "necessary human, administrative, technical and financial resources". Independence of the IBES is not only linked to its resources, for EU institutions independence is also firmly rooted in EU primary law and important to avoid conflicts of interest (see below).

### 3. Independence in EU primary law

In EU primary law, one can identify various provisions referring to a requirement of independence. Of the provisions relevant to EU institutions, Article 282(3) TFEU mentions that the European Central Bank (ECB) "shall be independent in the exercise of its powers and in the management of its finances" and that this "independence" must be respected by others.[86]

Nevertheless, some formulations provide for an intensification, either referring to "independence that is beyond doubt" or "complete independence", as covered

83 See below section C.II.

84 See below section B.III.1.

85 The resources must be seen against the background of the number of members affected. Currently, the European Parliament is the largest Party with 720 members, followed by the two advisory bodies (ECOSOC and CoR) with a maximum of 350 members each (Art. 301(1) TFEU and Art. 305(1) TFEU). At the end of this scale, we have institutions where the number of members corresponds to the number of Member States (e.g. European Commission, Court of Auditors), respectively, only the High Representative in case of the Council.

86 "Independence" is also the Title of Art. 7 of Prot. No 4 ECB. See also Art. 130 TFEU (neither take nor seek instructions). The latter provision has been covered in ECJ, Case C-62/14, *Gauweiler and Others*, judgement of 16 June 2015, ECLI:EU:C:2015:400, para. 40: "Article 130 TFEU is, in essence, intended to shield the ESCB [i.e. the European System of Central Banks] from all political pressure in order to enable it effectively to pursue the objectives attributed to its tasks, through the independent exercise of the specific powers conferred on it for that purpose by primary law".

in an ECJ case[87] concerning the Court of Auditors.[88] In the case of the following institutions one can find both intensified forms of independence: European Commission,[89] Court of Justice of the EU,[90] Court of Auditors,[91] and European Investment Bank.[92] For these four examples, the following pattern concerning independence can be identified. For potential members it is required that their "independence is beyond doubt", whereas for the (then composed) body as such, the requirement is that it "shall be completely independent". One can certainly derive a meaning from the distinction between ordinary and increased independence. This overview of EU primary law requiring a normal or intensified form of independence is important, because the ECJ seems to prefer linking topics that (also) have an ethical dimension, such as conflicts of interest, to provisions of EU primary law. In the ECJ's *Pinxten* case, the link was to Article 285 TFEU,[93] in a case concerning the European Medicine Agency (EMA),[94] the ECJ linked this topic to Article 41 CFR (right to good administration).

87 ECJ, Case C-130/19, *Court of Auditors v. Pinxten*, judgement of 30 September 2021, ECLI:EU:C:2021:782; see below at notes 93 and 105.

88 There is one body where EU primary law only refers to one intensified form of independence and that is the European Ombuds[wo]man, who "shall be completely independent in the performance" of her duties (Art. 228(3) TFEU). The same is true for the two EU's advisory bodies (Art. 13(4) TEU), the Economic and Social Committee and the Committee of the Regions, where Art. 300(4) TFEU mentions that they "shall be completely independent in the performance of their duties, in the Union's general interest".

89 In the case of qualification criteria for potential Commissioners, Art. 17(3)(2) TEU refers to "persons whose independence is beyond doubt". The Commission as an institution "shall be completely independent" (Art. 17[3][3] TEU). The above-mentioned objective ("complete", referring to an institution) vs. subjective ("beyond doubt", potential members) distinction also applies here. Concerning the obligation of Member States to respect this requirement of Commissioners, Art. 245(1) TFEU only refers to their "independence".

90 At the CJEU (Art. 19[2][3] TEU), Judges and Advocates-General of the Court of Justice (Art. 253[1] TFEU), members of the General Court (Art. 254[2] TFEU), members of the specialized courts (Art. 257[4] TFEU), and Assistant Rapporteurs (Art. 13[2] Prot. No 3 CJEU) "shall be chosen from persons whose independence is beyond doubt". In making their "reasoned submissions", Advocates General shall act "with complete impartiality and independence" (Art. 252[2] TFEU; Art. 49[2] Prot. No 3 CJEU).

91 At the Court of Auditors, it is mentioned that its "Members shall be completely independent in the performance of their duties" (Art. 285[2] TFEU), but concerning the selection process, the future members "shall be chosen from among persons" who are qualified and whose "independence must be beyond doubt" (Art. 286[1] TFEU). In brief, Art. 287[3][1] TFEU (cooperation between the Court of Auditors and the national audit bodies of the Member States) only refers to "independence".

92 At the European Investment Bank (EIB), Members of the Board of Directors shall be chosen from persons "whose independence and competence are beyond doubt" (Art. 9[2][8] Prot. No 5 EIB) and the "Management Committee and the staff of the Bank shall be responsible only to the Bank and shall be completely independent in the performance of their duties" (Art. 11[8] Prot. No 5 EIB).

93 ECJ, Case C-130/19, *Court of Auditors v. Pinxten*, judgement of 30 September 2021, ECLI:EU:C:2021:782, para. 868.

94 ECJ, Case C-291/22 P, *D & A Pharma v. Commission and EMA*, judgement of 14 March 2024, ECLI:EU:C:2024:228, para. 72.

In conclusion, EU primary law foresees an obligation of independence for almost all EU institutions covered by the IIA-IBES. This includes the European Commission, the CJEU, the ECB, the Court of Auditors, the ECOSOC, and the CoR. EU primary law also stipulates the independence of two EU entities not covered by the IIA-IBES, the European Investment Bank and the European Ombudsman. The Council of the EU is the only EU institution that does not have an obligation of independence. In the case of the EP, one can find the independent mandate in EU secondary law.[95]

Therefore, the emphasis on independence in EU primary law serves as a further argument for the need to ensure ethical conduct within EU institutions. This independence is at risk of being compromised in situations involving conflicts of interest.

## 4. Conflicts of interest

According to the Organization for Economic Co-operation and Development (OECD), a "'conflict of interest' involves a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities".[96] In literature, one can find three categories of a conflict of interest:[97] In the case of an actual conflict of interest, "a public official is in a position to be influenced by his private interests in the performance of his official duties", whereas an apparent (or perceived) conflict of interest "refers to a situation where there is a personal interest that might reasonably be considered by others to influence the public official's duties, even though there is no such influence". Finally, a potential conflict of interest "may exist where a public servant has private-capacity interests that could cause a conflict of interest to arise at some time in the future". In a recent case, the ECJ clarified that even an apparent conflict of interest is enough ("irrespective of the personal conduct of that member").[98]

As just outlined, a lack of independence can lead to conflicts of interest. On a timeline, such a conflict can occur at the beginning and can be an issue in the

95 See below section C.I.2.

96 *OECD*, Managing Conflict of Interest in the Public Service, available at: https://www.oecd.org/en/publications/managing-conflict-of-interest-in-the-public-service_9789264104938-en.html (7/6/2025), p. 24.

97 *White*, in: Auby/Breen/Perroud (eds.) p. 272 f.

