



ELB Blogpost 2/2023, 16 January 2023

Tags: institutional integrity, Qatargate, Qatar, Eva Kaili, Panzeri, corruption, ethics, integrity, conduct, conflict of interest, revolving door, transparency, Uber files

Topics: Administrative Law, Criminal Proceedings, Institutional Law, Transparency

## **‘Qatargate’ exposes a long-denounced inadequacy of the ethics framework for members of the EU institutions**

*By Giuseppe Campa*

The President of the European Parliament, Roberta Metsola, [declared](#) that ‘European democracy is under attack’ and announced the launch of a reform process following the arrests of four people on 9 December 2022, as a result of an [investigation](#) into suspicions of corruption to the benefit of Qatar. Among them, the most prominent name is Eva Kaili, at the time Vice-President of the European Parliament, who has as a result been [stripped](#) of her title. Former Member of the European Parliament (MEP) Pier Antonio Panzeri is also involved. The problem is that, considering the long-denounced shortcomings of the current ethics frameworks applicable to the members of EU institutions, it was just a matter of time before such a scandal occurred: action should have been taken earlier.

The goal of this post is to examine the most evident shortcomings of the current ethics frameworks for members and staff of the EU institutions involved in the legislative procedures, namely, the European Commission, the European Parliament and the Council of the European Union (Council): the excessive laxity of some of the provisions, the insufficient monitoring of the compliance with the rules and their weak enforcement failed to deter this scandal from happening.

Ethical rules are necessary to ensure that public officials serve the public interest (see [OECD, 2017](#), p. 3). Central to ethical conduct is the concept of conflict of interest. It is defined by the Organisation for Economic Co-operation and Development (OECD) as a ‘conflict between the public duty and private interests of public officials, in which public officials have private-capacity interests which could improperly influence the performance of their official duties and responsibilities’ (see [OECD, 2003](#), p. 15).

If the accusations against Eva Kaili are substantiated, they will not only be a violation of the European Parliament’s ethical rules, but also of criminal law. A sound ethics framework for the EU institutions is fundamental in a preventive logic because with adequate ethical rules, monitoring and consistent enforcement, ‘misconduct would be detected [...] earlier, possibly [...] before it ends up in the area of criminal law’ (see [Freund, 2022](#)).

I will firstly provide the reader with a schematic description of the current ethics frameworks; secondly, I will highlight the rules which need to be improved; thirdly, I will show the problems and laxity in rule enforcement; finally, I will present the prospects for reform that are currently being considered. Criminal law provisions relating to corruption will not be considered in this article.

## I. Description of the various ethical frameworks

It is important to point out that the ethical rules of the EU institutions are not harmonized: members and staff of the Commission, the Parliament and the Council are bound by different ethics frameworks with different obligations and enforcement mechanisms.

Ethical principles specifically addressed to Commissioners are laid down directly in the Treaties: [Article 17\(1\) and \(3\), TEU](#) and [Article 245 TFEU](#) lay down the principles of independence, integrity, and discretion during and after office; the latter provision even envisages sanctions in case of breach. Nevertheless, a ‘common core of ethics principles’ ([Alemanno](#), p. 10), such as independence, integrity and discretion during office, applies not only to Commissioners but also to Members of the European Parliament (MEPs) and staff: see Articles 1 and 2 of the [Code of Conduct for MEPs](#) and Article 11 of the [Staff Regulations](#) (see below). Common ethical principles or rules applicable to the representatives of the Member States in the Council, however, do not exist (European Court of Auditors (ECA), [Special report no 13/2019](#), para. 30).

Ethical principles are concretised into specific obligations by different legal sources:

- the [Code of Conduct for the Members of the European Commission](#) (CoC EC);
- the [Code of Conduct for Members of the European Parliament with respect to financial interests and conflicts of interest](#) (CoC EP) and [Rules of Procedure of the European Parliament](#) (RoP EP);
- the [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](#) (SR), which applies to personnel who do not hold political office (see Article 1a, SR).

