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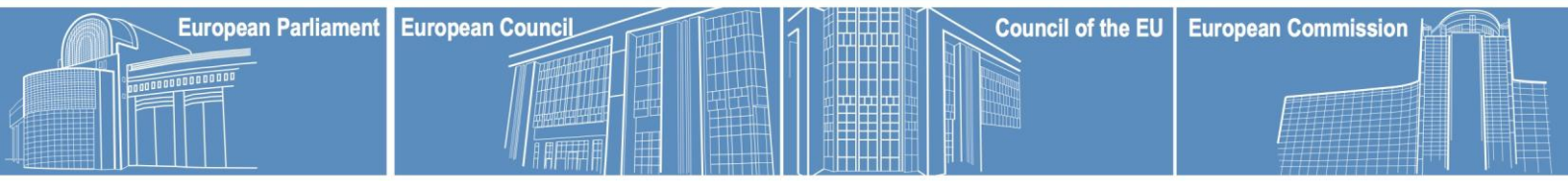

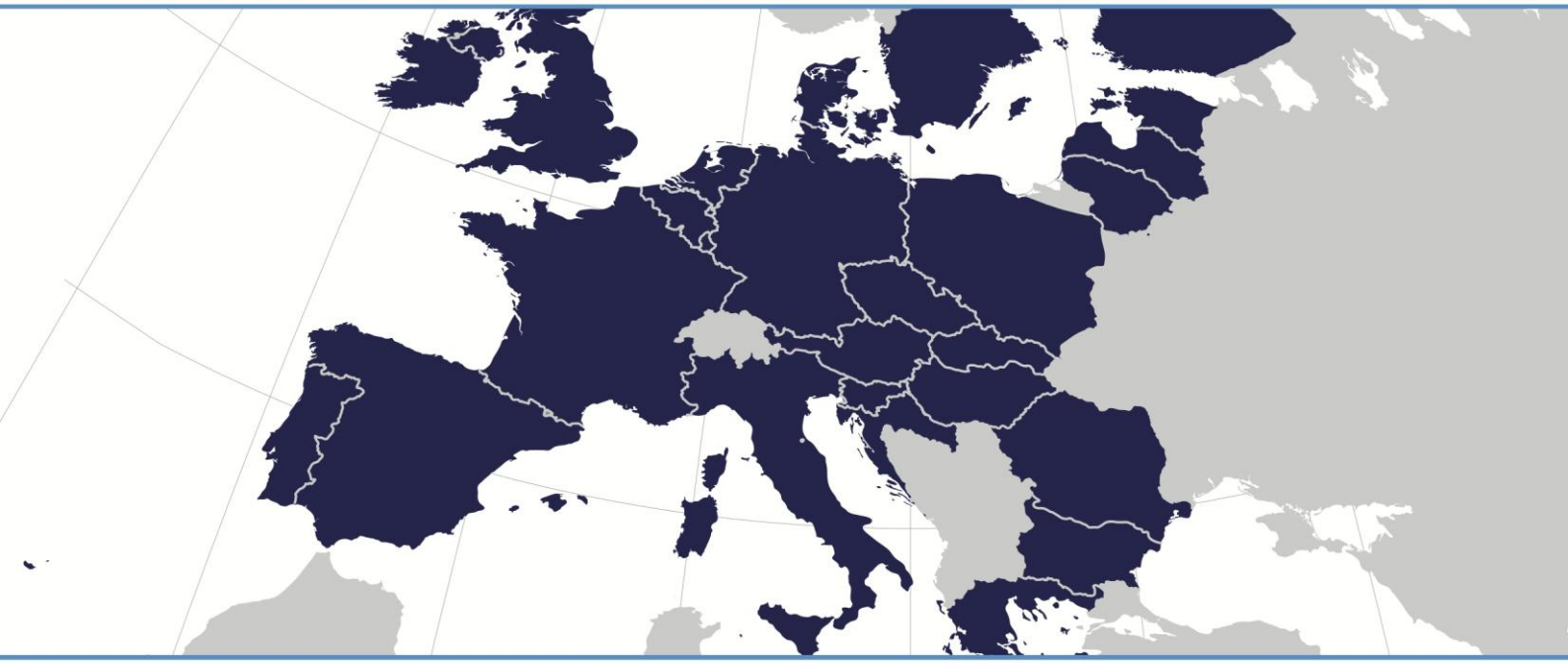

THE EUROPEAN UNION INTEGRITY SYSTEM

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

As part of the global Transparency International movement, the Transparency International EU Office (TI-EU) focuses on EU advocacy. In consultation with the movement, TI-EU promotes accountability, transparency and integrity in the EU's internal and external policies and in the EU institutions.

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The European Union Integrity System

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LIST OF ABBREVIATIONS

AA	Appointing Authority
AC	European Parliament Advisory Committee on the Conduct of Members
ACA	Administrative Cooperation Agreement
AD	Administrator staff category
AST	Assistant staff category
ATD	Access to documents
CFSP	Common Foreign and Security Policy
CJEU	Court of Justice of the European Union
CoC	Code of Conduct
COCOLAF	Committee on the coordination of the fight against fraud
CONT	European Parliament Committee on Budgetary Control
CoR	Committee of the Regions
COREPER	Permanent Representatives Committee
COSI	Council (of the EU) Standing Committee on Operational Cooperation on Internal Security
Council	Council of the European Union (‘Council of Ministers’)
CSO	Civil Society Organisation
DG	Directorate General
DG SEC GEN	Secretariat General of the European Commission
EC	European Commission
ECA	European Court of Auditors
ECGAB	European Code of Good Administrative Behaviour
EDPS	European Data Protection Supervisor
EEAS	European External Action Service
EESC	European Economic and Social Committee
EP	European Parliament
EPPO	European Public Prosecutor's Office
EPSO	European Personnel Selection Office
EU	European Union
EUIS	European Union Integrity System
EUR	Euro currency
Eurojust	European Union’s Judicial Cooperation Unit
Europarty	European Political Party
Europol	European Police Office
FR	EU Financial Regulation
GSC	General Secretariat of the Council of the European Union
HR	Human Resources
IAF	Internal Audit Function
IAS	Internal Audit Service of the European Commission
ICT	Information and Communications Technology
IDOC	Investigation and Disciplinary Office of the European Commission
IT	Information Technology
JIT	Joint Investigation Team
JSB	Joint Supervisory Body
MEP	Member of the European Parliament
MS	Member State
NGO	Non-governmental Organisation
NIS	National Integrity System
OAFCN	Anti-Fraud Communicators Network (administered by OLAF)
OCTA	Organised Crime Threat Assessment
OJ	Official Journal of the European Union
OLAF	European Anti-Fraud Office
RoPs	Rules of Procedure
SC	Supervisory Committee of OLAF
SIENA	Secure Information Exchange Network Application (administered by Europol)
SNE	Seconded National Expert
SOCTA	Serious Organised Crime Threat Analysis
SR	EU Staff Regulations
TI	Transparency International
TI-EU	Transparency International EU Office
UNCAC	United Nations Convention against Corruption

EXECUTIVE SUMMARY

Can we be sure that the EU institutions are free of the corruption risks present at the national level? Public trust in the EU institutions is low, and recent scandals have called into question EU integrity. The Transparency International EU Office presents the first ever comprehensive review of corruption and integrity risks in the EU institutions - *the EU Integrity System report* - to separate myth from reality and put forward recommendations for reform.

***

Corruption is a constant threat to the integrity of public decision-making throughout the EU. That was made clear by a recent report published by the European Commission, which details the extent of corruption in all 28 EU member states and points to high-risk areas such as political party financing, the allocation of government contracts, and parliamentarians' conflicts of interest. The report echoed the findings of a series of national studies carried out by Transparency International, which also identified corruption risks in the close links between politics and business, poor protection for whistle-blowers, and barriers to accessing information on public bodies.

The Commission's report was missing a 29th chapter however – one on the EU institutions themselves. In showing that no-one's house is completely in order, the report begged an obvious question: ***if these risks exist at the national level, how certain can we be that the institutions and structures of the European Union are corruption-free?***

European citizens are not so sure: a 2014 *Eurobarometer* survey revealed that 70% of the EU public think that corruption is present within the EU institutions. This is a majority view in all but six member states, with the figures as high as 84% in Sweden, and 82% in Germany. Moreover, 52% of Europeans don't think that the institutions help in reducing corruption in Europe.[1]

Recent high-profile scandals – such as the 2011 'cash for amendments' case involving the lobbying of members of the European Parliament, and allegations of bribery involving a European Commissioner in 2012 – have only served to feed this negative perception of the institutions.

With an annual EU budget of approximately 140 billion EUR,[2] and a large volume of legislation passing through 'Brussels' every year, including far-reaching bank reforms, the stakes of ignoring weaknesses in anti-corruption safeguards are high.

Consequently, myth and perception need to be separated from reality. With public confidence in the institutions at historically low levels, what is needed is an objective, independent assessment of whether EU decision-making and finances are effectively protected from corruption. This report aims to provide such an assessment.

The EU Integrity System (EUIS) report is the first, comprehensive analysis of how EU institutions promote integrity, how they deal with the risk of corruption and how their policies help the fight against corruption in Europe. It looks at both the rules in place and the practice in ten EU institutions and bodies. It is the first study of its kind, and the result of research conducted by the Transparency International EU Office over a nine month period in 2013 and 2014.

The report finds that there is a good foundation in the EU system to support integrity and ethics; a foundation provided by the general policies and rules adopted to prevent fraud and corruption. There are a wide range of provisions already in place to protect EU institutions and those working for them from undue influence; to give the public a right of access to EU information; and to enable suspected maladministration, fraud and corruption to be investigated. Citizens and businesses also have the opportunity to submit complaints or request judicial review of EU decisions affecting them. All these channels are being actively used in practice and have proven to function well on the whole, albeit with some variation between institutions.

However this foundation is often undermined by poor practice, lack of political leadership, failure to allocate sufficient staff and funding, and unclarity about to whom the rules apply. ***The result is that despite improvements to the overall framework, corruption risks persist at the EU level.*** The most urgent of these include opacity in EU law-making and in EU lobbying, poorly managed conflicts of interest, weak protection for EU whistle-blowers, and weak sanctions for corrupt companies.

1 European Commission (2014), Special Eurobarometer 397 – Corruption, pp. 40, 44, 61
2 See http://ec.europa.eu/budget/figures/2014/2014_en.cfm, and http://europa.eu/about-eu/basic-information/money/expenditure/index_en.htm

The report notes, for example, that existing EU transparency rules are rendered meaningless in practice by complex decision-making procedures and opaque negotiations within and between EU institutions that fall outside the formal rules. In an attempt to speed up the pace of EU law-making, there has been a trend towards more informal decision-making, the upshot of which is that critical parts of the legislative process do not receive proper scrutiny and important negotiations are shrouded in secrecy. Similarly, no mandatory rules on lobbying apply at the EU level, and the public remains largely in the dark about how outside interests are influencing EU legislation and those in power.

In addition, no evidence could be found that the financial information declared by European Commissioners and MEPs is being systematically verified by the institutions themselves, undermining the effectiveness of this essential safeguard against conflicts of interest and illicit enrichment. Meanwhile, committees monitoring compliance with ethics rules are usually filled with current or former members of the institutions, and therefore lack independence or real teeth.

At the same time, the absence of provisions to protect internal whistle-blowers at almost all institutions means that there is little incentive for staff to come forward and report unethical and illegal activity, despite legal obligations to do so. This poor implementation of existing rules can also be seen in the reluctance of the European Commission to use all the powers it has to prevent corrupt companies from taking part in public EU contracting: in late 2013, only 1 company was prohibited from tendering for EU contracts on the basis of the Commission's powers to debar (or 'blacklist') companies where there is evidence that they have engaged in fraud or corruption.

More generally, the failure to make full and proper use of existing controls will not reassure a public that are sceptical of the commitment of politicians and bureaucrats to a more open and ethical style of government. The institutions covered in this report will need to take action to demonstrate that they are serious about tackling weaknesses and fulfilling the spirit as well as the letter of the law. This is not simply about changing perceptions but also about bolstering institutional legitimacy, contributing to better governance across the region, and ensuring the highest possible standards of public service among the EU's representatives.

The chapters that follow evaluate the institutions both with regard to their internal corruption and integrity risks, and to their roles in combating corruption across the EU institutional landscape as a whole. The EU Integrity System report covers:

- four core EU institutions with important political, legislative and executive functions – the European Parliament, the European Council, the Council (of Ministers) and the European Commission; as well as
- six EU institutions and bodies (hereafter, 'institutions') that have important judicial and oversight functions – namely, the Court of Justice of the European Union, the European Court of Auditors, the European Anti-Fraud Office (OLAF), two EU law enforcement agencies (Europol for police cooperation and Eurojust for judicial cooperation), and the European Ombudsman.

The report is intended to be a base-line assessment, rather than an in-depth analysis of each institution, highlighting key strengths and weaknesses, and the relationships between institutions. Recommendations are put forward for policy and legislative reform, calling on institutions to act individually and together, where necessary. The report therefore provides a foundation for future efforts to strengthen the fight against corruption in the institutions and across the EU as a whole.

KEY FINDINGS

The key findings from the study are summarised here, under six themes. These gather together significant strengths and weaknesses identified at individual institutions to draw conclusions regarding the entire EU integrity system. Specific recommendations directed at individual institutions can be found in the later chapters of the report.

Transparency of decision-making

The general level of transparency across the EU system benefits from a strong legal foundation in the EU treaties guaranteeing the right of public access to documents held by EU institutions. The Council of Ministers, European Commission, and European Parliament (EP) do, in practice, release much documentation and the EP, in particular, allows the public to trace most parts of its political decision-making through its website.[1] The Court of Justice (CJEU), European Court of Auditors (ECA), and the European Ombudsman systematically publish outputs from their work, and all institutions assessed are handling requests for access to documents, although in varying quantities (see Annex 4). The Ombudsman is proving to be a useful channel to improve transparency across institutions,[2] and is acting on complaints from the public on the issue – for example, where they may dispute the refusal by an institution to grant access to a document. In addition, specific appeal bodies exist to help individuals access any personal data concerning them that is held by the EU's law enforcement agencies (Europol and Eurojust).

However, public scrutiny of EU law-making is hampered by blind spots in the process. These include so-called 'trilogue' and conciliation discussions where EU laws are negotiated behind closed doors between the Council, Parliament and Commission. The work of the Council below the ministerial level, and of Commission expert and member state committees remain difficult or impossible to trace despite their direct and often definitive influence on legislation. European Council meetings and EU Court deliberations also remain hidden from the public. Moreover, despite the presence of an estimated 15 000 lobbyists in Brussels alone,[3] no rules oblige EU law-makers to record and/or disclose their meetings with lobbyists when drafting legislation, nor any input provided by them for draft policies, laws and amendments – a so-called 'legislative footprint'. The lack of a mandatory register of lobbyists at the EU-level further undermines the assurance that EU decision-making is adequately protected from the influence of vested interests or abuse. The current, voluntary register applies only to the Commission and EP, and not to the Council or member state permanent representations, despite their central role in EU law-making and the fact that they remain a target for lobbyists.

Furthermore, currently only the European Commission, Parliament, the European Ombudsman, and the Council and European Council jointly, have public document registers in place. Moreover, the quality of these registers varies greatly, undermining accessibility and usability. Improvements, for example, are needed in how well users can search within these registers, and in the documents they contain, Documents released in response to public requests for access are not immediately or systematically included on public registers. Meanwhile, a recent change to rules regarding the disclosure of internal EP administrative documents represents a retrograde step in transparency. Question marks also remain on the extent to which the EP is publicly registering all the documents it holds, and whether the Council is listing faithfully in its register the existence of all sensitive/confidential documents that it holds. Action is therefore needed to improve the coverage of public document registers at all institutions, to ensure, for example, that they do in fact contain all documents that have already been published by the institutions, contain correct information on confidential documents held by the institution, and contain documents related to internal (administrative) decision-making.

Recommendation: *the European Parliament, Commission and Council should record and disclose all input received from lobbyists/interest representatives for draft policies, laws and amendments. This should be done in a standardised format (a 'legislative footprint').*

Recommendation: *the European Parliament, Commission and Council should make the EU Transparency Register mandatory – and extend its application to the Council and member state permanent representations – supported by incentives to encourage registration, disincentives for non-registration, and genuinely dissuasive sanctions for breaches of accompanying rules.*

1 See the European Parliament's Legislative Observatory available at http://www.europarl.europa.eu/oeil/home/home.do
2 See, for example, the Report of the European Ombudsman following his visit to the European Union's Judicial Cooperation Unit (Eurojust), OI/8/2012/OV, and Report of the European Ombudsman following his visit to the European Police Office (Europol) (OI/9/2012/OV,
3 See Corporate Europe Observatory, 'Brussels: The EU Quarter', (Brussels; CEO, 2011), pg. 7, at http://corporateeurope.org/sites/default/files/publications/ceolobbylow.pdf

Recommendation: *the European Parliament, Commission and Council should publish all documents from each step in the process of drafting legislation. This should include negotiations between the institutions (e.g. 'trilogues'), Commission committees and expert groups, and all levels of the Council. Systematic and timely public reporting from these steps should be mandatory.*

Recommendation: *all EU institutions and bodies should proactively publish documents relating to their decision-making. The documents should be as accessible as possible, through the introduction of online public document registers. Where such registers already exist, state of the art search functions should be used to improve quality and usability.*

Ethics and conflicts of interest

The general rules governing staff conduct across the EU administration are a good basis to prevent corruption and low integrity standards. Permanent EU staff are bound by a broad range of restrictions, including restrictions on their future employment; they are obliged to report conflicts of interest when in service; and from 2014, are also subject to conflict of interest checks before being hired. Moreover, there is a growing focus on ethics within institutions. Best practice includes the European Commission's network of department-specific 'ethics correspondents', and the European Ombudsman's active promotion of principles of good public service. These developments reflect growing sensitivity to issues such as accepting gifts from lobbyists, or failing to disclose other professional activities while working for the EU civil service. However, the complexity of the rules in place and the detailed exceptions that often apply to different categories of EU civil servant make it difficult for individual staff members to understand their obligations in all cases. This is demonstrated by the high number of queries from staff to the European Commission's human resources department on the rules about external professional activities (1078 in 2012 – more than a third of the total number of queries[4]), and recent disciplinary cases where staff failed to request permission for such activities (21 individuals were sanctioned in 2011[5]). Cases of former officials moving to private business including lobby firms also indicate that staff may not always receive adequate information about how to avoid conflicts of interest (and perceptions of conflicts of interest), and raise questions as to whether the institutions are making sure that staff comply with the rules.[6]

The generally good controls on the conduct of staff contrast starkly with the weak checks on the behaviour of Members of the European Parliament (MEPs) and senior EU figures. For example, no evidence could be found of comprehensive and systematic verification of the asset declarations made by such figures (e.g. Commissioners, MEPs, members of the Court of Auditors). This is the case despite the Commission itself highlighting, in its 2014 EU Anti-Corruption Report, the corruption risks that result from failing to manage conflicts of interest properly, and the particular importance of verifying asset declarations.[7] Similarly, at present, individual (non-governmental) members of the Commission's expert committees – which deal, for example, with EU rules on agriculture, food and chemical safety, or taxation issues – are not obliged to complete declarations of interests. Meanwhile, information on the expenses of individual MEPs is not made public by the EP.

In appointment procedures for many EU leadership positions, political decision-making often trumps concerns about integrity, undermining principles set down in law. Independence, for example, is a necessary pre-requisite for members of the Commission or ECA, European Ombudsman, and Director General of the European Anti-Fraud Office (OLAF), yet no detailed, objective criteria are in place to assess any potential conflicts of interest held by candidates to these offices.(Candidates could, for example, be required to complete a mandatory declaration of assets *before* appointment and declarations could be systematically submitted to any institution/committee undertaking formal appointment hearings). A procedure is in place for an independent panel to assess the professional qualifications of individuals nominated to become members of the Court of Justice, but here, the secrecy surrounding the procedure prevents public scrutiny and may thereby weaken trust in its workings. This is compounded by the fact that the panel is composed predominantly of former members of the Court.

Besides shortcomings in the nomination procedures, there are also no rules in place to compel MEPs or other EU figures to record and disclose their meetings with lobbyists. Furthermore, the rules to prevent and to punish unethical behaviour by MEPs and senior EU figures are often inconsistent or contain gaps. There are obvious inconsistencies, for example, regarding the duration and scope of obligations that former members and officials of institutions have after leaving office: 'cooling-off periods'[8] range from 18 months for former Commissioners, to 3 years for former members of the European Court of Auditors, while MEPs are free of meaningful post-term obligations (see Annex 3). Inconsistencies also exist regarding the scope – or even mere existence – of codes of conduct: no code is in place for the European Council President, for instance. None of the ethics committees that

4 European Commission, 'Human Resources Report of the European Commission – 2013', (Luxembourg; Publications Office of the European Union, 2013), pg. 72. Total number of queries was 2918.

5 Activity report of the Investigation and Disciplinary Office of the Commission (IDOC) 2011; the reports from 2008-2012 are available at http://www.asktheeu.org/en/request/investigation_and_disciplinary_o; http://www.asktheeu.org/en/request/idoc_report_2011; and http://www.asktheeu.org/en/request/idoc_annual_report_2012

6 See information on a complaint lodged with the European Ombudsman at http://www.ombudsman.europa.eu/cases/caseopened.faces/en/49130/html.bookmark

7 See the Report COM(2014)38 of 3 February 2014 from the Commission to the Council and European Parliament, EU Anti-Corruption Report, pp. 11, 12

8 A period during which an individual is prohibited from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during their time at the institution.

exist to advise MEPs and EU leaders on compliance with ethics rules (e.g. at the Commission, Parliament, Court of Auditors) is genuinely independent. Most of the time these committees are composed of current or former members of the institutions, and normally they only respond to cases that are brought to their attention. They do not proactively monitor compliance (e.g. through conducting spot-checks on asset declarations) or have powers to issue binding recommendations or administrative sanctions for breaches of rules. Without strong, independent ethics committees, there will be doubts about whether senior EU figures can really be held to account for breaking the rules. Transparent selection procedures should be used to appoint committee members, who should themselves declare any interests they hold, to ensure their independence. The European Ombudsman's identification of a conflict of interest concerning a former member of the Commission's ethics committee – the so-called 'Petite' case – has shown that improvements of this kind are necessary.[9]

Of additional concern is the lack of common integrity rules for representatives from national authorities when exercising functions at the EU level. This includes ministers and diplomats in the Council of the European Union, national civil servants or experts in member state committees advising the Commission on secondary EU law, or national representatives at Europol and Eurojust.[10] Often, they are directly involved in EU law-making, wielding significant power, and/or handling sensitive information, yet they are almost entirely free of mandatory and harmonised EU-level obligations regarding their conduct. Consequently, they are not subject to common sanctions. While these individuals may be subject to national level integrity regimes, EU citizens cannot be certain that all are working under equally strict rules.