98 ECJ, Case C-291/22 P, *D & A Pharma v. Commission and EMA*, judgement of 14 March 2024, ECLI:EU:C:2024:228, para. 74. As the Court has also clarified in this case, this can in the end "render unlawful the decision adopted" (para. 74). "The fact that, at the end of its discussions and deliberations, that expert group expresses its opinion collegially does not remove such a defect" (para. 77). Such a conflict of interests of an expert (that is to say, links between experts and the pharmaceutical industry) can continue over several levels without losing its harmful effects, that is to say a compromised expert, consulted by a committee, leading to an opinion of an agency (the European Medicines Agency), which in the end leads to a decision of the European Commission (para. 76).

process of recruitment. Here the idea would be not to import a conflict of interest. During employment or membership, a conflict of interest can affect questions of the acceptance of gifts and hospitality, procurement issues, financial and other activities, respectively external activities (side-jobs). Other activities can also concern statements[99] that officials are not allowed to make, especially if linked to the mandate of the body or institution, respectively not approved and inappropriate publications.[100] An important tool in this context are declarations of interest, both as a practical tool and also to raise awareness.[101] At the end of employment or membership, in a similar way as concerning the potential import of a conflict of interest in the process of recruitment, the so-called 'revolving-doors'-effect can lead to inappropriate situations in the case of staff,[102] respectively members (e.g., *Barroso* and or *Oettinger*).[103]

Both the members of the Body and the independent experts must avoid conflicts of interest. The independent experts "shall declare to the Body any conflicts of interest which could impair their independence or impartiality"; in this case, "the Body shall decide whether any measures need to be taken and, if necessary, on the appropriate measures" (Article 5[3] IIA-IBES). Conversely, the Members of the Board do not report their conflicts of interest to the independent experts, but "promptly" to the Chair.[104] Article 13(1) IIA-IBES resembles a possible conflict of interest, whereas paragraph 2 sounds as an actual conflict of interest.

Conflicts of interest can be linked to various principles, such as integrity, honesty, impartiality, and independence. The latter principle has been covered by the ECJ in a 'conflict of interest'-case affecting the Court of Auditors. As mentioned by the ECJ, in "order to comply with the obligation under Article 285 TFEU to be completely independent in the performance of their duties, in the European Union's general interest, the Members of the Court of Auditors must avoid any conflict of

99 This raises issues of freedom of speech (for example, Art. 11 CFR), or freedom of assembly (for example, Art. 12 CFR).

100 One example is the following book: *Connolly*. On this book, see ECJ, Case C-273/99 P, *Bernard Connolly v. European Commission*, judgement of 6 March 2021, ECLI:EU:C:2001:126; ECJ, Case C-274/99 P, *Bernard Connolly v. European Commission*, judgement of 6 March 2021, ECLI:EU:C:2001:127.

101 A report of the *European Court of Auditors*, The ethical frameworks of the audited EU institutions: scope for improvement, available at: https://op.europa.eu/webpub/eca/special-reports/ethics-13-2019/en/ (7/6/2025), pp. 27 ff., has revealed a situation of improvable awareness of staff members.

102 *Despotopoulou*, ERA Forum 2021/4, p. 643.

103 *Tansey*, in: Dialer/Richter (Hrsg.), p. 257. See also *Chiti*, in: Auby/Breen/Perroud (eds.). See also *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025).

104 They shall "avoid any situation which may [!] impair their independence or impartiality in the exercise of their function in the Body" (Art. 13[1] IIA-IBES). Paragraph 2 then refers to "any situation which impairs their independence or impartiality when performing their tasks in the Body".

interest".[105] The issue of independence and conflicts of interest raises the question of how far these concerns fall within the scope of the IBES's tasks.

## III. Tasks

### 1. Developing common minimum standards

The main task of the IBES is to develop common minimum standards for the conduct of the members of the Parties. As mentioned above, both the members of the Body (Article 13 IIA-IBES) and the independent experts (Article 5[3] IIA-IBES) must avoid conflicts of interest. Hence, it is surprising that conflicts of interest do not explicitly figure among the areas to be covered by the common minimum standards (Article 8[2] IIA-IBES).[106] The above-mentioned emphasis of EU primary law on independence provides an additional argument, why conflicts of interest should explicitly be addressed in these minimum standards.

These minimum standards to be developed by the IBES shall cover declarations of both financial and non-financial interests (lit. a). Some of the areas to be covered by these minimum standards explicitly refer to the terms of office of the members of the Parties, such as external activities (lit. b), the acceptance of gifts, hospitality, or travel offered by third parties (lit. c), and awards, decorations, prizes, and honours (lit. d). In light of the aforementioned 'revolving door' cases involving *Barroso* and *Oettinger*, it is important that activities carried out after the end of a term of office are also covered by these minimum standards (lit. e). Finally, these minimum standards shall also cover "conditionality and complementary transparency measures" (lit. f) under the IIA on the mandatory transparency register.[107] In the latter, conditionality is defined as "the principle whereby registration in the register is a necessary precondition for interest representatives to be able to carry out certain covered activities".[108] It clearly makes sense to link the IIA-IBES to the IIA Manda-

105 ECJ, Case C-130/19, *Court of Auditors v. Pinxten*, judgement of 30 September 2021, ECLI:EU:C:2021:782, para. 868.

106 These standards "shall take into account the status of the members of the Parties and shall not enter into conflict with their European Union mandate" (Art. 1[3] IIA-IBES).

107 Above note 32.

108 Art. 2(h) IIA Mandatory Transparency Register. They shall "encourage registration, such as dedicated mailing lists, the recommendation that certain decision-makers meet only registered interest representatives, or the publication of information on meetings between certain decision-makers and interest representatives"; Recital 8 IIA Mandatory Transparency Register. See also the Political statement of the European Parliament, the Council of the European Union and the European Commission on the occasion of the adoption of the Interinstitutional Agreement on a Mandatory Transparency Register, OJ L 207 11 June 2021, p. 18, and Council Decision (EU) 2021/929 on the regulation of contacts between the General Secretariat of the Council and interest representatives, OJ L 207 11 June 2021, p. 19. This 'conditionality' has recently been criticized by *European Court of Auditors*, EU Transparency Register provides useful but limited information on lobbying activities, available at: https://www.eca.europa.eu/en/publications/sr-2024-05 (7/6/2025).

tory Transparency Register, as the latter also refers to transparency and ethics.[109] Besides that, lobbying and conflicts of interest are connected, as in the case of lobbying, conflicts of interest can occur due to external participants (interest representatives), whereas conflicts of interest can also occur without influence by external stakeholders.[110]

It is an important first step to harmonize these substantive (and procedural)[111] standards. This task is reminiscent of harmonizing national law via EU directives, where the question of minimum[112] vs. full[113] harmonization arises. In the case of minimum harmonization, Member States do not have to but can lay down higher standards. As various EU Institutions and bodies have more or less ambitious approaches concerning their ethics rules,[114] those with higher standards could fear a lowering of their standards (the lowest common denominator). However, no IBES-Party needs to impose higher ethical requirements (recital 10 IIA-IBES), nor has to lower its ethical standards (recital 11 IIA-IBES).