These legal sources contain various kinds of obligations and restrictions:

- the obligation for Commissioners, MEPs and officials to disclose any financial interests which might create a conflict of interest in the performance of their duties by submitting a declaration (Article 3 [CoC EC](#); Article 4 [CoC EP](#); Article 11 [SR](#));
- the measures to be taken to tackle an actual conflict of interest (Article 4 [CoC EC](#); Article 3 [CoC EP](#); Article 11a [SR](#));
- restrictions on external activities during term of office (Article 8 [CoC EC](#); Article 2(c) [CoC EP](#); Article 12b [SR](#));
- restrictions on the acceptance of gifts (Article 6(4) [CoC EC](#); Article 5 [CoC EP](#); Article 11 [SR](#));
- rules on post-mandate activities (Article 11 [CoC EC](#); Article 6 [CoC EP](#); Article 16 [SR](#));
- provisions on transparency in EU Members’ meetings with lobbyists (Article 7 [CoC EC](#); [Rule 11\(3\) RoP EP](#));

- sanctions in case of breach of the ethical rules (Articles [245](#) and [247 TFEU](#), Article 12(3) [CoC EC](#); Article 8(3) [CoC EP](#), which refers to [Rule 176\(4\) to \(6\) RoP EP](#); Article 9, Annex IX [SR](#)).

Also significantly, the enforcement of these rules is specifically entrusted to different ethics bodies:

- an Independent Ethical Committee assists the President of the Commission in the application of the relevant Code of Conduct (Article 13 [CoC EC](#));
- at the request of the President of the European Parliament, an Advisory Committee assesses alleged breaches of the relevant Code of Conduct and advises the President on possible action to be taken (Article 7 [CoC EP](#));
- in the case of EU officials, the enforcement of the SR is entrusted to an Appointed Authority, different for each Institution (Article 9, Annex IX [SR](#));

As for the European Commission, there is an additional specific enforcement mechanism before the CJEU: if its members have breached their duty to behave with integrity and discretion or have been guilty of serious misconduct, the CJEU may, on application by the Council acting by a simple majority or the Commission, compulsorily retire them or deprive them of their right to a pension or other benefits (see Articles [245](#) and [247 TFEU](#)).

Furthermore, two other organisms are responsible of a general oversight function:

- the European Ombudsman conducts inquiries alleged instances of maladministration in the activities of the Union institutions, bodies, offices or agencies, with the exception of the CJEU acting in its judicial role ([Article 228\(1\) TFEU](#));
- the European Anti-Fraud Office (OLAF) is responsible for investigating *inter alia* serious misconduct which may constitute a breach of obligations by Commissioners, MEPs and staff likely to lead to disciplinary (and criminal) proceedings (Article 2(1) [Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office](#)).

As it can be seen, the legal framework is very complex and fragmented. Due to space constraints, it is not possible to analyse here in detail each of the previously mentioned provisions (for a more detailed overview of all the applicable rules and principles, see [Grad, Frischhut](#)): the next section will focus solely on those rules which are blatantly lax and need to be tightened. The following section will consider the problems in rule enforcement.

## II. Shortcomings in the legal provisions

Some of the applicable rules are manifestly inadequate. Below are five glaring gaps.

First, there are no common ethical rules applicable to the representatives of the Member States in the Council: these public officials are only bound by national legislation. Concerning this situation, the European Court of Auditors has already concluded that ‘No assurance exists as to whether national requirements cover all the necessary elements and relevant risks with respect to the nature of the position and work they perform’ (ECA, [Special report no 13/2019](#), para. 31).

Second, MEPs are allowed to perform external activities during their term of office: MEPs just need to disclose such activities in their declaration of financial interests (Article 4(2)(c) [CoC EP](#)). The only banned external activity during mandate for MEPs is paid professional lobbying directly linked to the Union decision-making process (Article 2(c), [CoC EP](#)). Note that, on the contrary, such a ban on external activities is in place, with reasonable exceptions, for Commissioners, as laid out by Article 11 [CoC EC](#). The lack of a ban on outside activities for MEPs paves the way for conflicts of interest to arise. Moreover, the NGO Transparency International found out in a [report \(2021a\)](#) that over one quarter (27%) of MEPs have declared earnings stemming from outside activities, and the actual figures may be higher, considering the declarations are not subject to institutional checks (ECA, [Special report no 13/2019](#), paras 46–50): as a result, some MEPs have included generic job descriptions in their declarations such as ‘economic activity’, or ‘consultancies’.