Recommendation: *EU legislators and EU Member States should introduce clear, objective and transparent appointment procedures for all key institutional positions, including systematic pre-appointment conflict of interest checks, in line with the UN Convention against Corruption (UNCAC).*[11]

Recommendation: *EU institutions should improve conflicts of interest policies for MEPs and senior EU figures, bringing them up to international standards, e.g. OECD guidelines*[12] *and the UNCAC.*[13] *These policies should not just include consistent and clear conflict of interest definitions and 'revolving-door' restrictions but also effective rules on the disclosure of interests, assets, income and gifts, and contact with lobbyists.*

Recommendation: *all EU institutions should introduce fully independent ethics bodies to advise on, monitor and recommend administrative sanctions regarding the conduct of members of institutions, including the observance of post-employment/post-service obligations.*

Recommendation: *EU legislators and EU Member States should empower (a fully independent) OLAF or the European Court of Auditors to verify asset declarations completed by senior EU figures, including candidates to those positions, and by MEPs.*

Whistle-blowing

The EU staff rules oblige all civil servants to report any illegal activity or misconduct they observe in the course of their work. The rules specify a number of ways for information to be reported, and lay down basic provisions for the protection of whistle-blowers. This obligation has been in place since 2004. As of 2014, all institutions are also required to put their own internal procedures in place to protect whistle-blowers. However, among the institutions assessed, only the Commission currently complies with this obligation, having put its own guidelines in place in 2012. The absence of such internal rules is of particular concern in some of the EU's oversight bodies. Given OLAF's role in providing opportunities for all EU civil servants to blow the whistle, it is notable that its own staff are deprived of a genuinely external channel through which to report misconduct. At the ECA, concerns about the treatment of whistle-blowers in the past – most recently during a case of alleged harassment in 2012[14] – have not resulted in the introduction of internal rules on whistle-blower protection. The protection of whistle-blowers and of their anonymity, where relevant, is also potentially at risk through the current practice of OLAF to share information on on-going cases with the European Commission. Without sufficient procedures in place to support and protect those reporting, the risks of corruption and wrongdoing within the EU administration are increased.

Recommendation: *all EU institutions should develop harmonised, internal whistle-blowing procedures in line with their obligations under the EU Staff Regulations, building on the European Commission's 2012 internal guidelines,*[15] *and with respect to existing standards on internal whistle-blower protection such as those elaborated by the British Standards Institute.*[16]

9 For more information, see http://www.ombudsman.europa.eu/cases/summary.faces/en/53404/html.bookmark
10 This does not include members of institutions, or SNEs; rather member state representatives in Council configurations, for example, or national liaison officers at Europol.
11 See UNCAC, especially articles 7, 8 and 12
12 See OECD, 'Managing Conflicts of Interest in the Public Service', (Paris; OECD, 2003)
13 See United Nations Convention Against Corruption (UNCAC), especially articles 7, 8 and 12
14 See J. Quatremer, 'Union européenne : silence et harcèlement à la Cour des comptes', Libération', 28 January 2013, available at http://www.liberation.fr/monde/2013/01/28/union-europeenne-silence-et-harcelement-a-la-cour-des-comptes_877410, (last accessed on 21 November 2013)
15 See Communication SEC(2012)679 of 6 December 2012 to the Commission on Guidelines on Whistleblowing
16 See the British Standards Institute PAS 1998/2008, Code of Practice for Whistleblowing arrangements. See also Transparency International, 'Whistleblowing in Europe', Annex 1: International principles for whistleblower protection, (Berlin; TI, 2013), art. 15,

Financial control

The EU's general financial rules – the EU Financial Regulation – are a strong safeguard against mismanagement of public finances across the EU administration. All institutions assessed are required to abide by these rules, and are subject to external audits by the European Court of Auditors. The procedure (so-called 'discharge') for EP scrutiny of institutions' financial accounts is functioning, and the EP appears ready to use its financial oversight powers as far as it can (e.g. freezing funds in 2011 to push for more transparency concerning Commission expert groups and to reduce corporate dominance of these groups). However, the effectiveness of the discharge procedure is largely dependent on the good cooperation of the other institutions and the quality of the information they choose to provide to the EP. Limitations to the procedure are revealed, for example, by the lack of consequences suffered by the Council when it has failed to provide information to the EP and on the three occasions when the EP has refused to sign off on the Council's accounts. Genuinely independent oversight of the financial management of European Political Parties is also yet to be put in place; however plans for this have been agreed by EU legislators.[17]

All institutions do, though, have in place internal financial procedures which adhere to the general EU rules, including on internal auditing. These financial controls are often decentralised, increasing accountability, and reflecting the major administrative reforms implemented by the European Commission in the wake of the fall of the Santer Commission in 1999. Staff with financial duties receive specific training at each institution, and efforts are made to deal with any conflicts of interest that might arise.[18] Further improvements are taking place, for example, the work being done to develop anti-fraud strategies in each of the Commission's departments, to address the specific risks facing different parts of the institution. This could serve as a good model for other institutions.[19]

Nevertheless, the range of controls to prevent public money falling into the hands of corrupt individuals risks being undermined by the weak way in which the European Commission is currently using its powers to exclude and deter corrupt companies from participating in public tendering by EU institutions. The Commission has discretionary powers to exclude (or 'debar') companies for 'grave professional misconduct', yet only one was excluded for this reason at the time of writing. Moreover, only six entities were debarred for convictions of fraud, corruption, money-laundering or involvement in a criminal organisation,[20] raising questions on how well member states and the Commission are sharing relevant information. In addition, information on debarred companies is not made public, reducing the potential deterrent effect of 'naming and shaming' offenders.

Recommendation: *the European Commission should make concerted use of its discretionary powers to exclude legal entities guilty of 'grave professional misconduct' from EU public procurement,[21] including learning from practice at international organisations such as the World Bank.[22] Its database of debarred companies should be made public, as a further deterrent against fraud and corruption.*

Checks and balances at European level

The laws underpinning the EU system contain specific safeguards against abuses of power and corruption, with mechanisms in place allowing institutions to hold one another to account for what they do and how they spend money. These mechanisms are being used, particularly with regard to the political oversight of the European Commission. For example, the EP is submitting an increasing number of formal questions (which must be answered by law) to the Commission each year, and is increasingly ready to flex its muscles when it comes to scrutinising other institutions. OLAF is investigating alleged fraud or illegal activity at all institutions, and is actively contributing to fraud-prevention strategies and activities. Meanwhile, all institutions are being audited by the ECA and are subject to financial scrutiny by the EP. The European Ombudsman is making use of its powers to investigate maladministration and to ensure follow up to its recommendations, and is also opening a number of inquiries on its own initiative into problems that may be systemic (e.g. a 2012 case looking at the procedures to check documents provided by prospective EU civil servants during recruitment procedures[23]). Judicial oversight of the Commission and the EU's legislators is also being exercised, with CJEU rulings respected by other institutions.

Weaknesses persist, however. The quality of oversight by the EP of financial management at the other institutions is heavily dependent upon their willing cooperation and the quality of information it receives from them (see above); and similar shortcomings are noted with regard to oversight by the Council and EP of the Commission's adoption of secondary legislation, e.g. the lack of sanctions available to the EP when the Commission is slow to provide it with information on such laws.[24] Moreover, the EP has little oversight of the EU's law enforcement

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http://www.transparency.org/whatwedo/pub/international_principles_for_whistleblower_legislation

17 See http://www.europarl.europa.eu/meetdocs/2009_2014/documents/afco/dv/2014-03-05_eupps_annex_/2014-03-05_eupps_annex_en.pdf

18 See, for example, the chapter 'Law Enforcement Agencies Integrity (Practice)'

19 M. Příborský, 'The new Commission anti-fraud strategy: revamped fight against fraud at EU level', ERA Forum, Vol 12 No 3 pp. 373-386 (2011), pp. 380-382

20 Information provided in email of 18 October 2013 from the European Commission Directorate General for Budget to the Transparency International EU Office

21 See Regulation 966/2012 of the European Parliament and the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union, art. 106 (1c)

22 See the World Bank listing of ineligible firms and individuals available at www.worldbank.org

23 See Decision of 19 December 2012 of the European Ombudsman closing his own-initiative inquiry OI/1/2012/MHZ concerning the European Personnel Selection Office, available at http://www.ombudsman.europa.eu/en/cases/decision.faces/en/48706/html.bookmark

24 This pertains specifically to so-called 'delegated acts'. See for example, D. Guéguen & V. Marissen, 'Handbook on EU secondary legislation', (Brussels: PACT European

agencies (Europol and Eurojust). The procedures to select and appoint a number of senior EU figures appear to lack vigorous integrity checks of candidates (see above). Resource constraints are affecting the work of some 'control' bodies within the EU system and are potentially undermining their role: this is reflected in the lengthy time taken for the ECA, OLAF, and the European Ombudsman to conclude their respective audits or investigations. The perception – and potentially the actual degree – of OLAF's independence, and how vigilantly alleged fraud and misconduct are investigated within the Commission, is undermined by its current status as part of the Commission. This is compounded by questions as to how effectively OLAF's own internal supervisory body is currently able to exercise oversight. Establishing watertight operational independence for OLAF, with well-functioning mechanisms to ensure it is still accountable for its actions, is crucial for the effective investigation and sanctioning of corrupt activity within the institutions. These accountability mechanisms could include regular and comprehensive reporting obligations to the Commission, Council and EP (e.g. on investigations opened and closed, the handling of complaints against OLAF, and the implementation of recommendations from its internal supervisory committee), and an equal role for each institution in the appointment and dismissal of the Director General.

Recommendation: *EU legislators should establish OLAF's full organisational independence, with appropriate accountability mechanisms towards the Commission, Council and European Parliament.*

Combatting corruption

EU institutions are attaching increased importance to the fight against corruption. The European Council recognises how anti-corruption efforts protect EU finances, and has integrated an anti-corruption dimension into roadmaps for EU work in the areas of justice, freedom and security. The Council makes use of intelligence from Europol to set priorities in the fight against cross-border crime, and is mandated to coordinate anti-corruption efforts by member states. The member states are themselves making use of the possibilities to cooperate offered by Europol and Eurojust (e.g. during a 2012 investigation of allegations that a Finnish arms company had bribed Croatian government officials[25]), and the two agencies themselves have broad scope to cooperate on and contribute to corruption cases. Anti-fraud and anti-corruption related legislation is being passed at EU level, including anti-money laundering rules or legislation on corporate reporting in the oil, gas, mining and forestry sectors. In 2014, the European Commission reviewed member state efforts on anti-corruption for the first time in an EU Anti-Corruption Report. Meanwhile, OLAF is investigating cases of fraud and corruption involving EU money and actively supporting fraud-prevention activities, such as giving financial and technical support to the training of national authorities dealing with EU funds.

However, there is no EU criminal law and a lack of judicial and prosecutorial powers at EU level: the Court of Justice does not have the power to adjudicate on EU-level corruption cases nor is there an EU-level prosecutor competent to deal with transnational cases. This leaves the investigation of criminal cases involving corruption to national authorities across the EU and leads to inconsistencies and deficiencies in judicial follow-up. Furthermore, OLAF cannot compel member states to act on its recommendations or initiate prosecutions. Meanwhile, as corruption is not considered by the Council as a stand-alone offence – rather, only as an enabler of other crimes – areas such as political corruption may not always be given adequate attention. The Council is also responsible for setting the operational priorities of Europol, and corruption is consequently not explicitly one of these priorities. The capacity of Europol and Eurojust to cooperate on and combat corruption more broadly is being underused (e.g. less than 2% of the operational information exchanged between the two agencies via the SIENA tool in 2012 related explicitly to corruption[26]), and the agencies remain heavily dependent upon member states to bring transnational cases to their attention and to take action. The Commission's 2014 Anti-Corruption Report, moreover, did not address the specific EU-dimensions of corruption, with little consideration or analysis of cross-border corruption or indeed corruption risks within the EU institutions.

Recommendation: *the Council should ensure the establishment of a European Public Prosecutor, and the European Council should ensure that serious, cross-border EU crimes, including corruption, are a part of its mandate.*

Affairs, 2013), pg. 54

25 See, for example, Eurojust, 'Annual Report 2012', (The Hague; Eurojust, 2013) pg. 29, available at http://eurojust.europa.eu/doclibrary/corporate/eurojust%20Annual%20Reports/Annual%20Report%202012/Annual-Report-2012-EN.pdf

26 Information provided at European Commission, DG HOME, Conference: 'An Open and Safe Europe – What's next?', EU Home Affairs Background statistics, pg. 13 (29 January 2014). SIENA stands for the Secure Information Exchange Network Application and is 'a state-of-the-art tool designed to enable swift, secure and user-friendly communication and exchange of operational and strategic crime-related information and intelligence between Europol, Member States and third parties that have cooperation agreements with Europol'. See https://www.europol.europa.eu/content/page/siena-1849

KEY RECOMMENDATIONS

PROMOTE A POLICY OF 'TRANSPARENCY BY DEFAULT' IN EU DECISION-MAKING
1. *The European Parliament, Commission and Council should record and disclose all input received from lobbyists/interest representatives for draft policies, laws and amendments. This should be done in a standardised format (a 'legislative footprint').*
2. *The European Parliament, Commission and Council should make the EU Transparency Register mandatory – and extend its application to the Council and member state permanent representations – supported by incentives to encourage registration, disincentives for non-registration, and genuinely dissuasive sanctions for breaches of accompanying rules.*
3. *The European Parliament, Commission and Council should publish all documents from each step in the process of drafting legislation. This should include negotiations between the institutions (e.g. 'trilogues'), Commission committees and expert groups, and all levels of the Council. Systematic and timely public reporting from these steps should be mandatory.*
4. *All EU institutions and bodies should proactively publish documents relating to their decision-making. The documents should be as accessible as possible, through the introduction of online public document registers. Where such registers already exist, state of the art search functions should be used to improve quality and usability.*
MANAGE EFFECTIVELY CONFLICTS OF INTEREST OF SENIOR EU DECISION-MAKERS
5. *EU legislators and EU Member States should introduce clear, objective and transparent appointment procedures for all key institutional positions, including systematic pre-appointment conflict of interest checks, in line with the UN Convention against Corruption (UNCAC).*[1]
6. *EU institutions should improve conflicts of interest policies for MEPs and senior EU figures, bringing them up to international standards e.g. OECD guidelines,*[2] *and the UNCAC.*[3] *These policies should include not just consistent and clear conflict of interest definitions and 'revolving-door' restrictions but also effective rules on the disclosure of interests, assets, income and gifts, and contact with lobbyists.*
7. *All EU institutions should introduce fully independent ethics bodies to advise on, monitor and recommend administrative sanctions regarding the conduct of members of institutions, including the observance of post-employment/post-service obligations.*
8. *EU legislators and EU Member States should empower OLAF or the European Court of Auditors to verify asset declarations completed by senior EU figures, including candidates to those positions, and by MEPs.*
9. *EU legislators should establish OLAF's full organisational independence, with appropriate accountability mechanisms towards the Commission, Council and European Parliament.*
PUT IN PLACE EFFECTIVE INTERNAL WHISTLE-BLOWING PROCEDURES
10. *All EU institutions should develop harmonised, internal whistle-blowing procedures in line with their obligations under the EU Staff Regulations, building on the European Commission's 2012 internal guidelines,*[4] *and with respect to existing standards on internal whistle-blower protection such as those elaborated by the British Standards Institute.*[5]
IMPROVE THE EU'S DEBARMENT SYSTEM
11. *The European Commission should make concerted use of its discretionary powers to exclude legal entities guilty of 'grave professional misconduct' from EU public procurement,*[6] *including learning from practice at international organisations such as the World Bank.*[7] *Its database of debarred companies should be made public, as a further deterrent against fraud and corruption.*
ESTABLISH AN INDEPENDENT EUROPEAN PUBLIC PROSECUTOR WITH BROAD ANTI-CORRUPTION POWERS
12. *The Council should ensure the establishment of a European Public Prosecutor, and the European Council should ensure that serious, cross-border EU crimes, including corruption, are a part of its mandate.*

1 See United Nations Convention Against Corruption (UNCAC), especially articles 7, 8 and 12
2 See OECD, 'Managing Conflicts of Interest in the Public Service', (Paris; OECD, 2003)
3 See UNCAC, especially articles 7, 8 and 12
4 See Communication SEC(2012)679 of 6 December 2012 to the Commission on Guidelines on Whistleblowing
5 See the British Standards Institute PAS 1998/2008, Code of Practice for Whistleblowing arrangements. See also Transparency International, 'Whistleblowing in Europe', Annex 1, (Berlin; TI, 2013), art. 15, available at http://www.transparency.org/whatwedo/pub/international_principles_for_whistleblower_legislation
6 See Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union, art. 106 (1c)
7 See the World Bank listing of ineligible firms and individuals available at www.worldbank.org

THE INSTITUTIONS

Reading the institution-specific chapters

Each of the following institution-specific chapters begins with a summary of some of the key strengths and weaknesses that have been identified through the research undertaken on that institution. A set of four recommendations is then laid out, addressed principally to the institution concerned. The strengths, weaknesses and recommendations are not necessarily listed in an order of priority; however, each respective list begins with issues that can potentially be addressed by the institution alone, or are of primarily internal significance to it, and closes with an issue, or issues that have a systemic, or inter-institutional dimension and may require action by other institutions or even the member states.

Each chapter continues with a brief description of the structure and organisation of each institution and historical information on its establishment.

Individual reports for each of the indicators against which the institutions have been assessed then comprise the main body of each chapter. Each indicator report opens with a central question that has steered the assessment of the institution against that particular indicator. An opening paragraph, in bold text, provides a headline answer to the question posed, summarising the research findings which make up the rest of the indicator report. For more information on the methodology and indicators, please refer to the 'About the EUIS' chapter.

To illustrate the types of corruption risks or integrity threats to which each institution could be vulnerable, each chapter also includes a brief overview of an actual case that has concerned the institution in the past (in a separate text box). All of these examples draw from events that have previously been publicly reported and are not presented as specific findings from the present study.

EUROPEAN PARLIAMENT

Strengths	Weaknesses
• Well-resourced administration and support provided to members • Good handling of requests for public access to documents • Positive moves to increase transparency of legislative votes in parliamentary committees • Large volume of legislative information made publicly available, despite usability concerns • Growing powers to drive the legislative agenda and good cooperation demonstrated from Commission regarding EP requests for legislative proposals	• Loopholes in integrity safeguards concerning MEPs' assistants • Weak rules and practice regarding the monitoring and sanctioning of MEPs' conduct and governing their contacts with third parties • Lack of internal whistle-blowing provisions • Opacity of inter-institutional discussions on draft legislation (trilogue and conciliation procedures), and of internal administration • EP oversight of other EU actors contingent on cooperation and willingness of these actors, revealing limits to its mandate (e.g. inability to sanction Council in budgetary discharge) • EP oversight of European Political Parties potentially compromised by dominance of those parties within EP itself

Recommendations

- The European Parliament should improve the monitoring and sanctioning mechanisms regarding the conduct of MEPs and their assistants, including the comprehensive verification of declarations of interest, the introduction of an independent ethics body with binding sanction powers, and publication of information on members' expenses
- The European Parliament should compel its members to disclose systematically third party involvement in legislative activities: implementing a 'legislative footprint' mechanism
- The European Parliament, the Council and the European Commission should increase transparency regarding trilogues and conciliation procedures
- The European Parliament and Council should ensure oversight of EU-level political parties by an independent authority, free of the influence of the political parties themselves, implementing the framework rules that they have agreed

About the European Parliament

The 1958 Treaty of Rome established the European Parliamentary Assembly to serve the EEC, Euratom and the ECSC, as a successor to the ECSC Common Assembly – first convened in 1952. The Assembly was renamed the European Parliament (EP) in 1962, and its members have been directly elected since 1979.

The powers of the EP have grown significantly over time. Since 1970, it has held oversight powers on the EU budget, and now decides equally with the Council upon the annual financing of the Union: it also signs off on the EU's annual accounts. Though it has minimal rights to initiate law directly, it acts on an equal footing with the Council to adopt legislation in over 90 policy areas. The EP also oversees the European Commission, electing its president and retaining the ability to dismiss the College, and holds a number of additional oversight powers, including the right to appoint a European Ombudsman.

The European Parliament currently comprises 751 members (MEPs) – having grown steadily from 78 in 1952. Elections take place at national level every five years, with seats apportioned according to member state population. MEPs gather within groups of political, rather than national, affiliation, comprising one or more European political party. A President is elected by the entire parliament for a 2.5-year term, with 28 having served since 1952.

Twenty standing committees gather between 24-76 MEPs to scrutinize draft legislation and produce reports: temporary and sub-committees are also convened. Relations with non-EU parliaments are maintained by 41 EP delegations.

MEPs dispose of private offices, while the institution maintains an administration of 6700 staff, headed by a Secretary General. A Bureau comprising the President, 14 Vice-Presidents and 5 Quaestors, oversees budgetary and administrative matters. (Quaestors deal with MEPs' financial and administrative issues.)

The EP is officially seated in Strasbourg, with committee and part-sessions held in Brussels: additional secretariat functions are located in Luxembourg.

Sources: http://www.europarl.europa.eu
M. Shackleton, 'The European Parliament', in The Institutions of the European Union 3rd, ed. by J. Peterson & M. Shackleton, (Oxford: OUP, 2012)

INDEPENDENCE (LAW)

To what extent is the European Parliament independent and free from subordination to external actors by law?

EU primary law establishes the European Parliament as an EU institution but does not explicitly provide for its independence. The independent mandate of MEPs, meanwhile, is laid down in secondary legislation. The EP's autonomy to determine its internal functioning, staffing and key offices is safeguarded in law. However, other institutions play decisive roles in determining several fundamental aspects, including its composition, the general rules governing MEPs' duties, and rules of taxation on former and current MEPs, for example. The EP has growing but limited powers to drive the legislative agenda, but enjoys equal footing with the Council in the ordinary legislative process. Other institutions may extraordinarily convene the EP, and enjoy broad attendance rights, while the EP retains powers to admit anyone else to view its proceedings or be heard by its committees. The immunity of MEPs is guaranteed in law, and the EP retains the sole right to waive this: nevertheless, EU case law has indicated that national judicial authorities are not expressly bound by EP opinions in this regard. The EP is, furthermore, obliged to cooperate with the ECA and OLAF in their work.

The EU Treaties establish the European Parliament (EP) as a distinct Union institution, and one ensuring the direct representation of EU citizens at the EU level,[1] but make no specific provisions on its independence, save for that of its administrative corps.[2] The European Council is empowered to decide (via unanimity) upon the composition of the EP,[3] yet this is upon the initiative and with the consent of the Parliament, and with respect to Treaty indications on the ceiling for the total number of members;[4] on the minimum and maximum number of seats per member state; and that representation should be 'degressively proportional'.[5] The right for every EU citizen to stand and participate in EU elections is safeguarded by the Treaties,[6] which also indicate term lengths for MEPs but set no limits on re-election.[7] Elections themselves take place at national level according to country-specific provisions: a comprehensive and uniform Europe-wide electoral procedure is not in place, and the EP does not have the power to introduce this (unilaterally or otherwise). The Council, however, retains the right to set common *ground rules* for EP elections, but can only act unanimously on an EP proposal, and with the latter's consent:[8] these rules include a list of the European and national level offices incompatible with that of an MEP, and indicate that MEPs must not be bound by 'any instructions... [nor]...receive a binding mandate', *inter alia*.[9] The independent mandate of MEPs is further made explicit in secondary legislation via the statute for MEPs,[10] but is not laid down in primary law.

