



**European Committee
of the Regions**

Brussels, 21 April 2022

**211th MEETING OF THE BUREAU OF THE EUROPEAN COMMITTEE OF THE
REGIONS**

- 26 APRIL 2022 -

ITEM 6 D

ESTABLISHMENT OF A NEW EU ETHICS BODY

Submitted by the secretary-general

FOR DECISION

SUMMARY

Bureau meeting: 211

Date: 26/04/2022

Item 6 b

Establishment of a new EU ethics body

Type:

- Document for information / debate
- Document for decision
- Recommendation to the Assembly

Short description:

In September 2021, the European Parliament adopted a resolution on the establishment of an independent EU ethics body through the conclusion of an interinstitutional agreement with the Commission, while other institutions would have the possibility to participate in it after it was concluded. The Commission welcomes the establishment of such body but suggests concluding an interinstitutional instrument among all interested institutions. The Commission also considers that the remit of such body should be more limited than what is outlined in the Parliament's resolution. On 18 March 2022, the Commission President asked the CoR President to indicate by the end of April what the CoR's views would be on taking part in these interinstitutional discussions. Subject to the agreement of the CFAA on the basis of the written procedure, it is hereby proposed that the Bureau authorises the President to reply to the Commission that the CoR wishes to take part in these interinstitutional discussions.

The Bureau is invited to:

- Take a decision on the CoR taking part in the interinstitutional discussions in view of the establishment of a new EU ethics body.

Remarks:

The decision taken by the CFAA through the written procedure will be announced at the Bureau meeting.

1. Parliament's resolution

On 16 September 2021, the European Parliament adopted (with 224 abstentions) a resolution on strengthening transparency and integrity in the EU institutions by setting up an independent EU ethics body¹. In this resolution, the Parliament proposes the conclusion of an interinstitutional agreement with the Commission that would set up an independent EU ethics body for both Parliament and the Commission, which would be open to the participation of all EU institutions, bodies, offices and agencies.

The main features of this new ethics body would be as follows:

- It would consist of nine independent members, namely three selected by the Commission, three elected by Parliament and three assigned de jure from among former judges of the Court of Justice, the Court of Auditors and former European Ombudsmen.
- The new body would deal with ethical rules with regard to Commissioners, MEPs and staff of the Commission and Parliament, as well as with regard to members and staff of the participating institutions.
- All participating institutions would give the new ethics body a preventive role through awareness-raising and ethical guidance, as well as a compliance monitoring and advisory role with the power to issue recommendations on ethics, including on conflicts of interest.
- The new body would have a number of powers, including: checking the veracity of the declarations of financial interests submitted by members of the participating institutions (and managing a database containing all the declarations); opening investigations on its own initiative and conducting on-the-spot and records-based investigations based on information it has collected or received from third parties, e.g. journalists, the media, NGOs, whistleblowers, civil society or the European Ombudsman; protecting whistleblowers; and making reasoned recommendations for sanctions and transmitting all relevant information on the case to the competent authority.

2. Commission's reaction

On 18 February 2022, the Commission replied to Parliament's resolution². Although the tone of the Commission's reaction is conciliatory and diplomatic, its content is in fact quite critical of Parliament's resolution:

- The resolution would affect the institutional balance between EU institutions and the institutional autonomy and the particularities of each institution. Furthermore, the investigative powers of the new body would impinge on the competences of OLAF, the European Public Prosecutor and the European Ombudsman.

¹ The resolution is available at https://www.europarl.europa.eu/doceo/document/TA-9-2021-0396_EN.pdf.

² The response is available at <https://oeil.secure.europarl.europa.eu/oeil/spdoc.do?i=56974&j=0&l=en>.

- The Commission supports the creation of an independent ethics body common to all EU institutions, but only with an advisory role³ and applying the existing rules of each institution to its respective members, not the staff. Unlike Parliament, the Commission opposes entrusting this body with decision-making powers and establishing a common ethical framework.
- The Commission considers that the legal basis proposed by Parliament, namely Article 295 TFEU, is inappropriate, as an interinstitutional agreement under this provision can only be concluded between Parliament, the Council and the Commission. Instead, the Commission suggests concluding a sui generis interinstitutional instrument that is open to all institutions, bodies and agencies. To this end, the Commission will make a proposal when there is an agreement among *all* institutions on the principle of creating an EU ethics body.

On 18 March 2022, the Commission President asked the CoR President to indicate, by the end of April, what the CoR's views would be on taking part in the abovementioned interinstitutional discussions.

3. Possible implications for the CoR

The establishment of a new EU ethics body as proposed by Parliament would have substantial implications for the CoR and would certainly affect its autonomy. It is almost certain that the CoR would be urged to become a participating institution after an agreement between Parliament and the Commission had been concluded, meaning that the CoR would not have the opportunity to discuss its content. Furthermore, the "one-size-fits-all" approach advocated by Parliament could create disproportionate constraints for CoR members, whose situation is not comparable to that of MEPs and Commissioners. It is also unclear how this new body would fit into the enforcement mechanism laid down in the CoR Code of Conduct.

Having thoroughly analysed this file, the CoR Secretariat-General (including the secretariats of the political groups) broadly agrees with the Commission's assessment of Parliament's resolution. In fact, the Commission puts forward a more pragmatic proposal: (i) the establishment of the new ethics body by means of a sui generis interinstitutional instrument open to *all* institutions would mean that the CoR would at least have a chance to shape its content; (ii) applying the existing rules of each institution would be more respectful of the particularities of each one of them; (iii) giving the new ethics body an advisory role would imply that the final decision in each individual case would still lie with the institution of the member concerned; and (iv) dealing only with members of the institutions would be far more realistic than also overseeing 60 000 staff members.

Furthermore, the CoR Resolution of 1 December 2021 on the 2022 Work Programme of the European Commission and the CoR political priorities for 2022 underlines that the CoR expects to be involved in the establishment of a new interinstitutional EU ethics body.

³ Within the Commission, this advisory role is currently carried out by an Independent Ethical Committee. On this point, the Commission's response states the following: "*If the institutions agree on the creation of an EU ethics body common to all institutions and if the tasks and functioning of this future body are similar to those of the Commission's current Independent Ethical Committee, then the Commission is ready to consider ending the operation of its own Committee and entrusting its tasks to the new body if the other institutions are ready to do the same*". Within the CoR, a similar advisory role is carried out by the Advisory Board on Harassment under Article 9 of the Code of Conduct – although, as its name suggests, only for harassment-related issues.

In view of the above, it is hereby proposed that the Bureau authorises the President to inform the Commission that the CoR wishes to take part in the interinstitutional discussions with a view to the establishment of a new EU ethics body. Depending on the outcome of these discussions, the CoR would still have to take a decision on whether or not to join the interinstitutional agreement. Given the time constraints, the CFAA was asked to take the decision on this issue by written procedure pursuant to Rule 40(5) of the Rules of Procedure, the outcome of which will be announced at the Bureau meeting.

PROPOSAL

The Bureau is invited to authorise the President to inform the Commission that the CoR wishes to take part in the interinstitutional discussions with a view to the establishment of a new EU ethics body.