This Article 8 IIA-IBES on common minimum standards is the main provision mentioned in Article 6 IIA-IBES, entitled "mandate of the body". Article 9 IIA-IBES tasks the IBES to update the common minimum standards, "where one or more members of the Body consider that a review is necessary".[115] From an internal perspective, the case-law of the CJEU is binding, as the CJEU oversees the "interpretation and application of the Treaties", including EU secondary law (Article 19[1] TEU). Hence, clarifications in case-law as the above-mentioned cases on conflicts of interest[116] must be taken into account. From an external perspective,

109 Recital 4, Art. 1(2), et passim. See also EP resolution IBES 2021 cited above note 38, at pt. 14.

110 Similarly, the literature also distinguishes between two types of conflicts of interest. This comprises out of role situations, that is to say, "conflicts between an individual's professional duties and his or her own outside private interests", as opposed to in role situations, which "involve a tension between two or more different professional duties an individual or form may have". *Norman/MacDonald,* in: Brenkert/Beauchamp (eds.), p. 449 f.

111 See below section B.III.2.

112 ECJ, Case C-509/07, *Scarpelli*, judgement of 23 April 2009, ECLI:EU:C:2009:255, paras. 24–25.

113 ECJ, Case C-261/07, *VTB-VAB*, judgement of 23 April 2009, ECLI:EU:C:2009:244, para. 52: in the case of full harmonization, "Member States may not adopt stricter rules than those provided for in the Directive, even in order to achieve a higher level of consumer protection".

114 See, for instance, *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025); *Frischhut*, IEB, pp. 28 ff.

115 The author welcomes the wording of Art. 9(2) IIA-IBES, according to which a "review may be considered necessary in particular due to developments in the case-law of the Court of Justice of the European Union, to new or modified ethical standards by international organisations, to new technical developments or to the need for clarification of common minimum standards as a result of recurring issues".

116 ECJ, Case C-130/19, *Court of Auditors v. Pinxten*, judgement of 30 September 2021, ECLI:EU:C:2021:782; and ECJ, Case C-291/22 P, *D & A Pharma v. Commission and EMA*, judgement of 14 March 2024, ECLI:EU:C:2024:228.

other international organizations might face similar issues, and new developments and best practices developed elsewhere shall also be considered.[117]

### 2. Enforcement

In the past, it has often been criticized that a self-regulatory,[118] fragmented[119] and complex[120] approach for enforcing ethical behaviour is not enough. It has been stated that "not a single financial penalty has ever been imposed for a breach of the Code of Conduct of Members" of the EP and that "26 such breaches have been documented in the annual reports of the Advisory Committee on the Conduct of Members".[121]

In addition to the above-mentioned substantial issues (Article 8[2] IIA-IBES), Article 8(3) IIA-IBES also addresses some more procedural issues. According to lit. a, the IBES shall develop common minimum standards "to ensure and monitor compliance with their internal ethical rules". This provision does not address monitoring and sanctions,[122] but compliance issues.[123] In addition, lit. b addresses publication requirements in this context.[124] Finally, Article 8(4) IIA-IBES comprises an opening clause, as the IBES may develop "[f]urther common minimum standards in areas other" than those mentioned above.

As another important task,[125] the IBES is also involved in the process of self-assessment of the Parties to the IIA (Article 10 IIA-IBES). It is the task of the IBES to elaborate common minimum standards and the task of the Parties to perform a written self-assessment of their internal rules against the background of these standards, respectively, updates. After a presentation of the written self-assessment, the independent experts establish a written opinion,[126] followed by an exchange of view of the entire IBES, not only the independent experts. Finally, the IBES Secretariat prepares a report summarizing the exchange of views. Article 10(7) IIA-IBES only

117 Cf. the OECD definition of conflicts of interest, mentioned above, note 96.
118 EP resolution IBES 2021 cited above note 38, at recital J.
119 EP resolution IBES Feb. 2023 cited above note 40, at recital C; EP resolution IBES July 2023 cited above note 42, at recital D.
120 EP resolution IBES July 2023 cited above note 42, at recital C.
121 EP resolution IBES July 2023 cited above note 42, at recital G.
122 See below section C.II.2.
123 They include "regular awareness raising actions, the composition and tasks of internal bodies responsible for ethical questions, reporting mechanisms to the Party concerned in the case of a suspected breach of ethical rules – including reporting on alleged harassment involving members of the Parties as well as follow-up action on the report and protection of the reporting persons against retaliation -, and procedures to initiate or adopt appropriate measures in the case of breaches".
124 See above note 100.
125 The IBES shall also hold at least yearly meetings for the exchange of good practices (Art. 11 IIA-IBES), provide the Parties with "an abstract interpretation" of the common standards (see also Art. 7 IIA-IBES), promote cooperation among the Parties, and issue an annual report according to Art. 18 IIA-IBES (Art. 6 IIA-IBES).
126 If they do not adopt it unanimously, the opinion shall include "any dissenting point of view"; their deliberations are confidential (Art. 10[4] IIA-IBES).

tasks each Party to update its internal rules, "where it deems it appropriate". In other words, each Party enjoys substantial discretion if and how they follow-up accordingly. The only soft sanction is that the self-assessment and the report shall be made public on the website of the Body (Article 10[7] IIA-IBES).

While the IBES shall elaborate common minimum standards, in the application of this IIA, "full account should be taken of the characteristics and specific status of each Party to this Agreement and its members" (recital 9 IIA-IBES). This makes sense, as common standards are clearly preferable, while allowing for differences, where objectively necessary, due to different legal settings or standards, especially if foreseen in EU primary law, as mentioned above concerning independence. Such an approach is reminiscent of the EU's motto, "united in diversity".[127]

In conclusion, the IBES cannot be qualified as a body vested with strong enforcement powers. This leads to the question what would have been possible in terms of enforcement and other powers, always considering the question of legal bases and other institutional constraints.

### C. Analysis of what could have been added

What has been achieved so far is remarkable in the sense of the number of Parties to this IIA and can be qualified as an important step forward. The question remains whether this was already the maximum or if, in the future, more would be possible. While the IBES should not be qualified as an example of "failing forward",[128] according to the author a better institutional design would be desirable. Therefore, in the following section some potential obstacles (C.I.) will be covered, followed by possible room for improvement (C.II.).

#### I. Potential obstacles

When analysing the long and difficult road leading to the IBES (A.II.), this project was (and still is)[129] faced with a lot of resistance. The main arguments put forward against an independent ethics body are often the possibility to delegate competences

127 The current diversity has been criticized by EP resolution IBES 2021 cited above note 38, at recital M: "whereas current ethical standard frameworks at EU level are tailored to the specificities of each EU institution, leading to different processes and levels of enforcement even of the same EU Staff Regulations in different EU institutions, agencies and bodies, thus creating a complex system which is difficult for both EU citizens and for those who have to respect the rules to understand".

128 *Jones/Kelemen/Meunier*, Comparative Political Studies 2016/7; *Jones/Kelemen/Meunier*, Journal of European Public Policy 2021/10.