Third, the rules on post-mandate activities (Article 6 [CoC EP](#)) do not impose a ‘cooling-off’ period for MEPs, i.e. a period of time during which it is forbidden for former public officials to lobby their past organisation: this is a particularly relevant loophole, considering that the establishment of such legal instrument is recommended by OECD’s [Principles for Transparency and Integrity in Lobbying](#) (para. 7). ‘Cooling-off’ periods are useful to prevent the so-called ‘revolving door’ phenomenon, which consists in the ‘movement of key actors between the private and public sectors’ that can give rise to conflicts of interest: a classic example is the situation in which ‘public officials move to lucrative private-sector positions in which they may use their government experience and connections [...] to unfairly benefit their new employer’ (see [OECD, 2010](#), p. 18). A ‘cooling-off’ period would have prevented former MEP Panzeri from profiting off his network of contacts in this particular case. By contrast, ‘cooling-off’ periods are set for Commissioners (2 years, Article 11(4) [CoC EC](#)) and staff (1 year, Article 16 [SR](#)).

Fourth, the only members of the EU institutions who are bound by the obligation to publish meetings with lobbyists are Commissioners and the members of their cabinet (Article 7(2) [CoC EC](#); [Commission Decision 2014/839/EU, Euratom](#)), Directors-General of the Commission ([Commission Decision 2014/838/EU, Euratom](#)), Rapporteurs, Shadow Rapporteurs and Committee Chairs in the European Parliament ([Rule 11\(3\) RoP EP](#)). Therefore, it is not necessary to publish meetings with lobbyists for MEPs without any of the aforementioned roles, members of the Council and lower-level staff of all the considered institutions: some important targets for lobbying activities such as desk-officers in the European Commission and Accredited Parliamentary Assistants fall in the latter category. Moreover, as Transparency International found in a [report \(2022\)](#), the obligation to publish lobby meetings for MEPs with the previously mentioned roles is not rigorously respected. For a definition of lobbying see Article 3 of the [Interinstitutional Agreement of 20 May 2021 on a mandatory transparency register](#) (IIA 2021).

Fifth, there are no rules whatsoever in place to assure transparency in meetings between members or staff of the EU institutions and public authorities of third countries (see Article 4(2)(d) [IIA 2021](#)).

### III. Shortcomings in rules enforcement

I will now analyse the shortcomings in rule enforcement.

First, the provisions on the composition of the previously mentioned ethics bodies raise doubts on their independence (see [Alemanno](#), p. 22; [Giménez Bofarull et al. \(2021a\)](#), pp. 48–49; [Giménez Bofarull et al. \(2021b\)](#), p. 48): the Advisory Committee of the European Parliament is composed of five MEPs, appointed by the EP President (Article 7(2) [CoC EP](#)), the three members of the Independent Ethical Committee are appointed by the Commission, on a proposal from the Commission President (Article 12(4) [CoC EC](#)) and the members of the Appointing Authority for staff are public officials (Articles 5 and 6, Annex IX [SR](#)).

Second, the Independent Ethical Committee and the Advisory Committee do not have the power to initiate investigations regarding breaches of ethics obligations: both can act only upon request by the president of the respective institution (Article 12(1) [CoC EC](#); Articles 7(4) and 8(1) [CoC EP](#)). This can become a problem, as the presidents ‘may prefer not to give additional visibility to a topic by soliciting an opinion from the Committee[s]’ ([Giménez Bofarull et al. \(2021a\)](#), p. 49). If you add that declarations of financial interests are a very important instrument to prevent potential conflicts of interest and that there is not any written standard procedure for checking their correctness or completeness (ECA, [Special report no 13/2019](#), para. 46), it is clear that ‘the EU ethics framework lacks autonomous monitoring capacity’ (see [Alemanno](#), pp. 23 and 11–15).

Third, the majority of the various ethics oversight organisms can only issue ‘recommendations’ or ‘opinions’. This is true not only for the Independent Ethical Committee (Article 13(3) [CoC EC](#)) and the Advisory Committee (Article 8(2) and (3) [CoC EP](#)), but also for the European Ombudsman (see Article 228(1) TFEU and Articles 1 and 4 of the [Statute of the European Ombudsman](#)) and OLAF (Article 11 [Regulation No 883/2013](#)). As a result, the decision to impose sanctions ultimately rests in the president of the relevant institution: therefore, ‘overlapping considerations of political nature [may] blur the evaluation of the ethical conduct’ ([Alemanno](#), p. 17). The only exceptions are the procedure before the CJEU for Commissioners laid out by Articles [245](#) and [247 TFEU](#) and the disciplinary proceedings before Appointed Authorities for staff (see Article 9, Annex IX [SR](#)).

Fourth, when a breach of the ethics obligations is assessed, sanctions are hardly ever applied. This is especially true for the European Parliament Advisory Committee, which dealt with a total of 26 MEPs involved in potential breaches of the Code of Conduct during the 2014–19 legislative term: none of them were sanctioned (see the [Annual Reports from 2015–2018](#) of the Advisory Committee of the Conduct of Members).