The European Parliament retains the right to decide upon its President and 'officers',[11] the composition of its internal Committees,[12] [13]and upon its internal rules of procedure,[14] but must seek the opinion of the EC and the consent of the Council, when adopting the 'general conditions governing the performance of the duties of its members'.[15] It sets the salary levels for MEPs, at a level 'appropriate...to safeguard their independence',[16] however, rules on the taxation of sitting and former MEPs require unanimous Council consent,[17] in part given that

1 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, arts. 10, 13 (TEU)
2 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 298(1) (TFEU)
3 See European Council decision 2013/312/EU of 28 June 2013 establishing the composition of the European Parliament [2013] OJ L181/57
4 This equates to 750 members plus 1 President. At the time of writing, there were temporarily 766, following the accession of Croatia, though this was to be reduced to 751 at the EP elections in 2014. See European Parliament Press Service, 'How many MEPs will each country get after European Parliament elections in 2014?', (13 March 2013) available at http://www.europarl.europa.eu/news/en/news-room/content/20130308STO06280/html/How-many-MEPs-will-each-country-get-after-European-Parliament-elections-in-2014, (last accessed on 16 December 2013) (EP information on election procedure)
5 TEU, art 14 (2). 'Degressively proportional' means that the greater the population of a member state, the greater the number of its parliamentary seats, but also the greater number of citizens represented by an individual MEP.
6 TFEU, arts. 20 (2(b)), 22
7 TEU, art. 14(3)
8 TFEU, art 223
9 Act concerning the election of the representatives of the Assembly by direct universal suffrage [1976] OJ L 287/5, arts. 4-6 and Council decision of 25 June and 23 September 2002 amending the Act [2002] OJ L 283/1, art. 1(7) (1976 Act)
10 Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament [2005] OJ L 262/1, arts. 2, 3. (MEPs Statute)
11 TEU, art. 14(4)
12 The EP also decides, via its political groups, upon the composition of its delegations to inter-institutional trilogue and conciliation committees. See European Parliament Directorate-General for Internal Policies of the Union, Directorate for Legislative Coordination and Conciliations Conciliations and Codecision Unit, 'Codecision and Conciliation: A Guide to how the Parliament co-legislates under the Treaty of Lisbon', (January 2012), available at http://www.europarl.europa.eu/code/information/guide_en.pdf (last accessed on 16 December 2013)
13 MEPs have the right to form official political groups (with a minimum number of 25 members) according to their political affinities and in line with internal EP rules: such groups are eligible for secretariat and financial support from the EP budget. Informal 'Intergroups' may also be established on specific topics and across political groupings, but must declare any financial or in-kind support received from third parties, in the same manner as would an individual MEP. See EP RoPs, rule 32. For further information on the obligations incumbent on individual MEPs, please refer to the Integrity (law) sub-chapter.
14 TFEU, art 232
15 TFEU, art. 223(2). This is done via a special legislative procedure, for which the EP has initiation rights
16 Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament [2005] OJ L 262/1, art. 9(1). (MEPs Statute) The salary of MEPs at the time of writing was set at 38.5% of the basic salary of a judge at the CJEU (see MEPs Statute, art. 10), equating to a 7956.87 EUR per month. See http://www.europarl.europa.eu/aboutparliament/en/0081ddfaa4/MEPs.html, (last accessed on 16 December 2013)
17 TFEU, art. 223(2)

MEPs have no obligation to reside in any of the locations in which the EP works.[18] These latter locations are laid down in the Treaties,[19] which compel the EP to retain its seat in Strasbourg, where 12, monthly plenary sessions (including that on the EU budget) must take place; other plenary sessions and EP Committee meetings must, in turn, be held in Brussels (though the latter can be held elsewhere if agreed by the EP Bureau[20]). The Treaties further specify that the EP's General Secretariat must be based in Luxembourg.

Without the need to be formally convened, the Parliament is compelled by the EU Treaties to hold an annual session on 'the second Tuesday in March';[21] so-called 'part-sessions' are held on a monthly basis.[22] While the EP President can recall parliament in urgent cases, [23] it can also convene extraordinarily at the request of a majority of MEPs, or even at the request of the EC or Council.[24] With regard to attendance at proceedings, the EC has the right to be present at all EP meetings, and to be heard at its own request. Moreover, the European Council and Council of Ministers have the prerogative to determine themselves the conditions under which they may be heard by the EP.[25] Entry into the Chamber of the EP is restricted, however, to MEPs, Members of the EC or Council, the EP Secretary General, members of EP staff 'whose duties require their presence there', and EU experts or officials.[26] EP Committees retain the right to meet when convened by their respective Chair, or the EP President, and can, at their discretion, invite the EC or the Council to participate.[27]

While the EP and Council act on an equal footing as co-legislators in the ordinary procedure for adopting EU legislation[28] – and also in the adoption of the annual budget of the Union[29] – the EU Treaties confer only limited rights upon the EP to put forward legislative proposals: this in a number of areas 'mainly concerning its own organisation, functions and the European elections'.[30] [31] The EC retains a near monopoly over legislative initiative, thereby driving the agenda of the EP, to a certain degree. The EP can, however, request the EC to submit a legislative proposal on 'matters on which it considers that a Union act is required for the purpose of implementing the Treaties',[32] and this can be done at the initiative of one of its internal committees or by an individual MEP.[33] The EC is not compelled to act but must justify any refusal not to do so.[34] The EP can also shape the legislative agenda through the role it now plays in the development of the European Commission's annual work programme, albeit that this role is only laid down in an inter-institutional agreement.[35] The EC has therein committed to take EP priorities into account when putting together its annual work programme,[36] and agreed not to make public any legislative proposal or 'significant initiative or decision' before notifying the EP; furthermore, the EC and EP agree in advance 'key initiatives' in the EC work programme to be presented in plenary at the EP.[37]

With regard to its own internal budget, the EP has autonomy in drawing up the estimates for its financial and human resource needs, and these are subject to agreement with the Council in the normal procedure for adopting the entire EU budget.[38] The Parliament has independence over the recruitment of its administrative staff, in line with procedures stipulated in the EU Staff Regulations,[39] with the Bureau appointing the Secretary General and determining the 'composition and organisation' of the secretariat.[40] The Secretary General is notably obliged to give an oath to the Bureau to undertake his/her duties with 'absolute impartiality'.[41] MEPs are free to select their personal staff - however since 2009, they have been prohibited from directly or indirectly hiring close family members or spouses/partners.[42] (For further information on the provisions in place to safeguard the independence of MEPs and EP staff, please refer to the Integrity (law) sub-chapter.)

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18 MEPs statute, Preamble, para. 11
19 Protocol (No. 6) on the location of the seats of the institutions and of certain bodies, offices, agencies and departments of the European Union [2012] OJ C326/265
20 'Any committee may decide to ask for one or more meetings to be held elsewhere. Its request supported by reasons, shall be made to the President, who shall place it before the Bureau. If the matter is urgent, the President may take the decision himself.' See EP RoPs, rule 135.
21 TFEU, art. 229
22 EP RoPs, rule 133(3)
23 With the approval of the Conference of Presidents, made up of him/herself and the Chairs of the political groups. See EP RoPs, rule 134(4)
24 TFEU, art. 229
25 TFEU, art. 230
26 EP RoPs, rule 145
27 EP RoPs, rule 193
28 TEU, art. 14. The ordinary legislative procedure covers areas including agriculture, energy security, immigration, justice and home affairs, health and structural funds.
29 However, the annual budget cannot exceed ceilings laid down in an EU multi-annual financial framework, which is adopted by the Council, for a period of at least 5 years, with only the consent of the EP, delivered through a majority vote. See TFEU, art. 312
30 Library of the European Parliament, 'Parliament's legislative initiative', [Library Briefing] (24 October 2013), pg. 2. This, for example, includes the adoption of the 'general conditions governing the performance of the duties of its members', as mentioned above.
31 Since the Lisbon Treaty came into force, the EP now also has the power to propose treaty changes. See TEU, art. 48
32 TFEU, art. 225
33 Both cases requiring the completion of an 'own-initiative report' by a competent committee and an absolute majority in the plenary. See EP RoPs, rules 41, 42
34 TFEU, art. 225
35 Framework Agreement of 20 October 2010 on relations between the European Parliament and the European Commission [2010] OJ L304/47 (EP-EC framework agreement)
36 EP-EC framework agreement, art 35
37 EP-EC framework agreement, art 13
38 TFEU, art. 314
39 See 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, principally, esp. Title III, e.g. art. 29 (Staff Regulations)
40 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 207, (EP RoPs). This includes the retention of the right to decide which categories of secretariat staff enjoy in whole or in part, immunity conferred on EU civil servants by the Treaties
41 EP RoPs, rule 207(1)
42 EP Bureau Decision of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament [2009] OJ C 159/1, arts 33(1), 43(d), (MEPs Statute implementing measures)

The EU's financial rules give the European Court of Auditors external audit powers over the European Parliament's financial accounts, and full rights of access to information deemed 'necessary for the performance of its task':[43] the EP is furthermore compelled, via Treaty provisions, to cooperate with the Court in the exercise of its audits.[44] The European Anti-Fraud Office (OLAF) retains powers to investigate EP personnel and MEPs, and in line with an inter-institutional agreement between the EC, Council and EP,[45] the latter has adopted practical arrangements with OLAF to govern the conduct of these internal investigations.[46] The arrangements oblige EP officials and servants to provide 'all useful information and explanations' to OLAF, and to report suspected evidence of misconduct, but do not prejudice safeguards on the immunity of MEPs, nor or their right to refuse to testify[47] – including, significantly, where they have obtained information confidentially, in the course of their parliamentary activities [48]

The immunity of MEPs – and their freedom of movement in the EU – are, furthermore, safeguarded by Treaty provisions,[49] which protect them from 'any form of inquiry, detention, or legal proceedings in respect of opinions expressed or votes cast by them in the performance of their duties'.[50] However, CJEU case law has indicated that this protection only pertains where the comments made have a direct, obvious link to the performance of the MEP's duties, and that it is for a national court adjudicating to establish this link.[51] Member states are compelled to afford MEPs from their territory the same level of immunity as that afforded to national-level parliamentarians, and not to detain or initiate legal proceedings against MEPs from other member states, which invites some discrepancy in the actual level of uniform protection afforded to members. Immunity does not extend, however, to instances where 'a Member is found in the act of committing an offence'.[52] The EP (plenary) retains the sole right to assert or waive the immunity of its members, and in urgent cases, via the decision of the EP President;[53] however, where a request is received by a national authority to waive immunity, the EP is obliged to inform OLAF.[54] Nevertheless, CJEU case law has indicated that national judicial authorities are not bound by an EP decision to defend the immunity of a member, and that the EP does not have the express power to intervene where a national court does not recognise that immunity – irrespective of whether the law of the member state concerned would allow its own domestic parliament to do so.[55]

43 TFEU, art. 287, and Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, arts. 159, 161 (Financial Regulation)
44 TFEU, art. 287(3)
45 Inter-institutional agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) [1999] OJ L136/15
46 EP RoPs Annex XII
47 EP RoPs, Annex XII, arts. 1, 2, 4
48 EP RoPs, rule 7(5)
49 Protocol (No 7) on the privileges and immunities of the European Union [2012] OJ C326/266, arts. 7-9
50 Ibid, art. 8
51 European Parliament Committee on Constitutional Affairs draft report of 17 July 2013 on amendment of Rule 7 of Parliament's Rules of Procedure on the waiver and the defence of parliamentary immunity (2013/2031(REG)), pp. 15-16 (AFCO draft report 2013)
52 Ibid, art. 9
53 EP RoPs, rules 5-7
54 EP RoPs, Annex XII, art. 6
55 AFCO draft report 2013, pp. 15-16

INDEPENDENCE (PRACTICE)

To what extent is the European Parliament free from subordination to external actors in practice?

The EP's independence over its internal functioning is not under threat, yet the limits of its autonomy have been highlighted through EU case law, for instance following disputes over its ability to decide upon its own locations of work and electoral procedures or with regard to the immunity of its members. Despite growing powers and increased confidence in asserting them, the European Parliament is still limited in its ability as a legislative body to propose new legislation. However, the Commission is showing good cooperation with regard to responding to EP requests for legislative proposals.

The powers and influence of the European Parliament have grown significantly since the first direct elections held in 1979, and since 2009, the EP has stood on an equal footing with the Council as a co-legislator in 85 policy areas.[56] The EP has since exerted its new powers and independence on a number of occasions. Of particular note was its initial rejection, in February 2010, of an extension to a temporary agreement between the EU and US to allow the bank data of EU citizens to be shared with the US authorities:[57] the EP here demonstrated its new role in co-decision over justice and home affairs legislation, withstanding intense pressure from both national governments and that of the US, including direct appeals to the MEP leading on the issue.[58] Similarly, in 2012, the EP went against the will of the EC and the Council and rejected a proposed international Anti-Counterfeiting Trade Agreement: here, making use of new powers of consent over such agreements.[59] Most recently, in 2013, the EP battled the Council over the 2013 and 2014 EU Budgets, leveraging its position to influence as far as possible the shaping of the Multi-Annual Financial Framework for which it must only provide its consent.[60]

The independence of the European Parliament as a legislative body is limited by the lack of a right to initiate legislation. However, the EC appears to be demonstrating improving, and indeed, 'positive and swift' cooperation when receiving requests from the EP to put forward legislative proposals. The EP made 29 such requests between 1994-2009, and, at the time of writing, had made 18 in the 7th legislative term: in general, follow-up by the Commission to these requests is seen as positive, with the latter stating only once that there was 'no economic case' for presenting a legislative proposal further to the EP's call. Moreover, the EP could potentially initiate legal action against the EC should it fail to respond to such a request by the former, and some academics argue that 'the political consequence of a failure by the EC to reason sufficiently the rejection of Parliament's request could be cause for a motion of censure on the Commission's activities'.[61]

While the independence of the EP to determine its own internal guidelines has not been violated to date, the EU's court was called on to rule on the legality of the Parliament's interpretation of these rules in 2001 specifically regarding whether administrative and financial support could rightly be withheld from a number of MEPs convening as a formal political group despite no common political affinity.[62] In this case, the Court supported the interpretation expressed by the EP, but the matter demonstrates that judicial control may still be exercised by the CJEU over these internal rules – setting out limits to the independence of the EP in this regard.[63]

In terms of its own organisation, while the EP can initiate the procedure to reform the ground rules concerning the election of its members, its lack of autonomy in this regard is demonstrated in the Council's reticence to review the existing rules.[64]

Yet perhaps the most high-profile demonstration of the EP's lack of independence over its own functioning is the debate over its locations of work. The Parliament has repeatedly highlighted the additional costs and disruption to its work resulting from the legal obligation to hold plenary sessions in Strasbourg and Brussels each month,[65] citing

56 Though the Lisbon Treaty extended co-decision to 40 new policy areas, it still does not apply in several areas which require unanimity in the Council, (e.g. taxation or transnational aspects of family law). See E. Schulz, 'Supranational decision-making procedures', European Parliament Fact Sheets on the European Union, [2013], pg.1, available at http://www.europarl.europa.eu/ftu/pdf/en/FTU_1.4.1.pdf (last accessed on 19 December 2013)

57 The so-called SWIFT (Society for Worldwide Interbank Financial Telecommunication) agreement. See for example, R. Turner, 'European Parliament rejects SWIFT deal for sharing bank data with US', Deutsche Welle, available at http://www.dw.de/european-parliament-rejects-swift-deal-for-sharing-bank-data-with-us/a-5239595-1 (last accessed on 19 December 2013)

58 See for example, R. van Geffen, 'European Parliament shows its teeth', theEuros.eu, (4 April 2010), available at http://www.theeuros.eu/European-Parliament-shows-its,3613.html?lang=fr (last accessed on 19 December 2013)

59 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 218(6) (TFEU)

60 See for example, EurActiv, 'Late night deal seals 2014 EU budget', EurActiv, (12 November 2013), available at http://www.euractiv.com/priorities/late-night-deal-seals-2014-eu-bu-news-531613, (last accessed on 19 December 2013), and EurActiv, 'Parliament approves EU's 2014-2020 budget', EurActiv, (19 November 2013), available at http://www.euractiv.com/video/parliament-approves-eus-2014-202-531796 (last accessed on 19 December 2013)

61 See Library of the European Parliament, 'Parliament's legislative initiative', [Library Briefing] (24 October 2013)

62 See Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rules 30-31 (EP RoPs)

63 See K. Lenaerts, 'The principle of democracy in the case law of the European Court of Justice', International and Comparative Law Monthly, Vol. 62, No, 2 (2013) (271-315), pp. 286-290

64 Note 6151/02 of 22 February 2002 from the General Secretariat of the Delegations on the Electoral Procedure – Presidency compromise proposal

65 See, for example, European Parliament resolution of 10 May 2012 with observations forming an integral part of its Decision on discharge in respect of the implementation of

the European Council as a particular obstacle to any change,[66] and in 2011, voted to merge two Strasbourg sessions into a single week in the two following years. This was contested by France and Luxembourg at the CJEU, with the latter ultimately ruling in 2012 that the EP's vote ran contrary to the Treaties.[67] In 2013, the EP voted to exercise its powers to call for a Treaty change to resolve the issue and allow it to decide autonomously where it sits.[68] At the time of writing, the Council was yet to respond to this vote.

The extent of the EP's powers to defend its members' immunity has been limited through a CJEU ruling in 2011, which stated that MEPs may not be granted immunity on opinions they express unless a direct and obvious link between the comments made and the performance of their parliamentary duties can be established.[69] As such, by limiting the independence of the EP, the CJEU is ensuring that the immunity conferred on MEPs does not imply impunity.

In its attempt to protect the independence of its members, the EP has previously sought to block access to its premises by another EU actor when refusing OLAF access to the offices of four MEPs being investigated as part of a 'cash-for-amendments' scandal in 2011, on the basis of a disagreement over its competence to investigate the alleged misconduct.[70] Following assertion by OLAF over its competence in the matter,[71] it was ultimately granted access to the EP's premises,[72] which indicates further limits to its independence when it comes to the investigation of potential corruption cases.

Due to the research team not being able to secure interviews with the EP administration during the research phase, more detail on the practical implementation of independence safeguards within the Secretariat General cannot be provided.

the general budget of the European Union for the financial year 2010, Section I – European Parliament (COM(2011)0473 – C7-0257/2011 – 2011/2202(DEC)), para 3 (2010 discharge report) and
European Parliament resolution of 17 April 2013 with observations forming an integral part of its Decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2011, Section I – European Parliament (COM(2012)0436 – C7-0225/2012 – 2012/2168(DEC)), para. 9 (2011 discharge report)

66 2010 discharge report, para. 74

67 See Case C-237/11 France v Parliament [2012] (Judgement of the Court (Third chamber) of 13 December 2012)

68 European Parliament resolution of 20 November 2013 on the location of the seats of the European Union's Institutions (2012/2308(INI))

69 See Lenaerts, pp. 290-293

70 Via a letter from the then EP President Buzek to OLAF, supported by the opinion of the EP legal services. See A. Willis, 'Confusion reigns over MEP cash-for-amendments probe', EU Observer, (28 March 2011), available at http://euobserver.com/news/32082 (last accessed on 17 December 2013)

71 See G. Sebag, 'Institutional conflict over OLAF investigation into MEP scandal, Europolitics, (31 March 2011), available at http://www.europolitics.info/institutional-conflict-over-olaf-investigation-into-mep-scandal-art300020-46.html (last accessed on 17 December 2013)

72 Interview with OLAF Director General, 5 December 2013

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the European Parliament?

Rules are in place to ensure the operational and financial transparency of the institution. Third parties and the media can access the EP premises, and official proceedings must be broadcast in real time and made available online. While a large degree of transparency pertains to European Parliament (EP) legislative and non-legislative activities in plenary, committee work can potentially be done behind closed doors, however, new rules from early 2014 increase transparency of committees votes on resolutions and legislation. Nevertheless, inter-institutional discussions to reach agreement on draft legislation (i.e. trilogues and conciliation procedures) are subject to very minimal transparency rules. MEPs' financial declarations must be public, though no information need be disclosed on their expenses or on contact with lobbyists. No 'legislative footprint' disclosing third party input into the legislative process is guaranteed in law. Recent changes to rules regarding the disclosure of internal administrative documents represent a retrograde step in transparency.

The EU Treaties compel the EP to hold discussions and votes on draft legislation in public and to ensure publication of documents 'relating to legislative procedures'.[73] Secondary legislation binds the Parliament to provide public access to all documents (*not* information) it holds – subject to broad exceptions related to the protection of its decision-making processes, of public security, of commercial interests or of data protection, *inter alia*[74] – and to a register of documents.[75] Exceptions not related to sensitivity, privacy or commercial interests apply for a maximum period of 30 years.[76] A list of documents to be made directly accessible via the register is in place,[77] but this does not expressly lay down timeframes for disclosure. All documents of Parliament must nevertheless be drawn up in the official languages of the EU,[78] with those drawn up under the legislative procedure or for the purposes of parliamentary business recorded in the as soon as they 'have been tabled or made public',[79] and those drawn up *or received* within legislative procedures made directly accessible: the Secretary General has discretion over the registration of administrative documents.[80] . However, this latter provisions represents a retrograde step vis-à-vis transparency, given that the discretion of the Secretary General results from a change to the rules in 2011. Prior to this, internal administrative documents were to be registered immediately, 'as far as possible' by the department who produced the document.[81] Provisions indicating whether draft versions of documents are to be made available in advance of meetings, (e.g. draft meeting agendas) are not in place. Documents 'received, drafted, or sent' by MEPs are not considered EP documents, unless 'tabled in accordance with the Rules of Procedure', and therefore fall outside the provisions for public access. MEPs do, though, have the right to inspect any EP files, aside from personal files and accounts.[82]

The EP's internal rules require plenary debates to be public, while standing committees[83] (and committees of inquiry)[84] may hold some of their proceedings *in camera*.[85] Members of the public can physically attend plenary sittings if granted admission by the EP President or Secretary General.[86] Detailed plenary minutes must be

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73 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts 15(2), 15(3) (TFEU)

74 Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43 (ATD Regulation)
Exceptions relate to the protection of public security, military affairs, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections/investigations/audits and the institution's decision-making processes.

75 This translates to an Electronic Register of References (ERR) to documents drawn up or received by the European Parliament as from the date from which Regulation (EC) No 1049/2001 is applicable (3 December 2001). See European Parliament Bureau decision of 28 November 2001 on public access to European Parliament documents [2011] OJ C216/19, art 1 (EP ATD decision)

76 ATD Regulation, art 4(7)

77 This includes agendas, minutes, texts adopted, and amendments from plenary and committee meetings; plenary attendance lists; a list of MEPs, their declarations of interest, and lists of their accredited assistant, along with 'public' conciliation documents, and general administrative guidelines. See European Parliament Bureau decision of 8 March 2010 adopting a list of the categories of documents directly accessible via the public register [2010], Annex I (Direct access list)

78 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 146, (EP RoPs)

79 European Parliament Bureau decision of 28 November 2001 on public access to European Parliament documents [2011] OJ C216/19, arts 4(3), 5(1), 5(2) (EP ATD decision)

80 EP ATD decision, art 4(4)

81 European Parliament Bureau decision of 28 November 2001 on rules governing public access to European Parliament documents [2005] OJ C289/06, art. 4(3)

82 Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament [2005] OJ L 262/1, arts 4, 6(1)-(2) (MEPs Statute) The revision of the EP's access to documents rules in 2011 further clarified the legal bases for requests for documents submitted by MEPs and staff from other EU institutions: '…whereas Members and staff of the institutions have special access rights, as recognised by Parliament's Rules of Procedure, the Financial Regulation, Regulation (EC) No 45/2001 and the Staff Regulations, which they may exercise without reference to Regulation (EC) No 1049/2001'. See EP ATD decision, preamble

83 The powers of standing committees are annexed to the EP RoPs, while committee members are elected by plenary allowing a public record. The composition and powers of special committees are included in decisions adopted by Parliament to establish them, ergo, they are public. See EP RoPs, rules 183-184

84 EP RoPs, Annex IX, art 2(2) states that '…Hearings and testimony [at committees of inquiry] shall take place in public. Proceedings shall take place in camera if requested by one quarter of the members of the committee of inquiry, or by the Community or national authorities, or where the temporary committee of inquiry is considering secret information. Witnesses and experts shall have the right to make a statement or provide testimony in camera.