129 According to *Braun*, EU ethics body in shambles, available at: https://www.politico.eu/newsletter/politico-eu-influence/eu-ethics-body-in-shambles/ (7/6/2025), Parliament seems to be delaying the necessary adoptions of its RoP. In the case of qualifying an IIA as directly derived from Treaty provisions (see above note 64), it would enjoy a legal mezzanine-rank and therefore in terms of hierarchy would be positioned above EU secondary law, nor requiring such adaptations.

(C.I.1.), the institutional balance, the separation of powers and the independent mandate of EP members (C.I.2.). As it cannot be excluded that some of these arguments pertain more to the field of lobbying against such a body, an objective analysis is needed. While this analysis also concerns the status quo (B.), its primary relevance lies in what may yet unfold.

### 1. The *Meroni* doctrine

The allocation of competences in the EU treaties, foreseen by the EU Member States as Masters of the Treaties, shall not be changed or reversed by the EU institutions. For example, in the case of decision-making, shifting powers between EU institutions could disturb the entire system. Hence, EU institutions do not have the power to adapt or even change EU primary law, especially in the case of the legislative process.[130]

The question of a possible delegation of certain powers was first decided in the 1950s in the so-called *Meroni* cases.[131] While these statements were made concerning the Coal and Steel Community,[132] they now also apply to EU law.[133] As stated by the ECJ, "the powers conferred on an institution include the right to delegate, in compliance with the requirements of the Treaty, a certain number of powers which fall under those powers, subject to conditions to be determined by the institution".[134] Therefore, a delegation is generally possible.

What is also often overlooked is the fact that *Meroni* was about a delegation from the High Authority (today: The European Commission) to private entities,[135]

130 This issue has been the case in ECJ, Case C-138/79, *Roquette v. Council*, judgement of 29 October 1980, ECLI:EU:C:1980:249, para. 33, where the European Parliament was deprived of consultation rights foreseen in the Treaties. See also more recently, ECJ, Joined Cases C-643/15 and C-647/15, *Slovakia v. Council*, judgement of 6 September 2017, ECLI:EU:C:2017:631, para. 160.

131 ECJ, Case C-9/56, *Meroni v. High Authority*, judgement of 13 June 1985, ECLI:EU:C:1958:7; ECJ, Case C-10/56, *Meroni v. High Authority*, judgement of 13 June 1985, ECLI:EU:C:1958:8.

132 The European Coal and Steel Community Treaty existed only for a limited period. See Resolution of the Council and of the Representatives of the Governments of the Member States, meeting within the Council of 20 July 1998 concerning the expiry of the Treaty establishing the European Coal and Steel Community, OJ C 247 of 7/8/1998, p. 5, and the Protocol [N.B. annexed to the Nice Treaty] on the financial consequences of the expiry of the ECSC Treaty and on the research fund for coal and steel, OJ C 80 of 10/3/2001, p. 67.

133 *Lenaerts*, EL Rev. 1993/1, p. 41.

134 ECJ, Case C-301/02 P, *Tralli v. ECB*, judgement 26 May 2005, ECLI:EU:C:2005:306, para. 41.

135 Perhaps the confusion stems from the fact that these private entities were referred to as "Brussels agencies". Nonetheless, these entities (the Joint Bureau and the Fund) were companies established under private law and were "cooperative undertakings under Belgian commercial law and their registered offices are at Brussels"; joined opinion A.G. *Roemer*, Cases C-9/56 and C-10/56, *Meroni v. High Authority*, ECLI:EU:C:1958:4, p. 179.

whereas in case of the IBES a delegation would take place to an EU body charged with ethical tasks. Besides this, as aptly stated by *Hatzopoulos*, why should the CJEU criticize a delegation of powers to an EU body, if EU institutions decided so?[136]

There are, of course, some requirements that need to be considered when delegating powers, also in case of the IBES. The "delegation must be governed by a law which specifies the content of the delegation precisely and which must guarantee not only sufficient control […], but also complete legal protection against the measures adopted by these associations".[137] Therefore, one needs a legal basis,[138] an explicit decision[139] to delegate powers, the delegated powers must be precisely[140] specified, and legal protection must be granted. The latter requirement nowadays also stems from Article 47 CFR. In case of the IBES, there is a legal basis (Article 295 TFEU, procedural autonomy, self-organization), an explicit decision (the IIA) with a clear mandate (Article 6 IIA-IBES), and the IBES is of course subject to CJEU control.

In addition, at the time the High Authority "could not confer upon the authority receiving the delegation powers different from those which the delegating authority itself received under the Treaty".[141] This should not be an obstacle for further enhancement of the IBES and is reminiscent of *nemo plus iuris transferre potest quam ipse habet*. All these requirements (legal basis; explicit transfer; precisely specified powers; powers which the body also enjoys itself; no prohibition to transfer powers) should not be an obstacle.

Last, but not least, the requirement of precisely specified powers has to be seen from the angle of executive vs. discretionary powers. The latter category would replace "the choices of the delegator by the choices of the delegate" and would lead to "an actual transfer of responsibility".[142] Hence, a delegation of powers must

136 *Hatzopoulos*, p. 325. See also below note 146.

137 Joined opinion A.G. *Roemer*, Cases C-9/56 and C-10/56, *Meroni v. High Authority*, ECLI:EU:C:1958:4, p. 190, drawing a comparison from national law.

138 Obviously, a delegation of powers would not be possible if formally prohibited: General Court, Case T-333/99, *X v. ECB*, ECLI:EU:T:2001:251, para. 102: "a delegation of implementing powers is lawful under Community law, provided that it is not formally prohibited by any legislative provision".

139 ECJ, Case C-9/56, *Meroni v. High Authority*, judgement of 13 June 1985, ECLI:EU:C:1958:7, p. 151; General Court, Case T-311/06, *FMC Chemical and Arysta Lifesciences v. EFSA*, judgement of 29 January 2009, ECLI:EU:T:2008:205, para. 66: "the delegating authority must take an express decision".

140 This has been confirmed in Avis 1/76, *Accord relatif à l'institution d'un Fonds européen d'immobilisation de la navigation intérieure*, opinion of 26 April 1977, ECLI:EU:C:1977:63, para. 16: "it is unnecessary in this opinion to solve the problem thus posed. In fact, the provisions of the Statute define and limit the powers which the latter grants to the organs of the Fund so clearly and precisely that in this case they are only executive powers".

141 ECJ, Case C-9/56, *Meroni v. High Authority*, judgement of 13 June 1985, ECLI:EU:C:1958:7, p. 150.

142 ECJ, Case C-9/56, *Meroni v. High Authority*, judgement of 13 June 1985, ECLI:EU:C:1958:7, p. 152.

ensure that they fall within the category of clearly defined executive powers and do not lead to discretionary powers.