As for the Commission, Transparency International found that the opinions issued by the Independent Ethical Committee in recent years were indeed implemented ([Giménez Bofarull et al. \(2021a\)](#), p. 51). Nonetheless, rules on post-mandate activities are laxly applied. For example, where Commissioners and staff of the EU institutions intend to take up an activity within two years of the end of their mandate, they must request authorisation to do so (Article 11(2) and (3) [CoC EC](#); Article 16 [SR](#)): the organization Corporate Europe Observatory showed in a [report](#) that in 2019 the Commission services approved 363 requests for post-public office employment from officials, and it rejected just 3, with some very controversial cases. This led the European Ombudsman to launch an inquiry which found that the Commission should apply a more robust approach in relation to revolving door moves of its staff (see [Decision on how the European Commission manages ‘revolving door’ moves of its staff members \(OI/1/2021/KR\)](#)).

#### IV. Reform proposals

As it can be seen from the above, the ethical framework for members and staff of the EU institutions involved in the legislative process presents some serious shortcomings, pertaining not only to the strictness of the legal provisions but also to their monitoring and enforcement. It is not surprising that, without proper monitoring, scandals keep occurring (another recent serious scandal are the so-called 'Uber files', which reportedly show that former Commissioner Neelie Kroes lobbied on behalf of Uber during her 'cooling-off' period, see [The Guardian](#)), and that 'when breaches come to light, this is not usually due to systematic checks by the EU institutions [...], but rather journalistic work' ([Alemanno](#), p. 23), or, as in the most recent scandal at the EP, thanks to Belgian authorities.

It is clear that something needs to change.

A very promising reform was actually being considered even before 'Qatargate' took place: the establishment of an independent ethics body common to all EU institutions. This idea was firstly expressed by Commission President Ursula von der Leyen in the [2019 – 2024 Political Guidelines for the Commission](#) (p. 19), but the Commission did not follow up on this commitment with a proposal.

On 16 September 2021, the European Parliament took the initiative and proposed the conclusion of an interinstitutional agreement based on [Article 295 TFEU](#) to set up an independent EU ethics body for the Parliament and the Commission and open to the participation of all EU institutions, agencies and bodies, with a resolution ([resolution on Strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body 2020/2133\(INI\)](#)): the proposed ethics body would be competent to apply the current ethical frameworks to members and staff of the participating institutions (paras 5-8). It would consist of nine independent members, which would have to be selected among former judges and ethics experts (paras 25-32). The new ethics body would have a broad competence for the examination of conflicts of interest prior to, during and after public office (para. 24). Furthermore, it would be granted the power to initiate investigations on its own initiative and the power to adopt public recommendations to the respective institutions regarding their members and staff, including recommendations for sanctions (in particular, see paras 16 and 19).

Because of its independent composition and its investigative powers, the proposed independent ethics body would allow for proper monitoring and consistent enforcement of the ethical rules, thereby making it possible to detect misconduct early, hopefully preventing episodes of corruption. Furthermore, while such a body would not be able to adopt decisions, 'its recommendations to the institutions' decision-makers [would] be made public: [n]o more proceedings [would] end in deadlock' ([Freund, 2021](#)).

The establishment of such an ethics body would therefore consist in a fundamental improvement under most of the critical shortcomings in the enforcement of the current legal framework: it is the most urgent reform to undertake. Nonetheless, the Commission has expressed criticism towards many of the provisions in the Parliament's resolution in a [follow-up](#) on 4 April 2021 and has not issued a proposal yet, so the reform is currently stalling (for a detailed legal analysis of the Parliament's resolution and the Commission's follow-up, see [Schmulow, Hauser and Alemanno](#)).

As for the excessive laxity of the ethical rules, a necessary, easy-to-implement measure is the introduction of a 'cooling-off' period for MEPs; the obligation to publish meeting with lobbyists could also be extended to all MEPs and even to lower-level members of the institutions; transparency in meetings between members of the EU institutions and third-country representatives could also be increased.

On 15 December 2022, in the wake of the scandal, the European Parliament pleaded for these reforms in a [resolution on suspicions of corruption from Qatar and the broader need for transparency and accountability in the European institutions \(2022/3012\(RSP\)\)](#).

Hopefully, 'Qatargate', by exposing some of the shortcomings of the EU institutions' ethical framework, will be the turning point towards the establishment of an independent ethics body common to all EU institutions and other improvements on their ethics and transparency rules.