



Cabinet Informal Note: **Independent EU Ethics Body**

ACTORS

- **European Commission**
 - Political Guidelines (President Ursula von der Leyen)
- **Commissioner Jourová**
 - Vice-President for Values and Transparency
- **Commissioner Šefčovič**
 - Interinstitutional Relations and Foresight
- **Council**
 - The Council has been sceptical
- **EP AFCO Committee European Parliament**
 - AFCO rapporteur Daniel Freund
 - Committees for opinion: JURI, CONT, ECON

TIMELINE OF THE FILE

After a long consultation period, Green rapporteur Daniel Freund, produced a draft report in January 2021. The amendments to the draft report are set to be voted on in the Constitutional Affairs Committee (AFCO) in July 2021. A **Plenary vote** is then foreseen for **September 2021**. The Commission has promised to work on a proposal upon the basis of the parliamentary report, when/ if it is passed.

SUBSTANCE STATE OF PLAY

The draft report from rapporteur MEP Daniel Freund was welcomed by outspoken academia and civil society but was met with controversy in the AFCO Committee. Several amendments have been submitted by the EPP and the political right which question the body as such and raise constitutional concerns. There are also several amendments which would favour a body with purely advisory capacity. The JURI committee opinion has been relevant with regard to the process by which that committee scrutinizes the conflicts of interests of incoming Commissioner candidates.

SET UP

- **Independent**
 - All actors agree it needs to be independent. But little detail has been mentioned on budget, members, powers, systems of review, standing. Independence is crucial from an Ombudsman perspective
- **Inter-institutional**
 - Inter-Institutional Agreement seems to be the only viable option.
- **Binding decisions**

- Very controversial. Would make the body substantially different from the EO. It would also imply redress rights in front of Court.
- **Advisory powers**
 - VP Jourová believes these are crucial to allow the IEB to react quickly
- **Members based**
 - The draft report suggests a members based set-up. This seems to face little resistance. Proposal is for nine Members (3 selected by COM, 3 elected by EP, 3 assigned from former presidents of CJEU, ECA, EO). Overall, Members could be former EOs, national members of ethics authorities etc ...
- **Power to receive complaints**
 - No agreement on whether citizens should be allowed to complain as well.
- **Own initiative investigations**
 - No agreement yet.
- **Mandate/Form**
 - Many open questions remain. If the new entity is a new EU body, then will there be overlaps with the mandates of the Ombudsman and OLAF? Will this new body fall also under the mandate of the Ombudsman?
- **Secretariat**
 - Current proposal is to establish an independent secretariat

OMBUDSMAN PERSPECTIVE:

- Supports anything which improves ethics regulation in the EU.
- Many open questions how the body would work.
- Ombudsman's independence has to be safeguarded if there are any interactions with the IEB.
- Ombudsman happy to share institutional experience.
- Ombudsman office already carries out many tasks in the area of ethics of senior EU officials (except MEPs). E.g. EBA case, former COM Sec Gen case, former COM President case, G30 case, EMA executive director declaration of interests case, Special advisers case, Commissioners' travel expenses case,
- Ombudsman inquiries into EU administration, and not individuals.
- Ombudsmen could be a good source for candidates for Members.
- Any ethics body needs to be **truly independent and have own initiative powers**.

MODELS TO DRAW FROM

Irish Standards in Public Office Commission¹: board of members, chaired by a former judge, members include: senior civil servants, former MPs and the Irish ombudsman. The ethics body uses the same secretariat as the ombudsman's office. Besides overseeing compliance/ complaints, it also issues guidance and advice and undertakes outreach activities. Also covers lobbying and elections. The website has a convenient overview of all applicable rules and guidelines.

¹ Standards in Public Office Commission <https://www.sipo.ie/about/our-members/>

French High Authority for Transparency in Public Life¹: 9 members. President, appointed by the French president, as well as members of France's highest judicial bodies and members appointed by the parliament. They serve a non-renewable and non-revocable mandate, cannot seek or receive orders from the government. Financial autonomy - Solely subject to audit by court of auditors and the parliament. It deals with ethics of public officials and the regulation of lobbying. Receives and checks declarations of CoIs and declarations of financial interests. Cooperation with tax and anti-money laundering services.

¹ French High Authority for Transparency in Public Life <https://www.hatvp.fr/en/high-authority/ethics-of-publics-officials/list/#what-is-the-monitoring-process-rp>