How can this requirement be achieved? As the first step now consists of elaborating common minimum standards, in a next step a strengthened ethics body could be tasked to enforce these developed standards, taking into account EU values and principles.[143] These minimum standards could be annexed to the enhanced ethics body's mandate, including the obligation to update them by referring to the already existing wording in Article 9(2) IIA-IBES.[144] Hence, the more precise and specific an (updated) mandate of the IBES, the more it is compliant with the *Meroni* doctrine. This applies for both the substance, but also for possible sanctions.[145]

ECJ president *Lenaerts* has made a clear statement on the question of the "transfer of authority to an internal body": according to him, such "acts simply tend to improve the quality of Community lawmaking or of the enforcement of Community law" and the "delegation to an independent body cannot be a threat to the constitutional 'balance of powers' within the Community legal order".[146] While this statement was not made with regard to IBES, according to the author it can also be applied in case of this ethics body.

To conclude, even though the IBES does not concern the legislative process and is not a private entity but an EU body with delegated competences, the requirements of the *Meroni* doctrine must be – and indeed are – safeguarded.

### 2. The institutional balance, the separation of powers and the independent mandate

The *Meroni* doctrine is related to a second argument that is often invoked as a possible obstacle: the institutional balance. This was recently summarized by the ECJ as follows: "Article 13(2) TEU provides that each EU institution is to act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out therein. That provision reflects the principle of institutional balance, characteristic of the institutional structure of the European Union, a principle which requires that each of the institutions must exercise its powers with due regard for the powers of the other institutions".[147]

143 See also below section D.

144 "A review may be considered necessary in particular due to developments in the case-law of the Court of Justice of the European Union, to new or modified ethical standards by international organisations, to new technical developments or to the need for clarification of common minimum standards as a result of recurring issues".

145 *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025). He mentions that to "ensure compliance with the Meroni doctrine when the body adopts sanctions, the institutions could pre-define the possible infringements and the factors to be taken into account when determining the sanction".

146 *Lenaerts*, EL Rev. 1993/1, p. 43.

147 ECJ, Case C-551/21, *Commission v. Council (Signature d'accords internationaux)*, judgement of 9 April 2024, ECLI:EU:C:2024:281, para. 62.

In the same judgement, the Court also emphasized "that the EU institutions are to practice mutual sincere cooperation",[148] referring to the same Article 13(2) TEU. A cooperation to enhance ethical behaviour, linked to various provisions of EU primary law (for example, independence), EU values, etc. would not infringe but rather strengthen what is enshrined in EU primary law. In literature, the purpose of the institutional framework of Article 13 TEU has been described as to "promote the EU values, advance its objectives, serve its interests, those of its citizens and those of the Member States, and ensure the consistency, effectiveness and continuity of the EU's policies and actions".[149] A body that ensures integrity, transparency, and attempts to avoid conflicts of interest falls within this purpose.

Likewise, the separation of powers is sometimes invoked as another argument against an independent ethics body. *Jacqué* has aptly emphasized that for the CJEU the institutional balance "is a substitute for the principle of the separation of powers that, in Montesquieu's original exposition of his philosophy, aimed to protect individuals against the abuse of power".[150] The separation of powers has also been covered by the ECJ, but in the context of national situations. It is strongly related to the value of the rule of law and especially to the independence of the judiciary, in relation to the legislative and the executive branches of power.[151] Overall, this concept was developed by *Montesquieu* to avoid misuse of power.[152] An ethics body that ensures integrity, transparency, and attempts to avoid conflicts of interest is an important tool against misuse of power. Consequently, the separation of powers is no argument against an independent ethics body, rather quite the opposite.

In the case of the EP, sometimes the independent (or free) mandate is mentioned as another argument against an independent ethics body. The "direct universal suffrage Act" mentions in that regard that the Members of the EP "shall vote on an individual and personal basis" and that they "shall not be bound by any instructions and shall not receive a binding mandate".[153] Instructions and binding mandate have to be interpreted as an external input, and instructions seem to refer more to an individual input. Independence also comes with responsibility, and independence cannot be interpreted as a free pass for conflicts of interest. Therefore, the notion of

148 ECJ, Case C-551/21, *Commission v. Council (Signature d'accords internationaux)*, judgement of 9 April 2024, ECLI:EU:C:2024:281, para. 63.

149 *Böttner*, p. 36 f.

150 *Jacqué*, CML Rev. 2004/2, p. 384.

151 See, for example, ECJ, Case C-357/19, *Euro Box Promotion and Others*, judgement of 21 December 2021, ECLI:EU:C:2021:1034, para. 228. On the link to the case-law of the European Court of Human Rights (ECtHR), see ECJ, Case C-585/18, *A.K. (Independence of the Disciplinary Chamber of the Supreme Court)*, judgement of 19 November 2019, ECLI:EU:C:2019:982, para. 130.

152 *Montesquieu*, livre onzième, chapitre VI, p. 152.

153 Act concerning the election of the representatives of the Assembly by direct universal suffrage, OJ L 278 of 8/10/1976, p. 5, as amended by OJ L 178 of 16/7/2018, p. 1, Art. 6. See also recently Decision of the Bureau concerning the Implementing Measures for the Statute for Members of the European Parliament and repealing the Decision of the Bureau of 19 May and 9 July 2008, OJ C/2024/2814 of 26 April 2024. See also Art. 2 EP RoP.

an independent mandate is preferable to a free mandate, as the latter could suggest a lack of commitment to standards of integrity, transparency, and ethics. Thus, obligations to behave with transparency, integrity, and to avoid conflicts of interest cannot be seen as a breach of this provision.

In conclusion, neither the *Meroni* doctrine, nor the institutional balance, the separation of powers or the independent mandate are obstacles for or valid reasons against an IBES, although sometimes invoked in this regard.

## II. Room for improvement

Taking into account the legal framework outlined so far, what improvements could be made regarding both substantive aspects (Parties, members, and staff; C.II.1.) and procedural issues (enforcement, monitoring, investigation, and sanctions; C.II.2.)?

### 1. Parties, members and staff

The number of Parties can and should be increased, also comprising the EUCO. In the case of the EUCO, both its President and the other members (Article 15[2] TEU)[154] should be covered. In a similar vein, all Council members should be covered (Article 16[2] TEU), not just "the representatives at ministerial level of the Member State holding the Presidency of the Council", as proposed by the Commission. Attempting to anticipate a possible argument why they cannot be included, we have already seen different possibilities for delimitating their national vs. EU-related activities, via a positive wording (ECOSOC) or a negative wording (CoR). In addition, the current wording of Article 1(4) IIA-IBES ("minimum standards shall only be relevant for the exercise of the European Union mandate") should suffice. As mentioned above,[155] the term "entities" comprises EU "institutions, bodies, offices and agencies". Other entities can (cf. Article 20 IIA-IBES) and should join voluntarily. EU agencies could, of course, also be constrained to join by changing the relevant underlying EU regulation.[156]

At the moment, the independent experts are only observers. Integrating independent experts, which have to fulfil high requirements in terms of qualification and integrity, as full members would strengthen such an independent ethics body.[157]

154 That is to say, the Heads of State or Government of the Member States, and the President of the Commission. The latter is already currently bound by the IIA-IBES, similar as the High Representative.

155 Above note 17.

156 See also EP resolution IBES 2021 cited above note 38, at pt. 8: "co-legislators may decide to bind agencies through their founding regulations".