85 EP RoPs, rule 103. The EP can also decide not to make public a committee of inquiry's final report. See EP RoPs, Annex IX, art 4(2)

86 Members of the public must remain seated and silent, and expressions of approval or disapproval are liable to immediate ejection. See Rules of Procedure of the European

published in the *Official Journal of the European Union* (OJ),[87] though no timeframe for publication is indicated. Attendance lists are also public.[88] The results of votes by roll call – mandatory for all plenary votes on proposals for legislative acts, and from March 2014, for final plenary votes on non-binding resolutions, and final committee votes on resolutions and on legislation[89] – must be recorded in the minutes, indicating how individual members voted. Only the final outcome of secret ballots,[90] are recorded in the minutes, with the names of participating MEPs. For votes by a show of hands, only the result must be recorded in the minutes: this was the normal procedure for votes in committees,[91] but from March 2014, the aforementioned changes came into force.[92] Verbatim records[93] must also be published in the OJ (again, without a strict deadline), while EP proceedings must be broadcast 'in real time' on the institution's website and made accessible until the end of the following parliamentary term.[94]

The working documents from conciliation procedures[95] are only disclosed once the procedure has been concluded,[96] while no provisions are in place to make public any working documents from trilogue discussions held at any stage of the co-decision procedure, despite the EP underlining the principle of transparency in this regard: indeed neither type of procedure is held in public, though meetings 'shall be announced'.[97] While the compositions of EP negotiating teams are decided by standing committees, transparency over negotiating mandates before a first committee vote on draft legislation is weak,[98] and any feedback from negotiations, documents, mandate updates, and, indeed, decisions on final agreements, need not – under the broad justification of 'timing reasons' – go before a full committee, heavily diminishing transparency.[99]

Agendas and minutes of the meetings of the Bureau and Conference of Presidents must be accessible to the public, but particular items can be withheld on the basis of exceptions under EU public access to documents rules.[100]

A full list of MEPs and their accredited assistants are to be directly accessible.[101] MEPs' declarations of financial interests must also be 'published on Parliament's website in an easily accessible manner'.[102] In addition, gifts valued above 150EUR and received by MEPs when officially representing the EP are to be recorded in a public register, including a photo of the gift.[103]

While MEPs must declare attendance at third party events[104] where their costs are covered by a third party,[105] no provisions obliging publication of these declarations: nor are there legal provisions in place to oblige the public disclosure of MEPs' expenses. MEPs are similarly not obliged to disclose contact with third parties or entities registered in the EU Transparency Register, and there is no requirement to include indication of any input from third parties within committee proposals for amendments (or justifications thereof), or motions for resolutions.[106] 'Prominent' online publication of penalties imposed by the President on MEPs, and notification of the plenary, is foreseen in internal rules;[107] plenary decisions to remove an office of parliament from an MEP, due to misconduct, are public.[108]

The EP must allow citizens the 'opportunity to make known and publicly exchange their views in all areas of Union action, and they have the right to petition the EP on a matter affecting them directly and which falls within the

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Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 145(3) (EP RoPs)

87 EP RoPs, rules 179(1), (4) and 180(1), (5)

88 Direct access list, Annex I

89 European Parliament, 'To boost transparency, roll-call votes in plenary to show how MEPs vote', [Press release] (26 February 2014), available at http://www.europarl.europa.eu/news/en/news-room/content/20140221IPR36643/html/To-boost-transparency-roll-call-votes-in-committee-to-show-how-MEPs-vote (last accessed on 26 February 2014) (Roll-call votes press release)

90 Held for appointments or when requested by one fifth of all MEPs.

91 EP RoPs, rules 165-169, 194-195

92 Roll-call votes press release.

93 This is a multilingual record, featuring oral contributions in their original language. See EP RoPs, rule181(1)

94 EP RoPs, rules 181-182

95 Conciliation is the third and final phase of the most important of the codecision legislative procedure, and always applies if Council does not approve all the amendments of the European Parliament adopted at its second reading. It involves a committee comprising equal numbers of representatives from the two aforementioned institutions, along with the EC in a brokering role. See TFEU, arts 294(8b)-(14)

96 EP RoPs, Annex XX, art 37

97 EP RoPs, Annex XXI, arts 1, 5

98 Negotiating mandates would normally be any amendments voted on by a committee or plenary. 'In the exceptional case of negotiations on a first reading agreement before the vote in committee, the committee shall provide guidance to the EP negotiating team.' See EP RoPs, Annex XXI, art 4

99 EP RoPs, Annex XXI, art 6

100 EP RoPs, rule 29, ATD Regulation, arts 4(1)-(4), and Direct access list, Annex I

101 Direct access list, Annex I

102 EP RoPs, Annex I, art 4(4)

103 EP RoPs, Annex I, art 5, and EP RoPs art 4 and EP Bureau Decision of 15 April 2013 on implementing measures for the code of conduct for members of the European Parliament with respect to financial interests and conflicts of interest, art 4 (CoC implementing measures)

104 Except where the third party is an EU institution, body, office or agency, a recognised international organisation (e.g. the UN and its bodies, the Council of Europe), a central, local, regional or municipal authority of a Member State (except where this authority acts as a representative of a public undertaking), a political party or foundation, a social partner involved in the social dialogue (e.g. a trade union or an employer's association), and a church or religious community (except their representative offices, legal entities and networks created to represent them);

105 CoC implementing measures, art 6

106 See EP RoPs, rules 45 and 47

107 EP RoPs Annex I, art 8(5) (CoC)

108 EP RoPs, rule 19

scope of EU activity.[109] The EP must also maintain 'open, transparent and regular dialogue with representative associations and civil society'.[110] Such entities can sign up to a public, voluntary 'Transparency register', requiring information on their EU lobby-related activities and finances, but not on their contact with legislators. Annual access to the EP can be granted to individuals from these organisations and can be revoked following a breach of a code of conduct.[111]

The EP also grants annual and temporary press passes to media professionals: representatives from journalists' associations may assist in decisions on accreditation. Journalists or their media organisations can be banned from the EP for up to two years on the basis of a breach of publicly available rules: the journalist's representative association must be involved in any decision taken, and the journalist given the opportunity to present their case.[112][113]

The EP's rules of procedure are public;[114] its financial rules laid out in publicly available regulations,[115] and its budget and accounts must be published in the OJ – as must information on recipients of funds from the EU budget.[116] Where above 15k EUR in value, information on a contract, including the contractor, must be published on the internet.[117] Lists of EP staff with key financial duties[118] must be provided to the European Court of Auditors and Council.

109 TEU, art 11(1); TFEU, art 227

110 TEU, art 11(2)

111 EP RoPs, Annex X. To register, entities must provide organisational and financial information on their lobby activities, including on clients, where applicable. No information on contact with legislators/policy-makers is required. No more than four individuals from a given organisation with annual access badges may be present on EP premises at a given time.

112 See European Parliament Directorate for the media – press service, 'Rules for accreditation to the European Parliament', and European Parliament Bureau decision of 7 September 2005 on rules governing photographers and televisions crews inside the buildings of the European Parliament in Brussels and Strasbourg. A permanent EU press pass can be granted to journalists, film crews and photographers, giving them access to the EP, EC and Council: these are granted via the EC assisted by an advisory committee including representatives of the International Press Association.

113 A permanent EU press pass can be granted to journalists, film crews and photographers, giving them access to the EP, EC and Council: these are granted via the EC assisted by an advisory committee including representatives of the International Press Association.

114 Direct access list, Annex I

115 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1 (Financial Regulation), and
Commission Delegated Regulation (EU) 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union [2012] OJ L362/1 (Financial Regulation implementing rules)

116 Financial Regulation, arts 34, 35

117 Ibid, art 35 and Financial Regulation implementing rules, art 21

118 Financial authorisation, internal audit, and accounting duties. Financial Regulation, art 65(8)

TRANSPARENCY (PRACTICE)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the European Parliament in practice?

A wide range of material is published by the EP on its website and via its document register, including live footage of parliamentary proceedings. Moreover, the EP generally handles requests for documents positively, and in a timely manner, with technological improvements in proactive disclosure resulting in a drop in the number of documents requested. However, the usability of information, e.g. with regard to voting records, or the declarations of members interests, is a concern. In addition, significant gaps remain in the transparency of informal discussions on draft legislation with the Council and Commission (trilogues), of members' expenses and their contact with third parties, and with the proactive disclosure of internal administrative documents. The EP's unwillingness to engage with the present study also points to serious concerns regarding its openness to cooperation with civil society.

The European Parliament (EP) administers a large, multilingual website containing information on its functioning and organisation; news – including a variety of social media channels, press releases and audio-visual material; on individual members and committees; a library of briefings and studies; and a document register; and offers users the possibility to receive automatic updates when new content is added to the site.[119] Rules of procedure are available, as is summary information on the rules governing MEPs salaries, staff, expenses and allowances.[120]

The EP manages an online public document register, containing 'references to documents produced or received' by the EP since 3 December 2001.[121] It reports that in 2012, the register contained 463,689 references, or 3,097,165 when counting all language versions, marking a 12% increase from 2011, and 49% since 2009.[122] Usage of the register is also reported to be increasing, while access to documents requests are falling: potentially explained by the EP's assertion that nearly 90% of documents are directly accessible on its site, and due to technological improvements to the register.[123]

Though no user guidance is provided, the register is structured by document type and contains a broad range of categories, including a section comprising documents previously released subsequent to access to document requests.[124] However, this latter section does not appear to be systematically updated. At the time of writing, only 4 documents were registered for 2012, and 15 for 2011, despite 166 and 289 requests being made, respectively, in these years for previously undisclosed documents, and a reported release rate of 95% each year.[125] Furthermore, there is no section for internal administrative documents.[126]

Despite the large scope of the register, search functionality does not always filter documents narrowly,[127] and information on newly added documents is not provided: rather surprisingly, moreover, the EP reports that no sensitive documents are held by the institution that are not recorded in the register.[128] The comprehensive nature of the register is currently subject to a complaint being investigated by the EU Ombudsman.[129]

Requests for access to documents can be made directly via an online form. The EP saw a large decrease in *documents* requested via the register website, between 2011 and 2012 (1161 to 777),[130] while the total number of actual requests (which might pertain to more than one document) saw only a 10% decrease year on year (589 and 536, in 2011 and 2012 respectively). The percentage of refusals/partial refusal of initial requests has also decreased from approximately 6% in 2011 to 3% in 2012. Four appeals to these refusals were submitted in 2011, with one resulting in a reversal of the original refusal; while six were submitted in 2012, and none were reversed.[131]

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119 See http://www.europarl.europa.eu (accessed on 31 October 2013)
120 See http://www.europarl.europa.eu/aboutparliament/en/0081ddfaa4/MEPs.html (accessed on 31 October 2013)
121 Entries in the register include information on the date and author of documents, and links to other documents within a given procedure file. See http://www.europarl.europa.eu/RegistreWeb/search/simple.htm?language=EN (accessed on 31 October 2013)
122 European Parliament, '2012 Annual report of the European Parliament on public access to documents', pg. 4, available at http://www.europarl.europa.eu/register/pdf/rapport_annuel_2012_EN.pdf (accessed on 31 October 2013) (EP ATD report 2012)
123 40% growth was seen in visits to the register from 2011 to 2012, with an average of 13842 visits per month in 2012. Access to documents requests fell from 1161 in 2011 to 777 in 2012. EP ATD report 2012, pp. 4, 9, 10, 21
124 These range from documents related to official parliamentary activities, to official incoming and outgoing mail, documents forwarded to the EP by other institutions, archived press material, and documents pertaining to the internal functioning of the organisation. Studies and impact assessments, and annexes of answers to written questions were added to the register in 2012. See EP ATD report, pg. 6
125 EP ATD report 2012, pg. 12
126 These are registered at the discretion of the Secretary General.
127 'After performing the search, visitors most often employed the sort function...' EP ATD report 2012, pg. 8
128 EP ATD report 2012, pg. 7
129 See http://www.ombudsman.europa.eu/cases/caseopened.faces/en/11296/html.bookmark (accessed on 31 October 2013)
130 EP ATD report 2012, pp. 9, 16
131 Response to the 2013 ATD request A8658/MJC/en.

In general, the principal justifications for refusals between 2009-2012 have been the protection of internal decision-making or personal data; with the latter the most cited reason in 2012.[132] The EP does not record the time taken to deal with requests: nevertheless, only five extensions to the 15 day response deadline were enacted in 2011 and in 2012, with all others reportedly handled in a timely manner.[133]

Three complaints regarding EP decisions on access to documents have been lodged with the EU Ombudsman since 2010: of those closed, one resulted in a critical remark.[134] One judgement was issued by the CJEU partially annulling an EP decision refusing public access to registers of assistants to former Members 2012: this is one of only three such cases being lodged at the General Court regarding EP decisions on access to documents.[135]

Requests for information can be made directly to a citizen's enquiry service and to the EP's press service: the EP also maintains an archive service, which handle requests for historical documents and in-depth research. Use of these services has led in part to the drop in access to documents requests.[136]

An annual calendar of plenary sittings is published. Draft agendas and documents for plenary sittings are made available in advance, along with information on on-going files (see below). Draft and final minutes, attendance lists, and tabled and adopted documents, are available by plenary date: voting records are also published in this manner. Live video of plenary sessions and recordings of past sittings are available on the EP website.[137] Verbatim reports from plenary sittings are available – though the latter with a considerable time lag of approximately a year, at the time of writing.[138]

Committees publish calendars of their meetings, and provide draft agendas in advance, with final minutes made available in due course. The outcome of votes and participation lists are published,[139] though without indication of individual members' votes, despite the fact that committees have become the central policy-making bodies with the Parliament. (New rules from March 2014 will, however, compel committees to hold roll-call votes on resolutions and legislation, and duly disclose how individual MEPs vote.)[140] Draft reports with deadlines for submission of amendments, and final lists of amendments are published, though without indication of any third party input. Most committees also produce newsletters on their activities, though publication is irregular.

Overall, much information is published with regard to plenary and committee proceedings, including press material, but use is dependent upon good knowledge of the functioning of the EP, hindering accessibility by the general public. This is put into stark relief when noting how EP voting data is currently being used and published by external organisations,[141] and indeed, that MEPs themselves are using these third-party services to communicate their voting records.[142] Despite the growth in usage of the EP website,[143] 79% of access to documents requests in 2012 concerned 'previously' disclosed documents and requests for non-specific documents have increased in 2012 (e.g. all documents related to a particular legislative file), which may reflect difficulties in usability.[144]

Minutes and agendas but no documents from EP Bureau meetings are made available following meetings, as is the case for other internal bodies (e.g. the Conference of Presidents, Conference of Committee Chairs, and Quaestors). These documents are accessible via the EP's document register. Notably, of requests in 2012 for documents not previously disclosed, internal administrative documents were the most requested, with Bureau documents representing 'over half of such requests'[145], indicating public interest in greater transparency regarding the EP's administration.

Information on on-going legislative files[146] is gathered within an online EP database for monitoring EU decision-making processes – a so-called 'Legislative Observatory' – which has been administered and expanded by the EP since 1994, in English and French.[147] The database is updated on a daily basis, and searches[148] can be made on a

132 EP ATD report 2012, pg. 20
133 Response to the 2013 ATD request A8658/MJC/en.
134 EP ATD report 2012, pp. 13, 16
135 EP ATD report 2012, pp. 13-14
136 EP ATD report 2012, pg. 10. Information on the Central Archives Service can be found at http://www.europarl.europa.eu/aboutparliament/en/0097d628af/Présentation.html (accessed on 31 October 2013(
137 See http://www.europarl.europa.eu/plenary/en/home.html (accessed on 31 October 2013)
138 At 3 November 2013, the last available provisional verbatim report concerned the plenary session of 22 November 2012.
139 Along with final committee reports
140 European Parliament, 'To boost transparency, roll-call votes in plenary to show how MEPs vote', [Press release] (26 February 2014), available at http://www.europarl.europa.eu/news/en/news-room/content/20140221IPR36643/html/To-boost-transparency-roll-call-votes-in-committee-to-show-how-MEPs-vote (last accessed on 26 February 2014)
141 See, for example, http://www.votewatch.eu (accessed on 31 October 2013)
142 See, for example, http://andrewduff.eu/en/ (accessed on 31 October 2013)
143 40% increase year on year between 2011 and 2012. EP ATD report 2012, pg. 21
144 EP ATD report 2012, pg. 10
145 EP ATD report 2012, pg.10
146 These files provide a timeline of key events and actors (e.g. lead MEPs), links to key documents – and summaries thereof – and access to depositories of legislative documentation administered by the EC and EU Publications Office. See http://www.europarl.europa.eu/oeil/info/info.do (accessed on 31 October 2013)
147 See http://www.europarl.europa.eu/oeil/home/home.do (accessed on 31 October 2013). The site contains records for all on-going procedures - irrespective of when they began - and all procedures completed since the beginning of the fourth parliamentary term in July 1994.
148 Which can be saved via the creation of individual accounts on the database webpage.

number of criteria. Information is also provided on new procedures and reports. Searchable databases of EP questions to (and related answers from) other institutions/bodies, and of written declarations, are also available.[149] Significantly, reporting of input from third parties to legislative procedures (e.g. via proposed amendments/meetings with lead MEPs) – whether on the EU Transparency Register or not – is not systematically provided by MEPs in legislative files, despite calls from the plenary itself,[150] and some MEPs adopting the practice.[151]

Documents from conciliation proceedings are made available on a dedicated area of the EP's website, and also through the document registry – once concluded.[152] The low number of documents listed for 2011 onwards[153] is a reflection of the increasing amount of EU legislation that is approved as early as possible.[154] In practice, this has involved increasing use of inter-institutional negotiation behind closed-doors, in so-called 'trilogues', involving a small number of MEPs and EP staff representing the institution. No public information is proactively disclosed from trilogues;[155] moreover, the lack of transparency has been criticised by MEPs, some of whom feel 'excluded' from the process, even when part of the committee nominally leading on a legislative file.[156] This has weakened the scrutiny role of the EP plenary, and arguably increased the susceptibility of EP negotiation positions to external – and unseen – influence by interest groups and member state pressure.[157] A request in 2013 for access to documents reporting on trilogues held within the reform or the statute and funding of European Political Parties initially resulted in the EP directing the requestor to consult a recording of a committee meeting which contained 'all public information on the trilogues' concerned. Ultimately, two summary notes were disclosed with an indication that no formal minutes had been drafted. The EP's reticence to disclose trilogue information was further explained on the basis that 'interinstitutional cooperation in good faith is crucial [for trilogues]. Parliament is only one of the negociating [*sic*] parties; disseminating partial or ephemeral information on such ongoing decision procedures could mislead the public or even put inadequate pressure on the other parties'.[158]

Information on members (including their individual declarations of interest, biographical information, contact details, information on their assistants, and on their parliamentary activity) is provided on member-specific webpages – accessible via directories, or through searches by country or political group, *inter alia*.[159] Declarations of interest are not, though, provided in an open, searchable data format[160] nor are they accessible in a central location allowing historical comparison of declarations, nor comparison between MEPs: this is further compounded by all declarations not being available in a common language, and often being handwritten. Further criticism on the quality of information in declarations has been raised by civil society actors.[161] No information is provided on individual members' expenses (though some MEPs do publish this privately[162]), nor on any decisions to recover undue payments to members – or related legal proceedings.[163] While some MEPs publish information on their contact with third party lobbyists or attendance at third-party events on privately managed websites,[164] this information is not systematically published via the EP site: MEPs' declarations of attendance at third party events, where their costs were covered by a third party are, however, now being published automatically on their individual EP webpages.[165] As is the case for general declarations of interest, concern remains on how easily the information in these declarations can be scrutinised.[166]

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149 See http://www.europarl.europa.eu/plenary/en/parliamentary-questions.html (accessed on 31 October 2013)

150 See European Parliament resolution of 8 May 2008 on the development of the framework for the activities of interest representatives (lobbyists) in the European institution, [2009], OJ C271/E/48, para. 3; and European Parliament decision (2010/2291(ACI)) of 11 May 2011 on conclusion of an interinstitutional agreement between the European Parliament and the Commission on a common Transparency Register, para. 9

151 For example Diana Wallis MEP. See tinyurl.com/WallisFootprint

152 See http://www.europarl.europa.eu/code/default_en.htm (accessed on 4 November 2013)

153 Only 2 joint working documents are available in the register for 2013, none for 2012 and 1 for 2011; while five joint texts approved by the conciliation committee are available for 2011 and none since then.

154 Between 1999-2004, less than 30% of (co-decision) legislation was agreed at first reading, while between 2004-2009, this stood at nearly 70%; and since 2009 this trend has continued to grow. M. Shackleton, 'The European Parliament', in The Institutions of the European Union 3rd ed, ed. by J. Peterson & M. Shackleton, (Oxford: OUP, 2012), pp. 136-137. See also D. Guéguen, Reshaping European Lobbying, (Europolitics, PACT European Affairs: Brussels, 2013), pg. 59

155 See, for example, R. Karsasheva, 'EU trilogues undermine parliamentary committees', EurActiv, (4 October 2012), available at http://www.euractiv.com/future-eu/trilogues-boost-influence-majori-analysis-515205 (accessed on 31 October 2013)

156 'Rafal Trzaskowski (EPP, Poland) says that some of his colleagues feel excluded and believe that rapporteurs are sometimes "hijacking" the whole committee.' See G. Sebag, First-reading agreements - Rise in number: Threat or opportunity?, Europolitics, (18 September 2012), available at http://www.europolitics.info/rise-in-number-threat-or-opportunity-artr343039-32.html (accessed on 31 October 2013)

157 Research suggests that the individual MEP (the rapporteur) leading trilogue negotiations on behalf of the EP may be more likely to 'promote national interests' rather than those of the Parliament. S. Hix and B. Høyland, 'Empowerment of the European Parliament', Annual Review of Political Science, Vol. 16 (2013) 171-89, pp. 183-84

158 Access to documents request A 6341 EM/en from R. Patz to the European Parliament. The request pertained to documents drawn up by the AFCO Secretariat (or other units of the EP's Secretariat General) summarising/reporting the trilogue meetings relating to the reform or the statute and funding of European Political Parties (Giannakou report).

159 See http://www.europarl.europa.eu/meps/en/map.html (accessed on 31 October 2013) Search results can also be downloaded.

160 Scanned pdf documents are uploaded to the site, sometimes with handwritten text.

161 See Friends of the Earth Europe, 'Transparency in the European Parliament', [2012], available at http://www.foeeurope.org/sites/default/files/transparency_in_the_european_parliament_july2012.pdf (accessed on 31 October 2013)

162 See, for example, http://www.keithtaylormep.org.uk/spending-summary-receipts-and-certificates/

163 Decision of the Bureau of the European Parliament, of 19 May and 9 July 2008, concerning implementing measures for the Statute for Members of the European Parliament [2009] OJ C159/1, art 68

164 For example, German Green MEP Sven Giegold publishes a list of meeting requests received from lobbyists and whether a meeting occurred. See http://www.sven-giegold.de/2013/lobbytransparenz/ (accessed on 31 October 2013). German Green MEP Reinhard Bütikofer also publishes a list of meetings with lobbyists: see http://reinhardbuetikofer.eu/transparenz/

165 At the time of writing (4 November 2013), 23 such declarations were available on the EP website.

166 These declarations are also uploaded as scanned pdfs of forms in the language of the MEP concerned, and are often filled in by hand. See, for example, http://www.europarl.europa.eu/ep-dat/96997_11-10-2013.pdf (accessed on 4 November 2013)

A list of gifts received by MEPs representing the EP in an official capacity has been available since 2013, and at the time of writing contained eleven entries (from six MEPs) featuring information on the name of the donor, value and nature of the gift.[167] No information is disclosed on other gifts received by MEPs.

Further to comments from the Advisory Committee on the Conduct of Members (see the EP Integrity chapters below) to improve the visibility of 'transparency-related information', the EP introduced a central webpage in November 2013 gathering information on 'Ethics and Transparency' at the Parliament, including links to the EU Transparency Register.[168]

In the course of the research for this study, repeated attempts were made to secure agreement from the Secretary General of the EP to interview him and other staff, and direct appeal was made to the EP's President and Bureau to facilitate this. The EP ultimately refused, as an institution, to allow research interviews, stating that the EP Secretariat was not an executive administration but rather 'a service-establishment for the lawmaker and as such…under the responsibility of the political instances in this House'. The participation of EP staff in research interviews was therefore 'not deemed appropriate'.[169] The research team also offered the EP the opportunity to review research findings in lieu of interviews; however no specific response was received from the EP to this offer. This lack of cooperation from the EP reveals serious concerns about the transparency of the institution and a worrying distrust of the role of civil society in contributing to the integrity of European parliamentarians and the administration supporting them.

167 See http://www.europarl.europa.eu/pdf/meps/2013%20GIFTS%20REGISTER.pdf (accessed on 31 October 2013)

168 See The Advisory Committee on the Conduct of Members, 'Annual Report 2013', [2014], pg. 3 (AC AR 2013), available at http://www.europarl.europa.eu/pdf/meps/Annual_Report_2013_EN.pdf (last accessed on 5 March 2014). The Ethics and Transparency page is available at http://www.europarl.europa.eu/aboutparliament/en/0060f4f133/Ethics-and-transparency.html

169 Letter of 11 February 2014 from EP President Schulz to the Director of the Transparency International EU Office

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the European Parliament has to report on and be answerable for its actions?

The European Parliament, as a directly elected body, is ultimately accountable to the EU public. MEPs' mandates can be withdrawn via national legislation but no such common procedures are laid down in EU law, aside from where an MEP holds an incompatible office, potentially inviting differing levels of accountability across the EP. The legislative activity of the EP is subject to judicial oversight by the CJEU, and proceedings can be brought by member states, EU institutions and citizens – including where the EP fails to act. Complaints can also be lodged with the European Ombudsman against the EP for maladministration. The EP must comply with EU financial rules and external audits by the ECA, but is ultimately charged with scrutinising its own accounts, as it is also the authority signing off on all EU budget spending. OLAF retains full investigative powers within the EP, with MEPs answerable to national law when their immunity is waived. Provisions are in place for consultations with the public and with experts.

The European Parliament is the sole EU institution to be directly elected by European citizens, and is ultimately accountable to the public via direct elections – as laid down in the EU Treaties[170] and elaborated in an act of the Council.[171] Terms of office are set at five years, but there are no limits on re-election.[172] While EU legislation specifies a number of European and national level offices incompatible with that of an MEP (e.g. member of a national parliament or government),[173] no EU-level rules pertain to the pre-vetting of candidates. However, it is the EP that is charged, by law, to verify the 'credentials' of incoming MEPs[174] – principally with regard to whether they hold an incompatible office – and can rule on the validity of mandates, and on any dispute arising from the EU level rules in place.[175] [176] National legislation can, furthermore, provide for the withdrawal of an MEP's mandate, and in such cases, the mandate must end:[177] however, with no such provisions laid down in EU law, MEPs are potentially subject to differing levels of accountability, dependent upon their member state of election.

Judicial oversight on the EP's legislative activity – including any acts it issues that are 'intended to produce legal effects *vis-à-vis* third parties'[178] – is exercised by the Court of Justice of the European Union, which, under Treaty provisions, has the power to annul all or parts of an act.[179] This can be done on the basis of an infringement of the Treaties, misuse of powers, or procedural errors, *inter alia.* Legal proceedings can be initiated against the EP by Member States, the Council, and the Commission, and – in order to 'protect their prerogatives' – by the European Central Bank, ECA, and Committee of the Regions. Natural and legal persons may also contest legal acts, where they can demonstrate 'direct and individual concern', and, in the case of a regulatory act not requiring additional implementing measures, merely 'direct concern', setting a high bar for these types of actions to be initiated.[180] Action can also be brought against the EP where it has failed to take action, despite being called upon to do so. In such cases, proceedings can be initiated by Member States and other EU institutions, and by any natural or legal person where the EP has failed to address to that person any act,[181] other than a recommendation or an opinion.

Though the office holds no judicial powers, the European Ombudsman can receive complaints from EU citizens (or natural or legal persons) regarding alleged maladministration by an EU institution, body, agency or office, including the EP, and can issue recommendations to the institution concerned. Despite Treaty provisions safeguarding the independence of the Ombudsman, it is the EP that elects the office-holder and that is solely able to initiate dismissal proceedings; furthermore, it has special legislative power to adopt the 'regulations and general conditions governing the performance of the Ombudsman's duties', and currently, no rules proscribe MEPs from running for the office.[182] As such, a degree of potential weakness remains in this particular accountability mechanism.

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170 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, arts. 10, 14 (TEU)
171 Act concerning the election of the representatives of the Assembly by direct universal suffrage [1976] OJ L 287/5, art. 1 and Council decision of 25 June and 23 September 2002 amending the Act [2002] OJ L 283/1, art. 1(3) (1976 Act; 2002 amendment to 1976 Act)
172 TEU, art. 14(3)
173 1976 Act, art. 6 a; 2002 amendment to 1976 Act, art. 1(7)
174 1976 Act, art. 11
175 I.e. those laid down in the 1976 Act and 2002 amendment to it.
176 This verification is done on the basis of a declaration from each newly elected MEP, and information from national authorities, inter alia. See Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 3 (EP RoPs)
177 2002 amendment to 1976 Act, art. 1(12)
178 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 263 (TFEU)
179 TFEU, art. 264
180 TFEU, art. 263
181 TFEU, art. 265
182 TFEU, art. 228

The EU Treaties also confer on EU citizens (or natural or legal persons) the right to submit a petition (including a complaint) to the European Parliament on any issue falling within the scope of the EU's activity and which directly affects the petitioner: the EP must receive these petitions and duly determine both their admissibility and any further action – which can include the EP ultimately issuing a report or resolution, *inter alia*.[183] Petitioners may be heard in the process of complaints being examined.[184]

The EP is obliged by the EU's financial rules to provide an annual report on its activities (including internal activity reports by each of its administrative departments) to *itself* and the Council (as the budgetary authority), submit its accounts to annual scrutiny by the ECA, and have in place an independent internal auditor and a system of internal controls.[185] The ECA has a full right of access to the EP, and the latter is obliged to provide responses to any ECA observations made on its financial management, including within special reports.[186] The ECA has full rights of access to information deemed 'necessary for the performance of its task',[187] and the EP is compelled, via Treaty provisions, to cooperate with the Court in the exercise of its audits.[188] However, as the institution responsible for authorising the final signing-off or *discharge* of the EU's accounts,[189] it is the EP that exercises ultimate scrutiny on its own accounts during this procedure. No extraordinary procedure is foreseen in legislation regarding the handling of the discharge of the EP's financial accounts to avoid this;[190] however, in line with the procedure for all institutions, the EP issues its discharge 'acting on a recommendation from the Council'.[191]

The European Anti-Fraud Office (OLAF) retains powers to investigate suspected misconduct, or illegal activity against the EU's financial interests by EP personnel and MEPs, and in line with an inter-institutional agreement between the EC, Council and EP,[192] the latter has adopted practical arrangements with OLAF to govern the conduct of these internal investigations.[193] The arrangements oblige EP officials and servants to provide 'all useful information and explanations' to OLAF, and to report suspected evidence of misconduct, but do not prejudice safeguards on the immunity of MEPs, nor or their right to refuse to testify[194] – including, significantly, where they have obtained information confidentially, in the course of their parliamentary activities.[195] While OLAF has no sanction powers, it can provide any evidence of illegal activity by an MEP to a national jurisdiction and recommend prosecution. MEPs are immune from legal proceedings or detention by member state authorities in the normal exercise of their duties, but the EP can waive the immunity of MEPs, upon examination of any request from a national legal or judicial authority;[196] CJEU case law indicates that national judicial authorities are not, however, bound by EP decisions to defend immunity.[197] Furthermore, the immunity of MEPs does not extend to instances where 'a Member is found in the act of committing an offence'.[198]

Provisions are in place to allow the EP to hold 'structured consultation with European civil society on major topics...[which]...may include holding public debates, open to participation by interested citizens, on subjects of general European interest'. This is done under the responsibility of the Conference of Presidents of the political groups, and reports must be delivered back to this body on the implementation of such consultations by a dedicated Vice-President.[199] Committees can also, subject to the authorisation of the EP Bureau, make use of hearings with experts on specific topics.[200] Furthermore, public hearings must be organised by the EP within three months of the European Commission receiving a citizens' initiative[201] for proposed EU action.[202]

183 TFEU, art. 227; EP RoPs, rules 201-202
184 EP RoPs, rule 202
185 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, arts 32, 66(9), 98-100, 158-163 (Financial Regulation).
186 Financial Regulation, arts 161, 162(1), 162(4), 163, 165(2)
187 TFEU, art. 287, and Financial Regulation, arts. 159, 161
188 TFEU, art. 287(3)
189 TFEU, art. 319(1). See also arts. 317-319
190 See EP RoPs, rules 76-77
191 TFEU, art. 319(1)
192 Inter-institutional agreement of 25 May 1999 between the European Parliament, the Council of the European Union and the Commission of the European Communities concerning internal investigations by the European Anti-fraud Office (OLAF) [1999] OJ L136/15
193 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, Annex XII, (EP RoPs)
194 EP RoPs, Annex XII, arts. 1, 2, 4
195 EP RoPs, rule 7(5)
196 EP RoPs, rule 7
197 European Parliament Committee on Constitutional Affairs draft report of 17 July 2013 on amendment of Rule 7 of Parliament's Rules of Procedure on the waiver and the defence of parliamentary immunity (2013/2031(REG)), pp. 15-16
198 Protocol (No 7) on the privileges and immunities of the European Union [2012] OJ C326/266, art. 9
For further information on the legal framework governing MEPs' immunity, please see the Independence (law) sub-chapter.
199 EP RoPs, rule 25
200 EP RoPs, rule 193
201 See TEU, art 11(4)
202 Regulation 211/2011 of the European Parliament and of the Council of 16 February 2011 on the citizens' initiative [2011] OJ L65/1, art. 11; 1EP RoPs, rule 197a. For information on the Citizens' Initiative see

ACCOUNTABILITY (PRACTICE)

To what extent do the European Parliament and its members report on and answer for their actions in practice?

Direct elections serve as the main instrument through which to hold the EP to account, and while these are held as foreseen in legislation, voter turnout has fallen continually since 1979 – from 62% to 43% in 2009. Efforts are being made to reverse this trend, but the effectiveness of the EP's outreach activities has been questioned. Mechanisms for judicial oversight and citizen redress are being used, though the number of cases is relatively low. The EP is complying with its legal reporting obligations, but is ultimately responsible for signing off on its own accounts, raising potential questions over the quality of scrutiny exercised over the its financial management. OLAF investigations take place upon allegations of illegal activity/misconduct, and are being followed up, but criticism has been levelled at the cooperation provided by the EP in such cases e.g. with regard to OLAF entry into MEPs offices further to the 'cash-for-amendments' scandal. The procedure to deal with requests for the waiving of MEPs' immunity appears to be functioning adequately.

The principal mechanism for holding the European Parliament to account is the direct elections held every five years to replenish the institution. These have been held regularly since 1979, but voter turnout has declined consistently from one election to the next, arguably weakening the effectiveness of this safeguard. Levels have thus fallen from 62.0% in 1979 (9 Member States) to 58.4% in 1989 (12), 49.5% in 1999 (15), and 43.0% in 2009 (27).[203] The EP engages in efforts to stem this decline and create more interest in the EP elections,[204] while much emphasis has been put on the intention of the main European political parties to put forward a candidate for EC President in 2014, which is intended to 'provide voters with a clearer reason for voting for one party rather than another'.[205] Furthermore, it is hoped that this will further improve genuine EU-level accountability by encouraging voters to make their choices in the EP elections based on EU rather than national issues:[206] a concern that has been widely raised in the past.[207] That media coverage of the EP is often focused on 'national and domestic actors'[208] further dilutes broader scrutiny by the European public: the EP does, as previously mentioned, engage in outreach activities,[209] however their effectiveness in reaching public audiences is questionable.[210]

The mechanisms for judicial oversight of the EP are being used, with 95 cases[211] brought against the Parliament (either as a sole defendant or otherwise) at the CJEU, from 2009 to the time of writing: nevertheless, this represents a small proportion of the 6071 cases registered in that time at the Court of Justice and General Court. In contrast, approximately 10% (74 out of 734) of cases dealt with by the Civil Service Tribunal during this period, involved the EP.[212] In this same period, the European Ombudsman opened 20 cases concerning the EP, issuing 5 draft recommendations – including on access to documents, but predominantly on staff issues;[213] in one case, related to discrimination against a staff member, the EP did not accept the Ombudsman's recommendation.[214] This relatively low number of cases is, in part, a result of the fact that the EP takes fewer decisions that have a *direct impact* on citizens,[215] and may also go some way to explaining the low number of cases lodged against the institution at the CJEU, given that direct concern must be demonstrated by individual plaintiffs.

With regard to accountability over EP requests to the EC for legislative proposals,[216] these must pass scrutiny by

203 M. Shackleton, 'The European Parliament', in The Institutions of the European Union 3rd ed, ed. by J. Peterson & M. Shackleton, (Oxford: OUP, 2012), pp. 141, 144. In 2009, increases in turnout in ten member states were 'outweighed by drops...in sixteen others, with six countries...registering less than 30 per cent participation.'

204 See for example the dedicated information campaign and related activities organised in the context of the 2014 elections, http://www.elections2014.eu/en (last accessed on 18 December 2013)

205 Shackleton, pg. 142

206 S. Hix and C. Crombez, 'Why the 2014 European Parliament elections will be about more than protest votes', LSE EUROPP, (3 June 2013), available at http://blogs.lse.ac.uk/europpblog/2013/06/03/european-parliament-elections-2014/ (last accessed on 18 December 2013)

207 See for example, M. Marsh and S. Mikhaylov, 'European Parliament elections and EU governance', Living Reviews in European Governance, Vol. 5, No. 4 (2010), available at http://europeangovernance.livingreviews.org/Articles/lreg-2010-4/download/lreg-2010-4Color.pdf (last accessed on 18 December 2013)

208 H. A. Semetko and S. Banducci, 'Media, Mobilisation and European Elections', Conference on European Public Opinion and the 2004 European Parliament Elections, Brussels, Belgium, on 18 September 2003, pg. 2, available at http://www.ucd.ie/dempart/brusselsconference/presentations/amsterdamtext.pdf (last accessed on 18 December 2013)

209 See also the transparency (practice) sub-chapter for further information on the information disseminated by the EP.

210 The low audience figures for Europarl TV and the high expenditure that the activity entails were criticised in the budgetary discharge procedure in 2012 and 2013. See, for example, European Parliament resolution of 17 April 2013 with observations forming an integral part of its Decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2011, Section I – European Parliament (COM(2012)0436 – C7-0225/2012 – 2012/2168(DEC)), para. 66 (2011 discharge report)

211 Both pending or closed.

212 All figures were gathered from a search in the case register of the Court of Justice of the European Union, undertaken on 17 December 2013. Please see http://curia.europa.eu/juris/recherche.jsf

213 See http://www.ombudsman.europa.eu/cases/advancedsearch.faces (last accessed on 18 December 2013)

214 See http://www.ombudsman.europa.eu/cases/draftrecommendation.faces/en/4239/html.bookmark (last accessed on 18 December 2013)

215 See European Ombudsman, 'Annual Report 2012', (2013), (Luxembourg: Publications Office of the European Union), pg. 6. See also, Shackleton, pg. 144

216 Under Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 225 (TFEU)

the EP President and a responsible committee before a corresponding resolution is adopted by the plenary.[217] This latter resolution must respect the principle of subsidiarity and highlight how any financial implications from the proposal would be met, and a dedicated administrative unit (the European Added Value Unit) has been established in the EP Secretariat General to deliver assessments to detail the justifications for any proposals put forward.[218]

The European Parliament is complying with its reporting requirements under the EU Financial Regulation, with an annual report on budgetary and financial management and annual activity reports from the administration's directorates-general being delivered to the Committee for Budgetary Control and the Council. External audits by the ECA are being carried out, as are internal audits,[219] with the latter having uncovered extensive fraud on at least one occasion.[220] Nevertheless, while the Committee for Budgetary Control appears to be seeking to exercise its oversight with vigilance, issuing lengthy discharge questionnaires to the EP administration and drafting final plenary reports with detailed observations,[221] there may be questions on how effective the EP is when issuing its own discharge.[222] The administration is reported to be generally cooperative,[223] and indeed, does provide extensive replies to requests for further information, even where it considers the questions to have no relation to the implementation of the budget concerned.[224] However, the extent to which the Committee, and the EP plenary, are driving rapid improvement in the budgetary management of the institution is of concern: it was unable to secure access for all Committee members to internal EP audit reports in 2012,[225] and review of the discharge procedure year on year sees similar issues being continually raised.[226]

In practice, furthermore, the Council does not interfere with the discharge procedure for the EP's accounts, in line with a non-binding 'Gentlemen's Agreement' dating back to 1970, by which the former institution agreed not to make 'amendments to the estimate of expenditure of the European Parliament', (i.e. not scrutinise the implementation of its budget) in so far as this does not conflict with provisions in the EU Staff Regulations and those regarding the seat of the EP.[227] Thus far, discharge has not been refused to the EP.

OLAF investigations concerning the EP are taking place, involving both administrative staff and MEPs, though statistics on the number of cases are not made public. Recent cases have involved the misuse of parliamentary allowances,[228] false expense claims,[229] and false accounting[230] by MEPs, with the resulting follow-up varying in severity from successful recovery of funds by the EP, to imprisonment. Nevertheless, criticism has been made regarding the actual level of cooperation provided to OLAF by the Parliament in the course of its work, and specifically in 2011, when the EP sought to block OLAF's access to the offices of four MEPs being investigated as part of a 'cash-for-amendments' scandal, by asserting[231] that as the case did not involve EU funds, a criminal investigation – rather than an OLAF-led administrative enquiry – should rather be held.[232] OLAF underlined its competence to investigate,[233] and was ultimately granted access to the EP's premises.[234] This investigation eventually led to a national court ruling against of one of the MEPs concerned,[235] – though this was overturned on

217 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 42 (EP RoPs)

218 'The EAVA Unit may conduct specific follow-up research on major legislative requests (other than those subject to legislative initiative reports) made by Parliament within the negotiations with the EC on the Commission Work Programme.' See Library of the European Parliament, 'Parliament's legislative initiative', (Library briefing), (24 October 2013), available at http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130619/LDM_BRI%282013%29130619_REV2_EN.pdf (last accessed on 18 December 2013)

219 For access to all documents related to the budgetary discharge of the European Parliament, please see http://www.europarl.europa.eu/committees/en/cont/home.html#menuzone (last accessed on 18 December 2013)

220 The so-called 'Galvin Report' of 2008 into the parliamentary assistance allowance and produced by the EP's internal auditor uncovered wide abuse of the system then in place. The rules governing payment of MEPs' assistants have since been overhauled.

221 See for example, 2011 discharge report

222 Interview with member of the Committee on Budgetary Control, 14 November 2013

223 Ibid

224 See for example, European Parliament replies to the discharge questionnaire 2010, pp. 20, 37, available at http://www.europarl.europa.eu/document/activities/cont/201201/20120123ATT35922/20120123ATT35922EN.pdf (accessed on 11 December 2013) (2010 discharge replies); and
European Parliament replies to the discharge questionnaire 2011, pp. 33-41, 46, 52, 56, 60, available at http://www.europarl.europa.eu/document/activities/cont/201301/20130117ATT59203/20130117ATT59203EN.pdf (accessed on 11 December 2013) (2011 discharge replies)

225 2010 discharge replies, pp. 8-9;

226 Such issues include the high and rising cost of EP prizes and the cost of Europarl TV. See for example, European Parliament resolution of 10 May 2012 with observations forming an integral part of its Decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2010, Section I – European Parliament (COM(2011)0473 – C7-0257/2011 – 2011/2202(DEC)), paras. 56-60; 2011 discharge report, para. 67; 2011 discharge replies, pp. 18-19.

227 C. Antpöhler, 'The European Parliament's Right to Discharge the Council', in European Parliament Directorate General for Internal Policies, Policy Department D: Budgetary Affairs Workshop on the Discharge of the Council's Budget Briefing Papers, (27 September 2012), pg. 96, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cont/dv/workshop_council_/workshop_council_en.pdf (last accessed on 18 December 2013)

228 See for example European Union Anti-fraud Office, 'Eleventh operational report of the European Anti-fraud Office 1 January to 31 December 2010', [2011], (Luxembourg: Publications Office of the EU), pg. 25

229 See for example M. Banks, 'Olaf urged to hand over files on shamed ex-MEP'

230 OLAF, 'Former Member of the European Parliament jailed for fraud following OLAF investigation', (Press release OLAF/09/17), (12 November 2009), available at http://ec.europa.eu/anti_fraud/media-corner/press-releases/press-releases/2009/20091112_01_en.htm (last accessed on 17 December 2013)

231 Via a letter from the then EP President Buzek to OLAF, supported by the opinion of the EP legal services. See A. Willis, 'Confusion reigns over MEP cash-for-amendments probe', EU Observer, (28 March 2011), available at http://euobserver.com/news/32082 (last accessed on 17 December 2013)

232 See G. Sebag, 'Institutional conflict over OLAF investigation into MEP scandal, Europolitics, (31 March 2011), available at http://www.europolitics.info/institutional-conflict-over-olaf-investigation-into-mep-scandal-art300020-46.html (last accessed on 17 December 2013)

233 OLAF, 'OLAF reaffirms its competence to investigate members of the European Parliament', (Press release OLAF/11/4), (28 March 2011), available at http://europa.eu/rapid/press-release_OLAF-11-4_en.htm?locale=en (last accessed on 17 December 2013)

234 Interview with OLAF Director General, 5 December 2013

235 See Euractiv.com, 'Ex-Austrian MEP imprisoned in lobbying scandal', EurActiv, (16 January 2013), available at http://www.euractiv.com/future-eu/lobbying-scandal-sends-mep-jail-news-517055 (last accessed on 17 December 2013)

appeal and was under review at the time of writing[236] – while another resigned: a further MEP was expelled from his political group but retained his seat in the Parliament.[237] Relations between the EP and OLAF soured further in 2013, in the wake of the 'Dalligate' affair,[238] which has seen the chair of the EPP political group, and members of the EP's Committee on Budgetary Control call for the resignation of the OLAF Director General.[239]

Requests for the waiving or defence of the immunity of MEPs are being considered by the EP plenary, with decisions taken on 27 individual members in the 7th parliamentary term, at the time of writing.[240] Twenty-two MEPs, including a sitting Vice-President,[241] had their immunity waived on grounds ranging from accusations of aggravated fraud[242] and passive corruption,[243] to incitement to racial hatred.[244] This would appear to demonstrate that this system of assessing requests is functioning, though information is not available on the number of requests received.

With regard to public consultations, almost all EP Committees do hold regular, formal hearings with experts, and information and material from these hearings are made available on the Parliament's website. In addition to this, events and thematic workshops, enabling MEPs to gather expert input, are organised under committees' auspices.[245]

236 See 'Strasser gets his day in court (again)', European Voice, (5 December 2013), available at http://www.europeanvoice.com/article/imported/strasser-gets-his-day-in-court-again-/78972.aspx (last accessed on 8 January 2014)

237 See A. Willis, 'Confusion reigns over MEP cash-for-amendments probe', EU Observer, (28 March 2011), available at http://euobserver.com/news/32082 (last accessed on 17 December 2013).