157 EP resolution IBES July 2023 cited above note 42, at pt. 4: "Regrets the fact that the Commission has proposed that five independent experts be involved only as observers rather than as full members; recalls that Parliament's proposal of 2021 envisaged a nine-person body composed of independent ethics experts, instead of one member from each participating institution".

Moreover, in case the independent experts are consulted they can only issue a "confidential and non-binding written opinion" (Article 7[3] IIA-IBES), and they only "provide an anonymized and aggregated annual account" (Article 7[4] IIA-IBES). Obviously, the EU institutions fear a naming and shaming. Nonetheless, it should be considered, if this could not constitute an effective tool, as long as combined with the necessary legal safeguards.[158]

Another question is whether staff could also be subjected to an independent ethics body, as demanded by the EP.[159] An important and already existing provision in that regard is Article 2 Staff Regulations.[160] It requires in its first paragraph that each institution must "determine who within it shall exercise the powers conferred by these Staff Regulations on the appointing authority". The second paragraph then foresees the possibility, that "one or more institutions may entrust to any one of them or to an inter-institutional body the exercise of some or all of the powers conferred on the Appointing Authority other than decisions relating to appointments, promotions or transfers of officials". The EP has also addressed another provision of the Staff Regulations.[161] Various provisions of the Staff Regulations refer to the consultation of a Joint Committee, for example, Article 13 (potentially incompatible gainful employment of spouse) or Article 16 (post-term appointment of benefits). Article 9(1a) Staff Regulations now provides that "a common Joint Committee may be established for two or more institutions", also mentioning that the "other Committees referred to in paragraph 1 and the Disciplinary Board may be established as common bodies by two or more agencies".[162] Hence, it is already now possible to include the staff of the Parties to the IIA-IBES.

While many of the common minimum standards (Article 8[2] IIA-IBES) can be related to conflicts of interest, it would also be advisable to explicitly mention conflicts of interest as the first *litera* of this list. The follow-up in the context of the self-assessment could be mandatory, not only voluntary (now, only when deemed appropriate; Article 10[7] IIA-IBES). Likewise, the "abstract" interpretation of the

158 As also mentioned above, section C.I.1., in the context of the *Meroni* doctrine.

159 EP resolution IBES July 2023 cited above note 42, at pt. 10: "Regrets the fact that the Commission's proposal covers members of the participating institutions but does not concern staff, who are subject to common obligations in the Staff Regulations; reiterates its call to include the staff of the participating institutions within the scope of the ethics body's work".

160 Staff Regulations cited above note 13.

161 EP resolution IBES 2021 cited above note 38, at pt. 7: "competence could be delegated to the independent EU ethics body by making use of the enabling clauses in Art. 2(2) or 9(1), or both, and would concern the monitoring and enforcement of the ethical obligations while other professional obligations would continue to be enforced by the appointing authorities". Nonetheless, the preferable solution would be Art. 2(2) Staff regulations, as in the case of Art. 9(1)(a) first sentence (N.B: the second sentence is about agencies) Staff Regulations, the requirements of Annex II 'Composition and procedure of the bodies provided for in Art. 9 of the Staff Regulations' have to be taken into account.

162 These other committees are a Staff Committee, one or more Joint Advisory Committees, a Reports Committee, and an Invalidity Committee.

common minimum standards (Article 6[2][d] IIA-IBES) could be turned into an individualized and binding[163] interpretation.

### 2. Enforcement, monitoring, investigation and sanctions

In terms of enforcement, the French HATVP and the Canadian CIEC stand out as best-practice standards. Even among the EU institutions, different approaches can be identified.[164] As mentioned above, an analysis of the enforcement powers of the IBES is quite short, as there are none. Article 6(3) IIA-IBES states that it shall "not be competent as regards the application of a Party's internal rules to individual cases". The EP has strongly criticized the status quo, referring to "the shortcomings of the current EU ethical framework [that] derive largely from the fact that it relies on a self-regulatory approach, the absence of EU criminal law and insufficient resources and competences to verify information".[165] Against this background, a future IBES should be tasked with monitoring and sanctions.

Why does monitoring matter? In a different resolution, the EP has called for the "right to start investigations on its own and to conduct on-the-spot and records-based investigations using the information that it has collected or that it has received from third parties".[166] Declarations of interest are useless in case the information provided by members (or staff) is not checked. A noteworthy example is a Member of the EP, who in 2012 declared himself "Master of the Univers[e]".[167] Hence, it is not surprising that the EP has also demanded that "the body should also have the possibility to check the veracity of declarations of financial interests and assets".[168] This would fulfil an important preventive function. The IBES should be able to check not only the declarations provided by members but should also be able to rely on external input. *Alemanno* suggests a "EU public registry for all declarable

163 On sanctions, see below at note 196.

164 *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025); *Frischhut*, IEB.

165 EP resolution IBES 2021 cited above note 38, at recital J.

166 EP resolution IBES Feb. 2023 cited above note 40, at pt. 6.

167 *Rohde*, Declaration of financial interest, available at: http://www.europarl.europa.eu/ep-dif/96710_01-03-2012.pdf (7/6/2025). See also *Grad/Frischhut*, in: Dialer/Richter (eds.), p. 315.

168 EP resolution IBES Feb. 2023 cited above note 40, at pt. 6. See also EP resolution IBES 2021 cited above note 38, at pt. 10: "Considers that this monitoring capacity should include, among other aspects, the possibility to check the veracity of the declaration of financial interests, which should be submitted by covered individuals directly to the EU ethics body, in addition to Parliament with respect to Commissioners-designate, to ensure that they arrive the fastest way possible to all those responsible for democratic and/or public scrutiny as stipulated by the applicable rules, the handling of conflicts of interest, rules related to lobbying activities, checks on transparency obligations, including in the legislative procedure, and the verification of compliance with revolving door rules and more generally verification of compliance with all provisions of codes of conduct and applicable rules on transparency, ethics and integrity".

information" for both members and staff.[169] Existing safeguards, as in the case of data protection,[170] would also have to be guaranteed by IBES; other tools might have to be added, such as harmonized staff whistleblowing[171] protection.[172] In the case of staff, the body could cover the monitoring and enforcement of conflicts of interest,[173] which should be integrated more explicitly into the IBES mandate.[174] As mentioned above, the staff regulations allow for the transfer of some powers.[175] Nevertheless, Annex IV, entitled Disciplinary proceedings, and its safeguards[176] (right of the official to comment, to be informed, etc.) must be adhered to in any case.[177] As mentioned above, Article 47 CFR is another reason for guaranteeing the same rights, as already required by the *Meroni* doctrine.

In the case of alleged misconduct, who can currently[178] take the initiative and investigate? According to Article 86 Staff Regulations, both the Appointing Authority and the European Anti-Fraud Office (OLAF) "may launch administrative investigations", if they become aware of evidence of failure by an official or former official to comply with the obligations under the Staff Regulations.[179] Concerning members, according to the EP's Rules of Procedure,[180] these tasks fall in the com-

169 *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025).

170 Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC, OJ L 295 of 21 November 2018, p. 39.

171 Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law, OJ L 305 of 26 November 2019, p. 17, as amended by OJ L/2024/3015 of 12 December 2024.

172 *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025). See also EP resolution IBES 2021 cited above note 38, at pt. 18.

173 This could cover Art. 11, 11a, and 12 (conflicts of interest), Art. 12b (outside activities), and Art. 13 (gainful employment of spouses) Staff Regulations.

174 Other obligations (for example, Art. 12 on psychological or sexual harassment) would not be transferred.

175 Art. 2(2) (transfer "to an inter-institutional body the exercise of some or all of the powers conferred on the Appointing Authority") and Art. 9(1a) Staff regulations.

176 Including the above-mentioned (note 170) data protection.

177 See also, *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025).

178 Against a change of the current situation: EP resolution IBES 2021 cited above note 38, at pt. 3: "Believes that in the scope of its duties, including regarding monitoring and investigating, the body should rely on the existing powers of institutions to ask their members for information or on the agreement of national authorities to share information; underlines that Parliament's President, the Commission's College or the respective authority of a participating institution will remain in charge of the final decision-making power until a possible revision of the rules".

179 Art. 86 Staff Regulations refers to Annex IX entitled "Disciplinary proceedings".

180 *European Parliament*, Rules of Procedure of the European Parliament – January 2025, available at: https://www.europarl.europa.eu/doceo/document/lastrules/TOC_EN.html?redirect (7/6/2025) [hereinafter EP RoP]. For a recent change, see EP decision amendments RoP cited above note 12.

petence of the President of the EP, and the Advisory Committee.[181] In the case of the European Commission, it is the task of the Commission President, assisted by an "Independent Ethical Committee" to ensure the application of its Code of Conduct.[182] The IBES should also enjoy this right of initiative.[183] The impetus for investigating a case should be possible both in the case of information derived from declarations of members or staff, as well as from Non-governmental organizations (NGOs), the media, or other watchdogs.[184]

When it comes to investigation, apart from the above-mentioned safeguards (CFR, data protection, etc.), powers transferred to the IBES following the *Meroni* doctrine (respectively the enabling clauses of the Staff Regulations) should not conflict with OLAF,[185] which is in charge of combatting fraud,[186] corruption, and any other illegal activity adversely affecting the EU's financial interests.[187] The EU's ethics body could be in charge of handling "members' misconducts that, by failing to qualify as "serious", escape OLAF's investigations".[188] Likewise, concerning investigation, the IBES should not overlap but cooperate with the European Public Prosecutor's Office (EPPO),[189] in charge of criminal offences affecting the financial interests of the EU. The list can be extended to the European Ombuds[wo]man, in charge of "maladministration in the activities of the Union institutions, bodies, offices or agencies"[190] and the Court of Auditors, who shall "examine the accounts of all revenue and expenditure of the Union".[191] Likewise, the EP has also demanded

181 EP RoP, Annex I (Code of Conduct for Members of the European Parliament regarding integrity and transparency), Art. 11(1): "Where there is reason to believe that a Member of the European Parliament may have breached this Code of Conduct, the President shall refer the matter to the Advisory Committee".

182 Commission Code of Conduct (see note 31), Art. 13.

183 See also EP resolution IBES 2021 cited above note 38, at pt. 16.

184 On independent media and their function "fulfilling the general interest function of 'public watchdog'", see Regulation (EU) 2024/1083 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), OJ L/2024/1083 of 17 April 2024, recital 1. See also EP resolution IBES 2021 cited above note 38, at pt. 16.

185 See also, EP resolution IBES 2021 cited above note 38, at pt. 17: "Stresses that requesting tax documents and bank records are interventions in private law, for which there must be serious allegations that fall within the competence of OLAF".

186 Art. 325 TFEU, concerning fraud and other illegal activities affecting the financial interests of the EU.

187 Commission Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office (OLAF), OJ L 136 of 31 May 1999, p. 20, as amended by OJ L 333 of 19 December 2015, p. 148, Art. 2.

188 *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025).

189 Council Regulation (EU) 2017/1939 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO'), OJ L 283 of 31 October 2017, p. 1, as amended by OJ L 431 of 21 December 2020, p. 1; Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198 of 28 July 2017, p. 29.

190 Art. 228 TFEU, except for the CJEU "acting in its judicial role".

191 Art. 287(1) TFEU.

that the IBES "should have the possibility to engage in cooperation and information exchange with relevant EU bodies such as OLAF, EPPO, the Ombudsman and the European Court of Auditors, within their respective mandates".[192] Cooperation with national authorities, for example concerning the sharing of information, might be necessary but will depend on a mutual agreement.[193] This can be important if relevant information is in the hands of national authorities but would be of relevance for the IBES.[194] The EP has been more reluctant and, in addition to awareness-raising and ethical guidance, stated that "decision-making powers should remain within the respective institution until the EU ethics body is entrusted with decision-making powers on a proper legal basis".[195]

Besides monitoring and investigation, including on its own initiative, let us, last but not least, turn to the question of sanctions. Here, the EP was not very ambitious, stating "that the body should issue [only] recommendations for sanctions to the Appointing Authority in dealing with ethical obligations for staff, and that in relation to Members of the European Parliament or Commissioners, the body should [only] issue recommendations to the responsible authorities of the respective participating institutions".[196] In the case of staff, the IBES could take over breaches of ethical obligations, especially conflicts of interest.[197] With regard to members, certain sanctions would require a change of the relevant documents. In the case of the EP, currently Rule 21 EP RoP foresees rules for an "early termination of an office", which involved the Conference of the Presidents in case of the President, a Vice-President, a Quaestor, a Chair or Vice-Chair of a committee, a Chair or Vice-Chair of an interparliamentary delegation, etc., as well as the President (initiative) and the Conference of the Presidents (proposal) in case of breaches of the EP's Code of Conduct[198] by a rapporteur. In the case of the Commission, Articles 245 ("duty to behave with integrity and discretion") and 247 ("serious misconduct") TFEU foresee a competence of the Court of Justice that should not be touched upon.

Hence, one can conclude that it will be easier to transfer "soft penalties" ("i.e. reputational, as well those affecting the position of the member within the institution, but not necessarily those that are of irreversible nature, such a termination")[199] and not hard ones. As mentioned above, the same analysis applies for staff. As

192 EP resolution IBES 2021 cited above note 38, at pt. 8.
193 Cf. also EP resolution IBES 2021 cited above note 38, at pt. 3.
194 In the case of the French HATVP, "French tax authorities have to deliver all the necessary information, so that the HATVP can assess the completeness, accuracy and sincerity of the declarations of assets and interests"; *Frischhut*, IEB p. 55 f.
195 EP resolution IBES 2021 cited above note 38, at pt. 9.
196 EP resolution IBES 2021 cited above note 38, at pt. 19, also states "that the ethics body [should] issue recommendations that can serve as precedents in identical or similar cases". See also EP resolution IBES Feb. 2023 cited above note 40, at pt. 12.
197 See above note 173.
198 EP RoP, Annex I cited above note 181.
199 *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025).

we have already seen, Article 2(2) Staff Regulations excludes a transfer concerning "decisions relating to appointments, promotions or transfers of officials". In our context, the exclusion of a transfer of officials might be the most important issue.