238 For media reporting on the issue, see http://www.neurope.eu/dossiers/dalligate-cum-barrosogate

239 D. Hinton-Beales, 'Daul calls for commission to 'force resignation' of Olaf chief', The Parliament.com, (11 June 2013), available at http://www.theparliament.com/latest-news/article/newsarticle/daul-calls-for-commission-to-force-resignation-of-olaf-chief/ (last accessed on 17 December 2013)

240 These figures are derived from a search on the EP website, via its document register.

241 European Parliament decision of 11 June 2013 on the request for waiver of the immunity of Alexander Alvaro (2013/2106(IMM))

242 European Parliament decision of 16 April 2013 on the request for waiver of the immunity of Hans-Peter Martin (2012/2326(IMM))

243 European Parliament decision of 23 June 2011 on the request for waiver of the immunity of Adrian Severin (2011/2070(IMM))

244 European Parliament decision of 10 May 2011 on the request for defence of the immunity and privileges of Bruno Gollnisch (2010/2097(IMM))

245 See http://www.europarl.europa.eu/committees/en/events.html?id=hearings#documents; http://www.europarl.europa.eu/committees/en/events.html?id=workshops#documents; and http://www.europarl.europa.eu/committees/en/events.html?id=other#documents (last accessed on 17 December 2013)

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the European Parliament?

EU primary law does not place safeguards on the integrity of Members of the European Parliament (MEPs), beyond stipulation of offices incompatible with being an MEP, with national law governing the entitlement to stand in EP elections. MEPs' conduct is, rather, primarily governed by a Code of Conduct, which obliges them to declare certain financial and professional interests and proactively address conflicts of interest. Monitoring and verification mechanisms are, however, weak, as are sanctions: MEPS can also undertake paid external activities, with no declaration needed for earnings totalling less than 5000EUR, and have minimal post-employment obligations. No measures are in place to monitor MEPs' engagement with third parties, beyond obligations to declare high-value gifts and any travel/accommodation expenses covered. While MEPs' assistants working on EP premises are bound by legal obligations, these do not extend to locally-based assistants.

Though the right for any EU citizen to stand as a candidate in elections to the EP is laid down in the EU Treaties and the Charter of Fundamental Rights,[246] the entitlement to stand is governed by national law, with EU-level provisions stipulating only, in this regard, the offices which are incompatible with membership of the EP – including membership of a national parliament or government. [247] Newly elected MEPs must provide a written declaration to the EP that they hold no such offices and can only begin office following verification of this.[248] While there are no provisions in EU primary law regarding the integrity or conduct of MEPs, their obligation to act independently and not be bound by any instructions is provided for in the EP's Rules of Procedure (RoPs), and a Statute for MEPs deriving from it.[249]

Since 2011, the main instrument used to safeguard the integrity of MEPs is a Code of Conduct (CoC), which stipulates that members must not enter into agreements to act or vote in the interest of third parties, and provides a basic definition of a conflict of interest. Members are duly obliged to address and proactively disclose any conflicts that arise – before speaking, voting or assuming a *rapporteurship*;[250] and to complete public declarations of their financial and professional interests.[251] This declaration must be submitted to the President at the start of each EP term, and updated whenever changes occur: an MEP cannot take up an official EP office[252] or a rapporteurship before providing it. Verification extends to a 'plausibility check' by the EP administration, with emphasis clearly put on the responsibility of MEPs to declare information in a 'precise' manner. As such, there are no specific prohibitions on MEPs engaging in outside activity – indeed, 'occasional remunerated outside activity' below a total ceiling of EUR 5000 a year does not need to be declared.[253]

The CoC also prohibits MEPs from accepting gifts above a value of EUR 150 unless these are received when representing the EP in an official capacity. In such cases, the gifts must be declared to the President (including the name of the donor) and handed over the EP administration. A public register of such gifts must be maintained on the EP website.[254] MEPs must also declare attendance at events organised by third parties for which their travel and accommodation costs are covered by a third party and this information must be made public. [255] Though a public register of lobby and interest groups exists for the EP, MEPs are not obliged to record or disclose any other engagement with third parties.

The CoC also establishes an Advisory Committee on the Conduct of Members (AC) comprising five members[256]

246 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 20 (TFEU), and Charter of Fundamental Rights of the European Union[2012] OJ C326/391, art 39 (FR Charter)

247 An MEP cannot simultaneously hold any of the following offices: member of a Member State government or national parliament; member of the Commission, ECA, CoR or EESC; judge, advocate-general or registrar of the CJEU or member of the General Court; EU Ombudsman; member of the Board of Directors of the ECB; member of committees or other bodies set up pursuant to the Treaties for the purpose of managing the Union's funds or carrying out a permanent direct administrative task, member of the Board of Directors, Management Committee or staff of the European Investment Bank, and active official or servant of the EU institutions or bodies. See Act concerning the election of the representatives of the Assembly by direct universal suffrage [1976] OJ L 287/5, art 6 and Council decision of 25 June and 23 September 2002 amending the Act [2002] OJ L 283/1, art 7

248 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 3 (EP RoPs)

249 EP RoPs, rule 2, and Decision of the European Parliament of 28 September 2005 adopting the Statute for Members of the European Parliament [2005] OJ L 262/1, arts 2, 3 (MEPs Statute)

250 Responsibility for leading committee scrutiny of a legislative file or matter under consideration.

251 Including any professional occupations/board or committee memberships in the three years before first taking office; any parallel remunerated activity; any on-going professional board/committee memberships; any financial holdings with potential 'public policy implications' or where they can influence the body in question; any financial/personnel support for their parliamentary activities; any other financial interests that might influence their work.

252 President, Vice President or Quaestors (the latter responsible for administrative and financial matters directly concerning MEPs)

253 See EP RoPs art 4 and EP Bureau Decision of 15 April 2013 on implementing measures for the code of conduct for members of the European Parliament with respect to financial interests and conflicts of interest, art 9 (CoC implementing measures)

254 CoC implementing measures, art 4(1)

255 CoC implementing measures, arts 6, 7. No declaration is needed where the third party paying the expenses represents a public or similar interest, including an EU institution, international organisation or Member State authority, inter alia (see art 6(2)).

256 From amongst the members of the bureaux and the coordinators of the Constitutional Affairs, and the Legal Affairs Committees, taking account of MEPs' experience and of

appointed by the EP President, all of whom are sitting MEPs: external expertise can only be used for advice. The AC principally advises MEPs on how to fulfil their obligations (who can rely on any such advice provided) and can also assess, upon the request of the President, alleged breaches of the CoC and propose further action. The President can exercise a range of weak sanctions against MEPs, ranging in scope from a reprimand, to removal of the subsistence allowance or suspension from some or all of the EP's activities– though not of the right to vote in plenary – for 2-10 days, to a proposal to suspend/remove the MEP from any office held.[257]

No specific post-employment obligations are laid down for MEPs, beyond the indication in the CoC that those who 'engage in professional lobbying or representational activities directly linked to the EU decision-making process may not, throughout the period in which they engage in those activities, benefit from the facilities granted to former MEPs'.[258] these include a dedicated EP entry badge for former members, and use of a courtesy office on EP premises. In addition, badges can be withdrawn if the facilities are used for political or commercial purposes.[259]

While MEPs are free to select their personal staff, since 2009, they have been prohibited from directly or indirectly hiring close family members or spouses/partners.[260] Parliamentary assistants working on EP premises, along with the staff of the Parliament's administration, are subject to legal obligations and disciplinary proceedings under the EU Staff Regulations and Conditions of employment for other servants (SR), which, *inter alia*, limit outside activities, safeguard independence, and impose an obligation to report fraud/corruption. [261] A code of conduct is in place to elaborate these obligations, and individuals must also complete a declaration when beginning service stating that they are free of conflicts of interest and that they understand their obligation to report these if/when they arise.[262] Specific provision is also made for the EP Secretary General, to provide the Bureau of the parliament with a solemn undertaking to perform his/her duties with 'absolute impartiality', upon appointment.[263] While post-employment obligations stipulated in the SR apply to administrative staff, they only pertain to parliamentary assistants that serve for at least five years; similarly, the latter are only bound by provisions against unauthorised disclosure of non-public information for two years after service.[264] As is the case for MEPs, assistants and EP administrative staff do not need to record their engagement with third parties, however specific mention is made in their code of conduct regarding risks of aggressive lobbying and potential offers of employment in the private sector, and of the need to declare any holdings that their spouse/partner may have and which might impair their independence.[265]

No specific provisions or a code of conduct are in place regarding the obligations on MEPs' assistants hired and operating in their constituency Member State.

political balance. Reserve members from political groups not represented on the AC are also appointed by the President See EP RoPs, Annex I, art 7.

257 EP RoPs, Annex I, arts 7, 8.

258 CoC, art 6

259 EP Bureau Decision of 12 April 1999 on facilities granted to former Members of the European Parliament, art 2

260 EP Bureau Decision of 19 May and 9 July 2008 concerning implementing measures for the Statute for Members of the European Parliament [2009] OJ C 159/1, arts 33(1), 43(d)

261 Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials (SR) and the Conditions of Employment of Other Servants (CEOS) of the European Economic Community and the European Atomic Energy Community, principally, arts 11, 11a, 12-26a of Staff Regulations and arts 125-142 of the CEOS (Staff Regulations/CEOS). Please see the EC integrity (law) report for further explanation.

262 Code of conduct adopted by the Bureau on 7 July 2008 providing a guide to the obligations of officials and other servants of the European Parliament (Staff CoC)

263 EP RoPs, rule 207(1)

264 EP Bureau decision of 9 March 2009 on implementing measures for Title VII of the Conditions of Employment of other servants of the European Communities, arts 8, 9 (CEOS implementing measures)

265 Staff CoC, arts A.3(a)(

INTEGRITY (PRACTICE)

To what extent is the integrity of Members of the European Parliament ensured in practice?

The introduction of a Code of Conduct (CoC) and related guidance for sitting MEPs has led to some changes in ensuring integrity in the European Parliament. Declarations of interest and reports on gifts and hospitalities received are being completed and partially verified, but weaknesses still remain in the quality and effectiveness of scrutiny of electoral candidates and elected MEPs. Monitoring of wider compliance with the CoC and sanctioning appear weak and not proactive. Ethics training is not provided to MEPs or assistants, nor do they disclose systematically their contact with lobbyists and other third parties in practice. The support provided to serving assistants to comply with their ethics obligations appears limited to occasional workshops, with negligible monitoring of compliance. No internal whistle-blowing guidelines are in place for members, assistants or staff.

There is no common, European-level system to vet the integrity of candidates standing in elections for the European Parliament[266] or before coming into office. In 2013, for example, an MEP was elected to the chamber despite being subject to prosecution for allegedly submitting false expense claims to the European Commission.[267] EU rules stipulate only the European and national level offices incompatible with that of an MEP. Newly-elected MEPs are obliged to declare that they hold no such posts, and the EP is carrying out verification thereof.[268]

The absence of ethics rules for sitting MEPs was made apparent in 2011, when several MEPs were accused by a UK newspaper of accepting payment to submit amendments to draft legislation.[269] The EP responded to public pressure following this scandal and introduced a Code of Conduct (CoC), which entered into force in 2012. Detailed implementing measures[270] took another year to be adopted.[271] Additional guidelines have since been produced,[272] including a User's Guide[273] principally focused on assisting MEPs with the completion of their declarations of financial interest.

Initial compliance with the new Code of Conduct was positive, with 88% of MEPs submitting their declarations of interests by the initial deadline. However, a review of the content of declarations revealed that 12% contained no information beyond the name and date of submission, and several contained illegible or flippant content.[274] To address these shortcomings, 'general plausibility checks'[275] on the declarations were introduced in July 2013, which are undertaken by the EP administration under the authority of the President. 183 letters were sent out by the President to MEPs in 2013 requesting updates to their declarations and leading 161 updated declarations being submitted.[276] Nevertheless, automatic checks are only triggered by empty or illegible declarations, with Presidential authorisation needed to initiate a check on the bases of 'erroneous', unclear, or 'flippant' information.[277]

There is further criticism that declarations are often completed by hand, and are not published in a machine-readable format, *inter alia*,[278] which is hampering scrutiny. At the time of writing, this was being addressed by the EP via the development of a dedicated IT platform expected to be in place for the new parliament in 2014.[279]

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266 See the debates around a potential Berlusconi candidature for the EP election in Estonia: http://www.eunews.it/en/2013/09/19/berlusconi-running-for-european-parliament-from-estonia-heres-what-he-needs-to-do/9278.

267 See T. Vogel, 'Maltese politician charged with fraud elected to European Parliament', European Voice, (26 April 2013), available at http://www.europeanvoice.com/article/2013/april/maltese-politician-charged-with-fraud-elected-to-european-parliament/77103.aspx (last accessed on 20 December 2013)

268 See minutes from the EP plenary, for example: http://www.europarl.europa.eu/sides/getDoc.do?type=PV&reference=20120611&secondRef=ITEM-007&format=XML&language=EN; and http://www.europarl.europa.eu/sides/getDoc.do?type=PV&reference=20131007&secondRef=ITEM-004&format=XML&language=EN http://www.europarl.europa.eu/sides/getDoc.do?type=PV&reference=20090714&secondRef=ITEM-006&format=XML&language=EN, (last accessed on 20 December 2013)

269 For further information on the so-called 'cash-for-amendments' scandal, please see the Accountability (practice) sub-chapter.

270 Principally concerning gifts received by Members representing Parliament in an official capacity, invitations to events organised by third parties, and the monitoring of Declarations of Members' Financial Interests.

271 EP Press service, 'Code of Conduct: implementing measures adopted, (Press release), (17 April 2013) (CoC IR Press release)

272 These comprises an information note on the implementing measures, which inform MEPs on how to declare gifts received, financial interests, and their attendance at third-party events, where their expenses were covered by a third-party. This information note was delivered to all MEPs on 26 June 2013 by the President, and provided to TI-EU on 15 October 2013 under access to documents request A12034/MJC/en

273 This was developed by the Advisory Committee on the Conduct of Members, and is available here: http://www.europarl.europa.eu/pdf/meps/CoC_Users_Guide_draft4web_EN_rev.pdf (last accessed on 20 December 2013)

274 See both: The Advisory Committee on the Conduct of Members, 'Annual Report 2012', [2013], pg. 8 (AC AR 2012), available at http://www.europarl.europa.eu/pdf/meps/Annual_Report_2012_FINAL_2013_02_19_EN_rev.pdf (last accessed on 20 December 2013); also Friends of the Earth Europe, 'Transparency in the European Parliament', [2012], available at http://www.alter-eu.org/sites/default/files/documents/transparency_in_the_european_parliament_july2012.pdf (last accessed on 20 December 2013) (FoEE report)

275 These are triggered on the basis of four criteria, where there is 'reason to think' that a declaration contains information which is: either manifestly erroneous; flippant; illegible; and/or incomprehensible.

276 The Advisory Committee on the Conduct of Members, 'Annual Report 2013', [2014], pg. 8 (AC AR 2013), available at http://www.europarl.europa.eu/pdf/meps/Annual_Report_2013_EN.pdf (last accessed on 5 March 2014)

277 See 'Monitoring procedure - Implementing Measures Chapter 3' provided by the EP to TI-EU on 15 October 2013 under access to documents request A12034/MJC/en

278 See, for example, FoEE report

279 AC AR 2012, pg. 13

However, this was being done without the proactive involvement of the Advisory Committee on the Conduct of Members (AC).[280] Centralised publication of declarations to allow comparison was also not in place at the time of writing, however the EP did begin to publish historical versions of declarations in late 2013.[281]

With regard to wider monitoring of compliance with the CoC and subsequent sanctioning, the advisory committee to the CoC reported in 2012 that it dealt with only one case of an alleged breach – related to a failure by an MEP to declare 'stock options...received as remuneration when...a member of the board of directors of a company'.[282] This led to no sanctions but only an update of the MEP's declaration of interests. Nine cases of alleged breaches were referred to the Committee in December 2013, but had not been concluded at the time of writing.[283] Civil society concerns on the need for further measures to mitigate any conflicts of interest in the MEP's activity had not been addressed at the time of writing.[284] It is unclear whether any sanctions/penalties have yet been imposed on other MEPs for breaches of the CoC, as no information could be found on the EP website, despite indication that such publication is done.[285] Furthermore, no information is provided on individual members' expenses, or on any decisions to recover undue payments to them – or related legal proceedings.[286] The EP's reticence regarding active monitoring and sanctioning appears to extend to former members, with civil society action necessary to highlight breaches of obligations by former MEPs, with no action ultimately taken by the EP itself when such instances are brought to light.[287]

MEP fails to declare millions in stock options

Since the introduction of a code of conduct in 2012, MEPs have been obliged to complete a declaration of financial interests including any significant holdings in a company. Despite this, a Belgian MEP failed that year to declare stock options in a multinational beer conglomerate valued at between 3-5m EUR. Media and civil society pressure resulted in the MEP updating his declaration after a delay of several months, yet he maintained that he had not failed to comply with obligations. This was supported by a parliamentary advisory group on ethics, but the MEP was ultimately encouraged to declare the shares. No sanctions were ever brought against him.

Sources: European Voice (http://www.europeanvoice.com); EU Observer (http://euobserver.com)

The Advisory Committee on the Code of Conduct is generally a reactive body composed only of MEPs. It is responding to a very low number of requests for guidance (32 in 2012) from MEPs, which are mainly related to clarification on how to complete declarations of interest.[288] This is seen as a signal that MEPs understand the rules.[289] No specific training on ethics has been provided for MEPs,[290] or indeed for members of the committee,[291] by the EP administration. (Furthermore, no advice is provided by the administration to MEPs on wider ethics issues e.g. post-term employment.)[292] The committee included recommendations for improvements to the CoC in its annual report in 2012, and produced the aforementioned User's Guide to the Code of conduct.

With regard to the recording of engagement with lobbyists and other third-parties, MEPs are completing declarations of their attendance at third party events, where their costs were covered by a third party.[293] No specific scrutiny measures regarding these declarations appear to be in place. Moreover, there is no centralised publication to facilitate external scrutiny. Similarly, no systematic EP recording of MEPs' meetings with interest groups or lobbyists is in place, only some MEPs proactively publish such information on privately managed websites.[294] A list of gifts received by MEPs acting in an official EP capacity has been published on the parliament's website since mid-2013, and at the time of writing contained 4 entries.[295] No disclosure of other gifts

280 AC interview
281 European Parliament replies to and action taken on the European Parliament decision of 17 April 2013 on the discharge in respect of implementation of the general budget of the European Union for the financial year 2011, pg. 5, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cont/dv/dicharge_follow_up_/dicharge_follow_up_en.pdf (last accessed on 20 December 2013)
282 AC AR 2012, pg. 11
283 AC AR 2013, pg. 3
284 See letter of 9 October 2012 from Friends of the Earth Europe, Corporate Europe Observatory, LobbyControl and Spinwatch to President of the European Parliament, available at http://www.alter-eu.org/sites/default/files/documents/NGO%20letter%20to%20Martin%20Schulz%20on%20financial%20interests%20MEP%20Dehaene%20October2012.pdf, (last accessed on 20 December 2013)
285 CoC IR Press release
286 Decision of the Bureau of the European Parliament, of 19 May and 9 July 2008, concerning implementing measures for the Statute for Members of the European Parliament [2009] OJ C159/1, art 68
287 In 2013, 'ALTER-EU groups...complained to European Parliament (EP) President Schulz about the 'EP Former Members Association (FMA)' openly seeking corporate sponsorship for activities at the premises of the European Parliament, in clear violation of the Code of Conduct for (ex-)MEPs'. See http://www.alter-eu.org/documents/2013/05/02/alter-eu-groups-complain-about-breach-of-parliamentary-code-of-conduct-by (last accessed on 20 December 2013)
288 AC AR 2012, pg. 10; AC interview
289 AC interview
290 Interview with member of the Committee on Budgetary Control, 14 November 2013 (CONT interview)
291 AC interview
292 CONT interview
293 At the time of writing (4 November 2013), 23 such declarations were available on the EP website.
294 For example, German Green MEP Sven Giegold publishes a list of meeting requests received from lobbyists and whether a meeting occurred. See http://www.sven-giegold.de/2013/lobbytransparenz/ (accessed on 31 October 2013). German Green MEP Reinhard Bütikofer also publishes a list of meetings with lobbyists: see http://reinhardbuetikofer.eu/transparenz/. While independent Austrian MEP Hans-Peter Martin has published two-years' worth of invitations he received from interest groups on his personal website: see http://www.hpmartin.net/english/1427-lobby-attempts-only-two-years (last accessed on 20 December 2013)
295 See http://www.europarl.europa.eu/pdf/meps/2013%20GIFTS%20REGISTER.pdf (last accessed on 20 December 2013)

and hospitality received is undertaken by MEPs.

With regard to MEPs' assistants, there appears to be no active, systematic monitoring of their compliance with their respective ethics-related obligations aside from the obligation to complete a declaration of the absence of conflicts of interest upon recruitment. They are not obliged to declare financial or other relevant interests and receive no mandatory ethics training. A workshop was held in 2013 to support them in the practical application of the implementing measures for the MEPs' CoC in 2013 and to raise awareness of the EU Transparency Register.[296] Despite accredited assistants being subject to post-employment obligations under the EU Staff Regulations since 2009, no information or training had been provided to support assistants' in their compliance with this obligation following the end of the 7th legislative term, at the time of writing.[297] The relevance of the lack of genuine oversight was exposed in 2013 when an MEP accused of submitting 158 anti-privacy amendments to a parliamentary report accused his assistant as the originator of the amendments[298], underlining the actual autonomy of assistants to engage in genuinely legislative activity.

No clear information, nor internal provisions on whistle-blowing, including on channels available and on provisions to protect individuals reporting misconduct, are in place within the EP[299] – either for MEPs, administrative staff, or assistants, and the willingness to introduce such rules is reported to be low.[300] This is of particular concern regarding assistants, given their direct working relationship with their respective members, and the authority MEPs have over their employment and dismissal, leading to situations in which assistants who observe wrongful behaviour would lack the means to report potential corruption.

Due to the research team not being able to secure interviews with the EP administration during the research phase, more detail on the practical implementation of integrity mechanisms within the Secretariat General cannot be provided.

296 AC interview; CONT interview
297 AC interview; CONT interview
298 See C. Pt, avec Belga, 'Le collaborateur de Louis Michel a remis sa démission', Le Soir, (21 November 2013), available at http://www.lesoir.be/365541/article/actualite/monde/2013-11-21/collaborateur-louis-michel-remis-sa-demission (last accessed on 20 December 2013)
299 CONT interview
300 Ibid

RESOURCES

To what extent does the European Parliament have adequate resources to effectively carry out its duties?

The EP has enjoyed nominal growth in its budget and human resources over recent years, but a 5% cut to its administrative staff is foreseen up to 2018. In general, resources appear to be sufficient, with MEPs and political groups having access to dedicated staff as well as support services such as a parliamentary library. Savings made to the EP budget in recent years do not appear to have had a detrimental effect on the services provided to MEPs. Major ICT projects are also underway. However, the EU budgetary authority has pointed to over-expenditure by the institution in certain areas, such as in relation to the costs incurred by operating in three locations, which may affect the availability of resources for other core services.

The budget of the European Parliament has seen a marginal increase, year on year, since 2009, and remains at approximately one-fifth of the EU's total administrative expenditure. In 2013, the EP budget (grand total expenditure, appropriations) stood at 1.75 billion EUR, increasing from 1.72 billion EUR in 2012 and 1.69 billion EUR in 2011.