### D. Conclusion: a balanced step forward

In the above-mentioned studies concerning France and Canada we have seen ethics bodies vested with strong powers, also concerning enforcement. An IBES with similar powers as the French HATVP could have been described as a full glass. Besides political will, in EU law the principle of conferral and the question of an appropriate legal basis are often the bottleneck for more ambitious solutions; a challenge, that does not exist at national level. From the above-mentioned possible legal bases, at the moment an IIA seems like an appropriate one, and a future treaty reform should foresee a distinct legal basis for a stronger EU ethics body.

In a nutshell, the IBES reduces substantive fragmentation through minimum standards. While some fragmentation in enforcement remains, the IBES can at least develop minimum standards concerning compliance, the composition and tasks of internal ethics bodies, and measures in the case of breaches. One important limitation is that the IBES cannot decide individual cases (Article 6[3] IIA-IBES). Independent experts may only be consulted if the relevant party so decides (Article 7[1] IIA-IBES). This aligns with the broader approach that Parties prefer voluntary decisions over imposed obligations. Accordingly, it is not surprising that the opinion of independent experts is confidential and non-binding (Article 7[3] IIA-IBES). Similarly, each party may follow but is not required to follow the IBES' recommendations (Article 10[7] IIA-IBES). In conclusion, the IBES cannot be classified as a strong watchdog with monitoring, investigative, and sanctioning powers. Its authority is relatively soft, as is the role of independent experts. The hope is that voluntary rules will be adhered to more readily than coercive ones and that this body will contribute to strengthening the role of ethics in the EU.

There are various elements of this IIA-IBES that should be welcomed. This applies to the idea of 'minimum harmonization', also given the significant number of Parties, and to the rules on future updates. The number of Parties is remarkable and key, because a scandal affecting a single institution at the EU level will always destroy trust in the EU as such, as most citizens will not be able to differentiate between the various EU institutions.

Still, there are aspects that can be improved, making the glass even fuller. The follow-up process to the self-assessment could be enhanced. It could at least have been foreseen that a Party not following the analysis of independent experts should be obliged to provide comprehensive reasons, which should then also be published on the website of the ethics body. More Parties (EUCO, but also EIB, agencies, etc.) should join and more 'members of the Parties' (especially all Council and EUCO members) should be added. Likewise, a stronger involvement of the independent experts would make sense, at least in a next step. As mentioned above, it cannot be excluded that it makes sense to harmonize the current standards with current

or former members of the existing internal bodies responsible for ethical questions of the Parties (Article 22[1] IIA-IBES), if this helps to benefit from existing knowledge. In the long run, independent experts can then apply them to individual cases and provide valuable input on how to further develop these common minimum standards.

Irrespective of what the first common minimum standards will look like, according to the author, they should be based on the EU's values (Article 2 TEU) and ethical and legal principles.[200] As depicted above, conflicts of interest can occur at the beginning, during, and at the end of membership or employment.[201] Following the broad understanding of conflicts of interest, they can be seen as an umbrella term covering the different areas of the current common minimum standards. This approach could be a fruitful combination of legal and ethical requirements. The ECJ applies a judicial self-restraint concerning the ethical perspective,[202] especially in case an ethical topic cannot be linked to a legal basis. As depicted above, in case there is a link between EU law (for example, Article 285 TFEU) and the ethical concept of avoiding a conflict of interest, the ECJ is willing to rule on this topic and make quite far-reaching statements.[203] The judicial self-restraint of the ECJ on more ethical issues can form a good basis for a division of labour between the ECJ (law) and the IBES (ethics). As mentioned above, the CJEU's power enshrined in Article 19(1) TEU ("ensure that in the interpretation and application of the Treaties the law is observed") shall not be impaired. The focus on EU values and principles is also important against the background of the *Meroni* doctrine. A clear description of the mandate, in terms of applicable standards based on values and principles, can help to ensure that the activities of the body are qualified as executive and not discretionary.

The extent to which the glass can be filled largely depends on the availability of an appropriate legal basis. While an IBES with strong powers, like the French HATVP, is not feasible, could the EU allow for a stronger IBES than the current status quo? Already now the *Meroni* doctrine allows for a transfer of competences from EU primary law and, conversely, this also applies for EU secondary law (*argumentum a maiore ad minus*). In the case of an IIA qualified as one "directly derived from Treaty provisions",[204] such an IIA would enjoy a legal mezzanine-rank[205] between EU primary and secondary law. These two arguments, the ability to change secondary law because of *Meroni* and the mezzanine-rank, would make the establishment of a stronger IBES possible.

200 See also *Frischhut*, IEB p. 28.
201 They can also be clustered in different categories (actual, apparent or perceived, potential) and types (in role and out of role).
202 See, for example, ECJ, Case C-506/06, *Mayr*, judgement of 26 February 2008, ECLI:EU:C:2008:119, para. 38.
203 ECJ, Case C-130/19, *Court of Auditors v. Pinxten*, judgement of 30 September 2021, ECLI:EU:C:2021:782; and ECJ, Case C-291/22 P, *D & A Pharma v. Commission and EMA*, judgement of 14 March 2024, ECLI:EU:C:2024:228.
204 *Monar*, CML Rev. 1994/4, p. 697.
205 *Alemanno,* Legal Study on an EU Ethics Body, available at: https://extranet.greens-efa.eu/public/media/file/9012/6725 (7/6/2025).

While possible arguments (for example, the institutional balance) against a strong body ensuring integrity, transparency,[206] and trying to avoid conflicts of interest are not convincing, a strong ethics body should itself fulfil the highest standards when it comes to the independence, qualification, and integrity of its members. Therefore, besides high substantive selection criteria, it could be recommendable to foresee an EU body[207] like the one of Article 255 TFEU for CJEU Judges and Advocates General, selecting the independent experts for IBES.

In EU law more broadly, one can observe an increasing role for ethics since the 1990s.[208] As discussed in the introduction, various initiatives – especially since 2000 – along with multiple scandals have paved the way for the establishment of an ethics body covering all EU institutions. The IIA-IBES represents an incremental step in the continued strengthening of ethics within the EU. In conclusion, the level of water in this glass has been steadily rising, and the IBES should be viewed as half full rather than half empty. If the IBES functions effectively and develops an initial set of common minimum standards, then further steps will not only be legally possible but should logically follow. In this sense, the IBES can be regarded as a balanced solution – an important step in the right direction – consistent with the EU's overall step-by-step approach to integration.

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206 *Ammann*, in: Staudinger/Prickartz/Pirker/Kirchmair/Hummelbrunner (eds.), p. 15 convincingly argued that transparency alone might not be enough and that an emphasis also has to be placed on integrity.

207 See opinion A.G. *Emiliou*, Case C-119/23, *Valančius*, ECLI:EU:C:2024:325, at paras 52 (there in note 36).

208 *Frischhut*, Ethical Spirit, p. 144.

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