Increases have also been seen in the institution's human resources during this period, with 6743 employment posts allocated to the administration and political groups combined in 2013, up from 6684 in 2012, and 6537 in 2011.[301] [302] At the end of 2012, the actual numbers of staff employed equated to 5941: 5187 in the secretariat and 754 in the political groups – each figure representing an increase from previous years.[303] Increases in staff since 2010 have in part been due to the additional tasks given to the Parliament under the Lisbon Treaty, and the accession of Croatia to the EU.[304]

The funds available for assistance to MEPs, from which the salaries of both their accredited assistants in Brussels, and local assistants in their member state of election, are drawn, saw a slight decrease in 2013 following steady increases since 2009. 1 705 accredited parliamentary assistants were actually employed at the end of 2012,[305] and 1599 in 2011.[306]

Despite this nominal growth in resources in recent years, the budget of the EP has in fact been decreasing by 2% in real terms, year on year: in addition, the administration is subject to a 5% cut in its staff up to 2018, in common with all EU institutions. As such, it has been seeking, since 2010, to make savings in its expenditures and increase efficiencies.[307] This led to almost 40m EUR in savings in 2012 budget: made up, *inter alia*, of a 25m EUR reduction in interpretation and translation costs, and a cut of 4m EUR in MEPs' travel expenses and staff mission costs - including 'the freezing of the daily and travel allowances at the 2011 nominal level'.[308] The plenary of the EP has welcomed the savings and noted that they were not affecting 'either the efficiency of Parliament's activities or the resources made available to each Member'.[309] Indeed, the services provided by the administration's translation and interpretations departments, for example, appear not to have been unduly affected by these cuts.[310] Budget allocations for expenditures on documentation and library services have also increased from 2012 to 2013.

Since 2010, several large IT projects have been launched within the EP administration, as part of a medium-term

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301 See the EU Budget on-line website for all figures from 2007 onwards, at http://eur-lex.europa.eu/budget/www/index-en.htm (last accessed on 11 December 2013)

302 These figures break down as follows:
2013: 5592 permanent posts; 1151 temporary posts
2012: 5540 permanent posts; 1144 temporary posts
2011: 5410 permanent posts; 1127 temporary posts

303 Report on Budgetary and Financial Management: Section I: European Parliament Financial Year 2012, [2013], OJ C188/1, pg. 18 (2012 Budget report)
In previous years, the figures have been as follows:
2011: 5578 employed; 5031 in Secretariat, 747 in political groups
2010: 5515 employed; 4951 in Secretariat; 561 in political groups
See Report on Budgetary and Financial Management: Section I: European Parliament Financial Year 2011, [2012], OJ C164/1, pg. 16, (2011 Budget report) and Report on Budgetary and Financial Management: Section I: European Parliament Financial Year 2010, [2011], OJ C167/1, pg. 15 (2010 Budget report)

304 European Parliament resolution of 10 May 2012 with observations forming an integral part of its Decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2010, Section I – European Parliament (COM(2011)0473 – C7-0257/2011 – 2011/2202(DEC)), para 66 (2010 discharge report) and
European Parliament resolution of 17 April 2013 with observations forming an integral part of its Decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2011, Section I – European Parliament (COM(2012)0436 – C7-0225/2012 – 2012/2168(DEC)), para. 15 (2011 discharge report)

305 2012 Budget report, pg. 18

306 2011 discharge report, para. 49

307 K. Welle, 'The EP in a multi-level governance EU - Ways to reduce the democratic deficit', CEPS Lunch Debate, Brussels, Belgium, on 26 June 2013 (Speech 13/187)

308 Made up, inter alia, of a 25m EUR reduction in interpretation and translation costs, and a cut of 4m EUR in MEPs' travel expenses and staff mission costs - including 'the freezing of the daily and travel allowances at the 2011 nominal level'. See European Parliament replies to the discharge questionnaire 2011, pg. 3, available at http://www.europarl.europa.eu/document/activities/cont/201301/20130117ATT59203/20130117ATT59203EN.pdf (accessed on 11 December 2013) (2011 discharge replies);

309 2011 discharge report, para. 8.

310 2010 discharge report, paras. 86-87; 2011 discharge report, para. 50

ICT strategy[311] falling under the approximately 23% of the EP budget devoted to 'Information policy and administrative expenditure'.[312] Improvements include a knowledge management system and upgrading of the EP website. Nonetheless, concern has been raised on the over-reliance on external expertise as opposed to internal EP technical knowledge – due to 'structural imbalances between internal and external resources' – and the need for better oversight of financial management in IT contracts to avoid over-expenditure.[313]

Several areas of high and rising EP expenditure have been singled out in recent years, demonstrating the importance of the savings outlined above. Of greatest significance has been the additional cost implications of the EP operating in three locations (Strasbourg, Brussels and Luxembourg) which rose from 14m EUR to 19m EUR between 2009-2011:[314] and here, attention has been drawn to the increasing maintenance and operation costs (rising from 33.7m EUR to 55.7m EUR between 2009-2013),[315] the costs of reimbursing travel by MEPs and EP personnel between the locations,[316] [317] and the rising costs related to the transportation of files between Brussels and Strasbourg.[318]

Other notable areas of high expenditure identified in recent discharge procedures include the overspend resulting from the development of an official parliamentary visitors' centre in Brussels;[319] the high costs incurred by official delegations from the EP travelling for work inside and outside the EU;[320] and the rising costs associated with a number of prizes awarded by the EP in the areas of film and journalism, *inter alia*.[321]

Neither public budgetary and financial reporting, nor external audits, appear then, to point to major concerns regarding the sufficiency of resources available to the EP. However, there is a potential future risk of the Parliament defaulting on the Voluntary Pension Fund it operates.[322] Marginal decreases in the budget allocated for security services were also highlighted in 2012, alongside worries regarding the falling quality of security services being delivered to the institution.[323] From 2013, security services were to be internalised, which was expected to reap growing savings in costs up to 2016 and beyond.[324]

311 2010 discharge report, para. 8
312 See http://www.europarl.europa.eu/aboutparliament/en/%2000059f3ea3/The-budget-of-the-European.html (accessed on 11 December 2013)
313 2011 discharge report, paras. 71-72
314 2011 discharge replies, pg. 7; see also, 2011 discharge report, paras. 9-10
315 European Parliament replies to the discharge questionnaire 2010, pg. 7, available at http://www.europarl.europa.eu/document/activities/cont/201201/20120123ATT35922/20120123ATT35922EN.pdf (accessed on 11 December 2013) (2010 discharge replies)
316 2010 discharge report, para. 70
317 The costs for MEPs, officials and accredited assistants to travel to Strasbourg sessions was 44m EUR in 2011. 2011 discharge replies, pg. 26.
318 2011 discharge replies, pg. 27
319 2010 discharge report, para. 49
320 2010 discharge report, para. 46
321 2010 discharge report, paras. 56-60; 2011 discharge report, para. 67; 2011 discharge replies, pp. 18-19.
322 2010 discharge report, paras. 97-99
323 2010 discharge report, paras. 38-44
324 2011 discharge report, para. 57

EFFECTIVE OVERSIGHT OF EU ACTORS WITH EXECUTIVE FUNCTIONS

To what extent does the European Parliament provide effective oversight over EU Institutions and bodies with executive functions?

The European Parliament has gained increasing financial and political oversight powers through successive changes to the EU Treaties, and has been actively asserting both formal and informal mechanisms to exercise scrutiny over EU actors with executive functions. These include budgetary oversight mechanisms as well as the ability to reject candidates for the European Commission. Nevertheless, the effectiveness of this work is being hampered by limitations in its mandate e.g. its limited abilities to sanction other institutions where it refuses to sign off on their final accounts, or to consult and debate confidential documents held by other institutions. As such, EP oversight is broadly contingent on the cooperation and willingness of others. The EP is however demonstrating a will to maximise its available capacity to hold other EU bodies to account, and extend its powers in this regard.

The European Parliament has broadly been seen as gaining increasing powers of political oversight over other EU actors as the EU has evolved – 'accruing formal means to investigate, demand information from, debate with, and sanction EU office-holders and agencies across a range of areas'.[325] Furthermore, scholars consider that while its powers remain limited in this regard, it has been seeking to assert them, and to find 'ways and means, often informal, to put and keep them [*EU actors*] under the spotlight'.[326]

Most prominent among these formal powers is its role in scrutinising the preparation and execution of the EU budget.[327] In practice, the EP appears to be actively asserting this role, which was most recently demonstrated in 2013, when it battled the Council over the 2013 and 2014 annual budgets, leveraging its position to influence as far as possible the shaping of the multi-annual financial framework.[328]

The EP is also charged with granting discharge to the European Commission for the entirety of the EU budget, and to individual institutions, bodies and agencies (henceforth, 'institutions') for their annual accounts. As such, institutions must report annually on their budgetary and financial management to the EP (and the Council),[329] and, during the discharge procedure must respond to any observations made by the EP, and report on action taken to follow-up any recommendations.[330] The European Commission is further compelled to provide any information requested by the EP to facilitate the discharge process.[331]

Though the discharge procedure appears formally to function well, the quality of the scrutiny that the EP is able to exercise is wholly dependent upon the (cooperation of the) institution under discharge and the adequacy of the information thereby provided to it.[332] Indeed, while the Commission and EU agencies engage well in the procedure – feeling the “pressure” of the EP's oversight[333] – the Council has repeatedly refused to comply with EP requests for information, and even contests the legal power of the Parliament to exercise oversight on its accounts.[334] The EP has duly refused discharge on three occasions, due in part to this lack of cooperation, with no real consequences for the Council,[335] exposing the weakness of the EP in this regard.[336]

Alongside these powers of budgetary oversight, the EP also retains broad scrutiny powers over the policy work of other EU actors with executive functions – most significantly, the European Commission. As such, it is exercising its ability to submit written and oral questions to the former 'quite vigorously',[337] with approximately 25000

325 M. Bovens, D. Curtin & P. 't Hart, 'The Real World of EU Accountability: Comparisons and Conclusions', in The Real World of EU Accountability, ed. by M. Bovens, D. Curtin & P. 't Hart, (Oxford: OUP, 2010) pg. 177
326 Ibid, pg.191
327 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts. 314, 312(2) (TFEU)
328 See for example, EurActiv, 'Late night deal seals 2014 EU budget', EurActiv, (12 November 2013), available at http://www.euractiv.com/priorities/late-night-deal-seals-2014-eu-bu-news-531613, (last accessed on 19 December 2013), and EurActiv, 'Parliament approves EU's 2014-2020 budget', EurActiv, (19 November 2013), available at http://www.euractiv.com/video/parliament-approves-eus-2014-202-531796 (last accessed on 19 December 2013)
329 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art. 66(9) (Financial Regulation);
330 Ibid, art. 166
331 Ibid, art. 165(3)
332 Interview with a member of the EP Committee on Budgetary Control, 14 November 2013
333 Ibid
334 Note 10491/1/11 of 31 May 2011 from the General Secretariat of the Council to the Permanent Representatives' Committee (Part 2) on the Annual Discharge Procedure
335 Interview with a member of the EP Committee on Budgetary Control, 14 November 2013
336 However, the EP refusal to grant discharge to the European Commission in 1999 – for its 1996 accounts – did play a key role in the fall of the Santer Commission. See K. Stasinopoulou, 'Case Study: The European Parliament's Role in the Resignation of the Santer Commission', in The Role of Parliament in Curbing Corruption, ed. by R. Stapenhurst N. Johnston & R. Pellizo, (Washington DC: The International Bank for Reconstruction and Development / The World Bank, 2006), pp. 149-56, and European Parliament: Daily Notebook (11 January 1999) available at http://www.cvce.eu/content/publication/1999/1/1/da75f293-0cc5-473e-a221-6978c1852b19/publishable_en.pdf (last accessed on 29 December 2013)
337 A. Wille, 'The European Commission Accountability Paradox', in The Real World of EU Accountability, ed. by M. Bovens, D. Curtin & P. 't Hart, (Oxford: OUP, 2010), pg. 75

questions posed from 2011 to, 2013.[338] [339] However, the large number of questions raises questions regarding the effectiveness of this oversight mechanism. Concern has also been raised here on whether the volume of Commission responses resulting from EP questions are leading to more decisions being moved to EP Committees, leaving 'little time for [plenary] debate and scrutiny'.[340] Nonetheless, a new 'Question time' format for plenary questioning of Commissioners was introduced in late 2011, based fully on spontaneous questions, with only the scope of the sessions outlined in advance: in 2012, seven Commissioners participated in five such sessions.[341]

Nevertheless, serious concerns continue to be highlighted regarding the lack of EP scrutiny powers over the adoption of secondary legislation by the EC.[342] While the EP's right to information on comitology proceedings has increased, commentators still point to its lack of control and sanctioning if it considers the EC has exceeded its powers regarding 'implementing acts'.[343] In addition, EP scrutiny of 'delegated legislation' adopted by the European Commission, is, being undermined by a weak flow of information, with the latter institution able to delay the provision of draft acts to the EP without sanction, [344] while not either being subject to overly restrictive reporting obligations.[345] Yet the EP has, in this regard, demonstrated a willingness to use its available powers to enhance its capacity for oversight, when freezing budget funds in 2011 until the EC implemented new rules to increase the balance and transparency of expert groups responsible for external advice and overseeing delegated acts.[346] [347]

Oversight over the European Council as another major executive body is markedly weaker than that of the Commission. Although the EP President can be invited to be heard by the European Council,[348] the EU Treaties only provide for the EP to receive reports from the European Council President after each meeting of the latter institution:[349] furthermore, the European Council can determine the conditions under which it is heard by the EP.[350] Since the formalisation of the European Council as an EU institution, and the establishment of a permanent President, the capacity for more consistent and systematic scrutiny has been highlighted – with the EP considered to be seeking to achieve this goal, within its limited formal powers.[351] Nevertheless, the quality and extent of any oversight is still contingent on the willingness of the European Council, and willingness appears to be low as disputes over the timing of European Council meetings have shown.[352]

(For information on the extent of the EP's oversight on Europol and Eurojust, please see the chapter on the accountability of the EU's law enforcement agencies.)

The EP's ability to exercise parliamentary scrutiny over the EU's classified documents is an area also being obstructed by insufficient information from other institutions – for example, on the number of such documents they hold, and to what they pertain. Where the EP has requested and received classified documents, MEPs are obliged to consult them in a secret reading room, but cannot even refer to them or their contents in committee debates, as the proceedings are public - rendering discussion unworkable.[353]

With regard to the EP's powers concerning the appointment and removal of members of other institutions, the

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338 2011 Annual Activity Report of the Secretariat-General of the EC, 20 March 2011, pp. 24-25. Available at http://ec.europa.eu/atwork/synthesis/aar/doc/sg_aar_2011.pdf (EC SG AAR 2011). And 2012 Annual Activity Report of the Secretariat-General of the EC, 27 March 2013, pg. 10, available at http://ec.europa.eu/atwork/synthesis/aar/doc/sg_aar_2012.pdf (EC SG AAR 2012)

339 Interview with EC Secretary General, Deputy Secretary General in charge of Directorates B, D, Data Protection, the Mediation Service and the Task Force "IT Governance", and Head of Unit for Public service ethics, 25 September 2013 (EC SEC GEN interview)

340 Wille, pg. 76

341 EC SG AAR 2012, pg. 10. President Barroso emphasised the importance of such accountability arrangements to the College in 2010: 'An important aspect of this is that all members of College fulfil their responsibilities in terms of attendance in the European Parliament and the Council, and indeed obligations to other bodies such as the European Economic and Social Committee and the Committee of the Regions.' Communication C(2010) 1100 of 10 February 2010 from the President on the Working Methods of the Commission 2010-2014, pg. 3

342 '...it is safe to say that comitology processes remain relatively impervious to direct scrutiny from the EP...'. Bovens et al, pg. 185

343 See G. J. Brandsma, 'Accountable Comitology?', in The Real World of EU Accountability, ed. by M. Bovens, D. Curtin & P. 't Hart, (Oxford: OUP, 2010); S. Peers & M. Costa, 'Accountability and Implementing Acts after the Treaty of Lisbon', European Law Journal, Vol. 18 No. 3 (2012), 427-460

344 D. Guéguen & V. Marissen, Handbook on EU secondary legislation, (Brussels: PACT European Affairs, 2013), pg. 54

345 '…it should be noted that where the Commission has to report on the delegation of power, it will apparently only have to produce one such report, on the occasion of the first renewal of the delegation.' S. Peers & M. Costa, 'Accountability and Implementing Acts after the Treaty of Lisbon', European Law Journal, Vol. 18 No. 3 (2012), (427-460), pg. 452

346 Friends of the Earth Europe, 'Budget blocked until safeguards against their capture by special interests and increased transparency are introduced', [Press release], (27 October 2011), available at http://www.foeeurope.org/press/2011/Oct27_ALTEREU_EP_blocks_expert_groups_budget.html (accessed on 28 October 2013)

347 The EP's ability to exercise parliamentary scrutiny over the EU's classified documents is also being obstructed by insufficient information from other institutions – for example, on the number of such documents they hold, and to what they pertain. Where the EP has requested and received classified documents, MEPs are obliged to consult them in a secret reading room, but cannot even refer to them or their contents in committee debates, as the proceedings are public - rendering discussion unworkable. Interview with member of the EP Committee on Budgetary Control, 14 November 2013. See also 'EU-Geheimdokumente: Schranken der Transparenz', Ehrenhauser.at, (16 April 2013), available at http://www.ehrenhauser.at/eu-geheimdokumente-schranken-der-transparenz/ (last accessed on 19 December 2013)

348 TFEU, art. 235(2)

349 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 15(6d) (TEU)

350 TFEU, art. 230

351 M. van de Steeg, 'The European Council's Evolving Political Accountability', in The Real World of EU Accountability, ed. by M. Bovens, D. Curtin & P. 't Hart, (Oxford: OUP, 2010), 147; Bovens et al, 184-185

352 T. Vogel, 'Notebook', European Voice, (23 May 2013), available at http://www.europeanvoice.com/article/imported/notebook-/77301.aspx (last accessed on 29 December 2013)

353 Interview with member of the EP Committee on Budgetary Control, 14 November 2013. See also 'EU-Geheimdokumente: Schranken der Transparenz', Ehrenhauser.at, (16 April 2013), available at http://www.ehrenhauser.at/eu-geheimdokumente-schranken-der-transparenz/ (last accessed on 19 December 2013)

strength of its position is mixed. It can issue a motion of censure against the Commission,[354] but has yet to do so – despite coming close in 1999 with regard to the Santer Commission that fell over corruption allegations[355]. However, the EP has been increasingly exercising its role in scrutinising candidates for the College of Commissioners, effectively forcing the withdrawal of the original Bulgarian nominee for the Barroso II Commission in 2010,[356] and subjecting a Commissioner-designate to an intense hearing procedure prior to ultimately confirming support in 2012.[357]

Nevertheless, while ignoring the will of the EP may now be politically untenable with regard to nominations to the College of the European Commission, the weakness of the EP in overseeing appointments to other bodies – where it does not play a decisive role – was exposed in 2013 when the Council chose to appoint a new member of the European Court of Auditors, despite his candidature having been previously rejected by the EP.[358] Similarly, despite vocal and repeated calls by MEPs for the Commission to 'force [the] resignation' of the Director General of OLAF, in the wake of the 'Dalligate' scandal, these calls had not, at the time of writing, been acted upon.[359]

Beyond these regular scrutiny powers, the EP also has the right to establish temporary committees of inquiry (henceforth, 'committees') to investigate 'alleged contraventions or maladministration in the implementation of Union law', at the request of at least a quarter of its members, and only where a matter is not already subject to legal proceedings.[360] The EP is, in this regard, able to investigate any EU institution/body, any 'public administrative body of a Member State, or...persons empowered by Union law to implement that law';[361] and can request any documentation from these bodies that it deems necessary and can invite them to designate a representative to 'take part in proceedings'. It may also invite any other person to give evidence before it.[362] However, neither European nor national level administrations are compelled to comply.[363] Committees can put forward draft recommendations to EU or national bodies for adoption by the EP plenary. The EP President is charged with ensuring follow-up to any inquiry conclusions. Inquiry proceedings and final reports are public, in principle.[364]The EP has invoked its right to establish such committees on only three occasions to date: into the Community Transit System (January 1996-March 1997); into BSE (bovine spongiform encephalopathy) (September 1996-February 1997); and into the Crisis of the Equitable Life Assurance Society (January 2006-June 2007). Based on its experiences, in particular with regard to the last of these inquiries, the EP has highlighted specific shortcomings in its current powers: namely, that it cannot summon witnesses; has no sanction powers for non-compliance by interlocutors with its requests (e.g. for documents); and does not have powers to undertake on-the-spot investigations, *inter alia*.[365]

354 TFEU, art. 234

355 K. Stasinopoulou, 'Case Study: The European Parliament's Role in the Resignation of the Santer Commission', in The Role of Parliament in Curbing Corruption, ed. by R. Stapenhurst N. Johnston & R. Pellizo, (Washington DC: The International Bank for Reconstruction and Development / The World Bank, 2006), pg. 151

356 S. Taylor, 'How Jeleva was forced out', European Voice, 21 January 2010, available at http://www.europeanvoice.com/article/imported/how-jeleva-was-forced-out/66933.aspx (accessed 16 October 2013)

357 European Parliament, MEPs grill commissioner-designate for health and consumers, [Press Release] (14 November 2012), available at http://www.europarl.europa.eu/news/en/news-room/content/20121113IPR55474/html/MEPs-grill-Commissioner-designate-for-health-and-consumers (accessed on 28 October 2013); BBC, 'Malta's Tonio Borg appointed EU Health Commissioner', BBC News Europe, (28 November 2012), available at http://www.bbc.co.uk/news/world-europe-20523924 (accessed on 28 October 2013)

358 See for example, A. Rettman, 'EU countries ignore MEPs on court appointment', EU Observer, (11 July 2013), available at http://euobserver.com/institutional/120826 (last accessed on 19 December 2013)

359 D. Hinton-Beales, 'Daul calls for commission to 'force resignation' of Olaf chief', The Parliament, (11 June 2013), available at http://www.theparliament.com/latest-news/article/newsarticle/daul-calls-for-commission-to-force-resignation-of-olaf-chief/ (last accessed on 29 December 2013)

360 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 226 (TFEU) Committees of inquiry are established by way of a majority vote by the EP plenary. Amendments cannot be made to any proposal on the subject of an inquiry. See Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 185 (EP RoPs)

361 Decision of the European Parliament, the Council and the Commission of 19 April 1995 on the detailed provisions governing the exercise of the European Parliament's right of inquiry [1995], OJ L113/1, art. 2 (1995 Decision)

362 1995 Decision, art. 3. Decisions to establish, or extend the life of, a committee must be published in the Official Journal of the European Union.

363 These exceptions include 'reasons of secrecy or public or national security arising out of national or Community [sic] legislation or rules' or 'any other provisions of the Member States which prohibit officials from appearing or documents from being forwarded'. See 1995 Decision, arts. 3(4), 3(5)

364 1995 Decision, arts. 2(2), 4; and EP RoPs, rule 185(8-11)

365 These shortcomings were highlighted in the final report of the inquiry into the crisis of the Equitable Life Assurance Society, and were reiterated in a 2007 recommendation from the EP to the Conference of Presidents. See the Report of the European Parliament Committee on Constitutional Affairs of 14 October 2011 on a proposal for a regulation of the European Parliament on the detailed provisions governing the exercise of the European Parliament's right of inquiry and repealing Decision 95/167/EC, Euratom, ECSC of the European Parliament, the Council and the Commission (2009/2212(INI)), (2011 AFCO Report)

PRIORITISATION OF ANTI-CORRUPTION IN THE EU

To what extent does the European Parliament prioritise anti-corruption as a concern in the EU?

The European Parliament is scrutinising draft anti-corruption and anti-fraud related legislation, and passed a number of new measures during the 7th legislative term, including strengthening existing EU anti-money laundering rules. The EP has used its indirect powers of legislative initiative and other non-legislative instruments to call for improvements in relevant EU legal frameworks, pertaining to reform in both EU-level and national public administrations and in the private sector. A dedicated special committee was set up in 2012 to analyse issues relevant to the combat of organised crime, corruption and money-laundering, ultimately leading to EP calls for a comprehensive EU strategy in this regard. Nevertheless, the impact of these non-legislative powers, and the extent to which the EP prioritises anti-corruption against other policy concerns, has been limited.

In its 'Stockholm Programme' of 2010,[366] the European Council set a range of EU policy objectives in the areas of justice, security and civil liberties. Further to this, the European Parliament – in its role as co-legislator – has received a number of legislative proposals from the Commission, related to anti-fraud and anti-corruption.[367] These have concerned using criminal law to combat fraud against EU funds;[368] reform of Europol;[369] combating counterfeiting of the euro;[370] the freezing and confiscation of proceeds of crime in the European Union,[371] and on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.[372] At the time of writing, the EP plenary had reached agreement on all but two of these proposals , with first readings foreseen before the end of the legislative term for those outstanding. Provisions to fight corruption have also featured in legislation adopted by the EP but not explicitly falling under this policy area: most markedly, the new EU Accounting and Transparency Directives adopted in 2013, which oblige large extractive and logging companies to disclose any payments made to governments ('country-by-country reporting'),[373] and in the new EU Directive on public procurement. The latter contains several provisions to mitigate corrupt activity including an obligation for Member States to report to the European Commission every three years on instances of corruption and conflicts of interest in their public contracting.[374]

With only an indirect power to initiate legislation, the extent of the European Parliament's actions to enact legal reforms in the area of anti-corruption proactively have been limited. Nevertheless, since 2009, the EP has exercised its powers to invite formally the Commission to put forward legislative proposals on 18 occasions, with at least two related to cross-border financial issues, including the freezing and disclosure of debtors' assets in cross-border cases,[375] and one calling for a European Law on Administrative Procedure, explicitly acknowledging the principle of transparency and the contribution that such a law would have to counter public sector corruption.[376] It is of note that the current legislation pertaining to public access to EU documents derived from such an EP request.[377]

Alongside these requests, the EP also passed a broad range of other anti-corruption-related resolutions in the 7th legislative term, adopted further to own-initiative reports by parliamentary committees, or to motions submitted by individual MEPs. These pertained to European and national public administrations, as well as to the public and private sectors, and dealt with issues including good governance in tax matters, and the fight against tax fraud;[378]

366 European Council, 'The Stockholm Programme – an open and secure Europe serving and protecting citizens', [2010] OJ C 115/1, para. 4.4.5 (Stockholm Programme)
367 See European Parliament Directorate General for Internal Policies, 'Towards the negotiation and adoption of the Stockholm Programme's successor for the period 2015-2019', (Brussels: European Union, 2013), pp. 39-81
368 See http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0193(COD)&l=en#keyEvents (last accessed on 15 January 2014)
369 See http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0091(COD)&l=en (last accessed on 15 January 2014)
370 See http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0446(APP)&l=en; http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0449(COD)&l=en#basicInformation; and http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0023(COD)&l=en (last accessed on 15 January 2014)
371 See http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2012/0036(COD)&l=en (last accessed on 15 January 2014)
372 See http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2013/0025(COD)&l=en (last accessed on 15 January 2014)
373 See Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, [2013], OJ L182/19; and
Directive 2013/50/EU of the European Parliament and of the Council of 22 October 2013 amending Directives 2004/109/EC, 2003/71/EC and 2007/14/EC, [2013], OJ L294/13
374 See http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?reference=2011/0438(COD)&l=en, (last accessed on 16 January 2014)
375 European Parliament resolution of 10 May 2011 with recommendations to the Commission on proposed interim measures for the freezing and disclosure of debtors' assets in cross-border cases (2009/2169(INI));
European Parliament resolution of 15 November 2011 with recommendations to the Commission on insolvency proceedings in the context of EU company law (2011/2006(INI))
376 European Parliament resolution of 15 January 2013 with recommendations to the Commission on a Law of Administrative Procedure of the European Union (2012/2024(INI)), especially paras. B, K, N and annex
377 Library of the European Parliament, 'Parliament's legislative initiative', [Library Briefing] (24 October 2013), pg. 5
378 European Parliament resolution of 10 February 2010 on promoting good governance in tax matters (2009/2174(INI); European Parliament resolution of 21 May 2013 on

anti-corruption specifically, including in sport;[379] and organised crime, corruption and money laundering.[380] Resolutions were similarly issued with regard to combating corruption outside the EU, e.g. in pre-accession[381] and third countries,[382] and on the promotion of good governance in cooperation with developing countries on tax issues.[383] In the development of these resolutions and supporting reports, parliamentary committees have commissioned a number of thematic events and studies to consider the potential for relevant legislative and policy measures, on issues including whistle-blowing[384] and openness in the EU institutions,[385] and review of the Stockholm Programme and consideration of a successor programme up to 2019.[386]

Perhaps the most visible initiative undertaken by the EP in recent years with regard to anti-corruption was its establishment of a Special Committee on Organised Crime, Corruption and Money-Laundering (CRIM) in March 2012 to analyse the impact of cross-border crime on the EU and its 28 member states.[387] The year-long mandate of the committee saw it convene 24 times, commission studies (e.g. on the impact of organised crime in the EU, and corruption in public procurement[388]), and conduct fact-finding visits.[389] Its final report[390] calls on the Commission to establish an EU action plan up to 2019 against organised crime, corruption and money-laundering, with the inclusion of legislative measures, and aims at the development of a comprehensive EU strategy to combat effectively criminal systems and related activities.[391] The report also calls on the Commission to report regularly to it 'on actions [against corruption] taken by Member States and to update existing European legislation where necessary'[392]. A broad range of issues are covered in the report, including the reiteration of previous EP recommendations, such as for the establishment of a European Public Prosecutor's Office:[393] yet the impact of new recommendations had been mixed at the time of writing – its call for the Commission to deliver draft proposals for a European whistle-blower protection programme by the end of 2013,[394] for example, having been immediately rejected.[395]

Fight against Tax Fraud, Tax Evasion and Tax Havens (2013/2060(INI))

379 European Parliament resolution of 15 September 2011 on the EU's efforts to combat corruption;
European Parliament resolution of 14 March 2013 on match-fixing and corruption in sport (2013/2567(RSP)). Both these resolutions resulted from motions for resolutions submitted by (groups of) individual MEPs, rather than subsequent to committee own-initiative reports.

380 European Parliament resolution of 25 October 2011 on organised crime in the European Union (2010/2309(INI));
European Parliament resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken (final report) (2013/2107(INI))

381 European Parliament resolution of 22 October 2013 on budgetary management of
European Union pre-accession funds in the areas of judicial systems and the fight against
corruption in the candidate and potential candidate countries (2011/2033(INI))

382 European Parliament resolution of 8 October 2013 on corruption in the public and private sectors: the impact on human rights in third countries (2013/2074(INI))

383 European Parliament resolution of 8 March 2011 on Tax and Development – Cooperating with Developing Countries on Promoting Good Governance in Tax Matters (2010/2102(INI))

384 http://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/453222/IPOL-JOIN_ET%282011%29453222_EN.pdf (last accessed on 15 January 2014)

385 http://www.europarl.europa.eu/RegData/etudes/note/join/2013/493035/IPOL-LIBE_NT%282013%29493035_EN.pdf (last accessed on 15 January 2014)

386 See for example, http://www.europarl.europa.eu/RegData/etudes/divers/join/2010/433810/EXPO-AFET_DV%282010%29433810_EN.pdf (last accessed on 15 January 2014).

387 European Parliament decision of 14 March 2012 on setting up a special committee on organised crime, corruption and money laundering, its powers, numerical composition and term of office

388 See http://www.europarl.europa.eu/committees/en/crim/studies.html#menuzone (last accessed on 14 January 2014)

389 To Belgrade, Milan, Palermo, Rome, The Hague and Washington

390 European Parliament resolution of 23 October 2013 on organised crime, corruption and money laundering: recommendations on action and initiatives to be taken (final report) (2013/2107(INI)) (CRIM final report)

391 The report covers a broad number of issues, recommending, inter alia, the harmonisation of relevant national level legislation and increased judicial cooperation; the criminalisation of vote-buying and sports-rigging; the use of e-procurement procedures to better prevent fraud and corruption; EU legislation on the protection of whistle-blowers in the public and private sectors; and publication of a country-by-country registry of beneficial owners to combat money-laundering, tax evasion and terrorist financing.

392 CRIM final report, art. 9

393 CRIM final report, art. 13

394 CRIM final report, art. 14

395 See N. Nielsen, 'EU-wide whistleblower protection law rejected', EU Observer, (23 October 2013), available at http://euobserver.com/justice/121873 (last accessed on 5 November 2013)

REGULATION AND OVERSIGHT OF EUROPEAN POLITICAL PARTIES[396]

To what extent is the integrity of the activities and finances of European Political Parties regulated and ensured in practice?

European Political Parties as umbrella organisations of national political parties are broadly regulated by EU law and supervised by the European Parliament. EU rules define the conditions for public and private financing, transparency and accountability of finances and procedures for registration and oversight of Europarties. The largest share of the budget of EU-level political parties is ensured through allocations from the European Parliament's budget. Doubts remain over the transparency of party and foundation finances; the independence and effectiveness of oversight from the European Parliament, given that it is dominated by the parties themselves; as well as over the lack of uniform rules for European Parliament elections, regarding, for example, campaign spending and transparency thereof.

The role of political parties at the European level has been acknowledged in the EU Treaties since 1993,[397] with the current Treaties clearly recognising the part that parties play in contributing to 'forming European political awareness and to expressing the will of citizens of the Union'.[398] Detailed rules to govern European Political Parties (or 'Europarties') are laid down in Regulation 2004/2003, which defines the minimum conditions for registering such a party (13 existed in 2013[399]) including the need to respect the fundamental values of the EU and the need to be represented in at least one quarter of EU member states through elected parliamentarians at European, national or (federal) regional level or having gathered at least 3% of the vote in the same amount of countries at the last EU elections.[400] Regulation 2004/2003 has, since 2007, also governed the foundations[401] (12 in total in 2013[402]) affiliated to Europarties, without which the former cannot exist.

The independent financing of Europarties only became possible through Regulation 2004/2003, which was partially reviewed in 2007 to ease funding restrictions and to allow the parties to campaign in European elections.[403]

While technical support from the European Parliament to Europarties may only be provided on an equal footing to all parties,[404] they are in practice strongly dependent on European Parliament finances. Parties must submit an annual application for grants to the EP, further to which, the latter has three months to adopt a decision.[405] A large share of the budgets of Europarties are financed through these grants – covered under an EP budget line that also funds the political foundations affiliated with the Europarties and the administrative and informational expenditure of the political groups in the European Parliament. For 2014, EP contributions will be about 28m EUR (up from ~22m EUR in 2013 and ~11m EUR in 2009). Overall EU budget support to the affiliated foundations will be 13.4m EUR (2013: 12.4m EUR; 2009: 7m EUR). [406]

Besides the procedure for receiving EU funds, the funding rules also foresee an upper limit for private donations of 12k EUR per year and donor and the need to publish annual financial reports that include the names of donors of private donations above 500 EUR. Co-funding through the political groups in the European Parliament and anonymous donations are prohibited but financial support from national political parties that are members of the Europarty can be up to 40%.[407] Europarty funds may not, however, be used to finance national parties or candidates.[408]

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396 European Political Parties are covered under the European Parliament in the current EUIS due to the lack of an independent status at European level and their close financial, political and administrative dependence on the European Parliament. Their role as separate political entities may be re-evaluated after the European Parliament elections 2014.

397 I. van Biezen & F. Molenaar, 'The Europeanisation of Party Politics? Competing Regulatory Paradigms at the Supranational Level', West European Politics, 35:3 (2012), 632-656, DOI: 10.1080/01402382.2012.665744; pp. 637-8.

398 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art. 10.4 (TEU); a similar formulation can be found in the Charter of Fundamental Rights of the European Union [2012] OJ C326/391, art. 12.2

399 http://www.europarl.europa.eu/pdf/grants/grant_amounts_parties_25-03-2013.pdf.

400 Reg. 2004/2003, art. 3

401 Created through the amendment of Regulation 2004/2003 in 2007. For background see: W. Gagatek & S. Van Hecke'Towards Policy-Seeking Europarties? The Development of European Political Foundations', EUI Working Paper RSCAS 2011/58 (2011), available at http://cadmus.eui.eu/bitstream/handle/1814/19156/RSCAS_2011_58.pdf?sequence=1.

402 http://www.europarl.europa.eu/pdf/grants/Grant_amounts_foundations_per_03-2013.pdf.

403 Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding, OJ L 297, 15.11.2003, p. 1; amended by Regulation (EC) No 1524/2007 of the European Parliament and of the Council of 18 December 2007, (Reg. 2004/2003)

404 Reg. 2004/2003, art. 11

405 Reg. 2004/2003, art. 4

406 Chapter 4.0 in the 2014 EP budget.

407 Reg. 2004/2003, art. 6

408 Reg. 2004/2003, art. 7

Private donations and other external support other than that of national member parties have in practice been low (e.g. none for the two largest political parties: EPP with a 2012 budget of ~8.8m EUR and PES, with a 2012 budget of ~5.5m EUR) and have rather been directed to the political foundations than to the political parties (e.g. around 114k EUR in 'corporate support' for the EPP foundation in 2012, out of a budget of approximately 5m EUR or 92k EUR for 'Contributions in kind' for the PES foundation in 2012, out of a budget of approximately 3.3m EUR).[409]

The implementation and oversight of the rules applicable to Europarties is undertaken by the European Parliament, in particular through the EP's Bureau which adopts implementing rules and the Luxembourg-based 'Political Structures Financing and Inventory Unit' of the Directorate for Finance in the EP's Secretariat General. Controls have led, in the part, to several parties being excluded from receiving EU funding.[410] The need to address the lack of independence of oversight, that is oversight fully exercised by the European Parliament as an institution dominated by the political parties themselves, was highlighted by Transparency International during the reform of the existing rules [411] and has also been raised by the EU Council.[412]

For the first time in 2013, the audit for all Europarties budgets for 2012 was executed by a single external auditor.[413] The regulation and implementing rules also foresees the publishing of financial reports by the European Parliament, but while the Europarties have been following their obligations to publish their audited financial reports by the end of September of the following year, centralised publication of these reports on the EP website[414] only occurred in late 2012 and 2013.[415] The need for greater and more timely transparency has been highlighted by Transparency International[416] and was acknowledged by the European Parliament in its legislative report in the context of the reform of the existing rules.[417]

A major shortcoming in the rules governing Europarties is the lack of uniform regulation over campaign spending, including transparency in this regard, given the complex regulatory framework resulting from 28 national party financing and campaign laws in addition to the EU-level rules.[418] Effective oversight of a transnational campaign by a single parliamentary unit appears unlikely. The European Parliament's unit responsible for party finances has indicated that during the 2014 EP elections, it will monitor, in particular, the activities of European Parliament political groups which are not allowed to directly and indirectly support the European campaigns of the parties related to them.[419]|

409 Based on an analysis of party and foundation finance reports published at http://www.europarl.europa.eu/aboutparliament/en/00264f77f5/Grants-to-political-parties-and-foundations.html.
410 Question to the Bureau BUR_QE(2010)0007, http://www.europarl.europa.eu/RegData/questions/bureau/2010/0007/BUR_QE(2010)0007_EN.pdf.
411 http://transparencyinternational.eu/wp-content/uploads/2012/11/TI-EU-Position-Paper-Europarty-Financing.pdf.
412 Cf. Agenda Item 15, http://register.consilium.europa.eu/doc/srv?l=EN&t=PDF&gc=true&sc=false&f=ST%2016964%202013%20INIT&r=http%3A%2F%2Fregister.consilium.europa.eu%2Fpd%2Fen%2F13%2Fst16%2Fst16964.en13.pdf.
413 Contract of EUR 712,000 for two years awarded to ERNST AND YOUNG BEDRIJFSREV, http://www.europarl.europa.eu/document/activities/cont/201309/20130925ATT71931/20130925ATT71931EN.pdf.
414 http://www.europarl.europa.eu/aboutparliament/en/00264f77f5/Grants-to-political-parties-and-foundations.html.
415 Own observations.
416 http://www.europarl.europa.eu/document/activities/cont/201101/20110125ATT12537/20110125ATT12537EN.pdf.
417 http://www.transparencyinternational.eu/2013/04/eu-party-finance-reform-stops-before-the-finishing-line/.
418 R. Patz, 'All eyes on the integrity of the 2014 European elections', EU Observer, (17 October 2013), available at http://euobserver.com/opinion/121806
419 [Reference current EP rules for Budget line 400 (political groups).

EUROPEAN COUNCIL

Strengths	Weaknesses
• Voluntary compliance with the EU regulation on access to documents is strong • Voluntary introduction of a register of gifts received by the President • High public awareness of institution as it is composed of senior political figures	• Lack of specific integrity provisions for European Council President and cabinet • Opacity of meetings and lack of systematic and timely disclosure of minutes • Budgetary and administrative opacity resulting from merged budget with Council of the EU • Absence of detailed procedures being used by the European Council to select and appoint individuals to key EU offices e.g. Commission President, High Representative for foreign affairs • Recent attention to anti-corruption and public sector integrity increasingly limited to financial fraud

Recommendations

- The European Council should introduce comprehensive integrity rules for its President and his/her cabinet
- The European Council should disclose its meeting documents in a mandatory and timely manner and improve detailed reporting from its meetings
- EU legislators should ensure the administrative separation of the budgets of the European Council and Council of the EU
- The European Council should build on the current justice and home affairs priorities (the 'Stockholm Programme') to define clear strategic and comprehensive anti-corruption guidelines for the coming years

About the European Council

The 1974 Paris intergovernmental summit marked the informal establishment of the European Council, following a proposal from the then French President Valéry Giscard d'Estaing. Having already convened a regular series of intergovernmental summits of the European Community since 1961, leaders decided to formalise and regularise what would become known as European Summits. The European Council only formally became an EU institution, however, further to the 2009 Lisbon Treaty.

The institution comprises 30 members in total: the heads of state or government of each EU member state as well as the President of the Commission, and its own President who chairs its meetings. The latter, unlike heads of government, is instructed not to act in any national interest and, as in the case of the Commission President, does not possess voting rights. The High Representative of the EU also takes part in the work of the European Council, but is not a full member.

Although the European Council possesses no legislative powers, it is charged with defining the broad political priorities and direction of the EU. The impact of this directional dominance, as well as its unrivalled hierarchical composition of heads of state, is largely the reason the European Council is seen as the Union's motor. It produces political decisions primarily on the basis of consensus. The European Council appoints its own President, the President of the Commission, the High Representative of the Union for Foreign Affairs and Security Policy, and the President of the European Central Bank.

The institution shares a secretariat with the Council of the European Union employing around 3100 staff. The European Council President is directly supported by a 33 strong cabinet.

The European Council convenes at least 4 times annually but in practice, holds around 6 meetings per year. When dealing with particularly contentious or unforeseen issues, it may meet extraordinarily. The institution is seated in Brussels.

INDEPENDENCE (LAW)

To what extent is the European Council independent and free from subordination to external actors by law?

The European Council works mostly on a consensual basis, exercising broad autonomy. However, formal agenda developments must be carried out in close cooperation with the Council and Commission. While the European Council has full control over the election and dismissal of its President, its members also comprise the Commission President and national heads of state and government, whose mandates and obligations are outside the control of the European Council. Furthermore, the European Council shares its budget and Secretariat with the Council, blurring its independence from the latter.

While the European Council's status as a separate EU institution is based in the Treaties,[1] its 'independence' is not made explicit therein. This omission is better understood when considering that the European Council comprises its own President, alongside Member State heads of state (or government), as well as the Commission President.[2]

The European Council has the legal mandate to 'define the general political directions and priorities' of the Union but is not bestowed with any legislative powers.[3] Its decisions are to be taken by consensus between all members, except where the EU Treaties stipulate otherwise,[4] with the President alone empowered to initiate votes where these pertain to decision-making. However, neither the latter nor the Commission President has a right to vote in such cases.[5]

The European Council convenes at the initiative of its own President, at least twice every six months, and s/he alone can call extraordinary meetings if justified by 'international developments'.[6] Meetings can though be extended from their normal two-day length by the institution itself, its President, *or the General Affairs Council*.[7]

The Council plays a clear role in determining the agendas of European Council meetings, which must be prepared in 'close cooperation' with both the Presidency of the Council and the President of the Commission, and submitted to the General Affairs configuration of the Council at least four weeks in advance of a meeting. Similarly, the European Council President must discuss draft guidelines for conclusions, draft conclusions and draft decisions with the General Affairs Council;[8] the latter is, furthermore, explicitly charged with the preparation and follow-up to meetings of the European Council 'in liaison with the President of the European Council and the Commission'.[9]

With regard to organisational arrangements, the European Council elects its own President by qualified majority; the latter cannot hold a national office and is legally obliged to advocate on a solely EU basis.[10] The President's term is 2.5 years and s/he can be dismissed, but only by the European Council, following the same procedure as that for appointment. [11] There are however, no specific provisions on how the President's independence is safeguarded, or any legal obligation for any interactions with outside interests to be recorded.

Administrative support is provided to the European Council by the General Secretariat of the Council which is under the authority of the Council's Secretary General: the latter also has full responsibility for administering the European Council budget.[12] However, the European Council has no legal mandate to decide on the appointment of the Secretary General.[13] Rules regarding the General Secretariat are governed by the Council (see respective chapter). Legal provisions explicitly grant member state representatives, their advisers and technical experts, immunity 'in the performance of their duties and during their travel to and from the place of meeting'.[14]

1 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 13 (TEU)
2 Ibid, art. 15
3 Ibid, art. 15(1)
4 Ibid, art. 15(4). An example of such an exception is the vote to appoint the European Council President, which shall be done by qualified majority; see ibid, art 15(5).
5 European Council Decision 2009/882/EU of 1 December 2009 adopting its Rules of Procedure [2009] OJ L315/51, Annex art 6 (RoPs)
6 RoPs, art. 1
7 RoPs, art. 4(1)
8 RoPs, art. 3
9 TEU, art. 16(6)
10 TEU, arts. 15(5), 15(6)
11 TEU, art. 15(5)
12 RoPs, art. 13
13 TFEU art. 240
14 Protocol (No. 7) to the Treaties on the Privileges and Immunities of the European Union, OJ C 326/266, art. 1

INDEPENDENCE (PRACTICE)

To what extent is the European Council independent in practice?

No cases calling the independence of the European Council into disrepute have been brought before the Court of Justice or the European Ombudsman over the last years. In fact, by virtue of the political status of its members, the European Council exercises more practical influence than its legal mandate foresees. This can be attributed, in part, to the fact that consensual decision making, (practiced habitually by the European Council) makes undue influence more difficult to assert. It has exercised its right to hold more than its mandated minimum number of meetings, and since its formal designation as an official EU institution, has convened two extraordinary meeting.

Between 2010 and 2013, there have been no publicised cases brought before the CJEU relating to attempted infringements on the independence of the European Council, nor has the Ombudsman opened any cases relating to a purported instance of such. This may well reflect the reality that attempts to exert undue influence over the European Council as a body would be unlikely given the need, in most cases, to exert undue influence over a majority of the individual members.

No mention is made in any European Council or summit documents[15] of the President of the European Council having exercised his right to convene a vote. Though the European Council is permitted to make the results of such a vote public if it wishes, but no instance had been recorded at the time of writing. In the instance that it has systematically chosen not to exercise this right, then all decisions will have been taken by consensus, rendering it even more unlikely for outside influences to infringe the independence of the institution.

Despite the legal obligation for only four EU summits to take place per year, a total of 23 EU summits (and a further 10 Eurozone Summits) were held between 2010 and 2013.[16] Of these 23, one meeting was convened 'extraordinarily' (unplanned) in response to political unrest in Libya.[17] [18] This is demonstrative of the European Council exercising its right to exceed its meeting mandate and could be seen as indicative of a good level of independence.

Although the European Council does not have the legal power to appoint the Secretary General of the Council General Secretariat, the current office holder was agreed upon at the level of the European Council[19] before being formally appointed, highlighting that the political power and independence of the European Council is exceeding its legal independence.

15 From 2010-2013
16 Minutes webpage on European Council website, http://www.consilium.europa.eu/documents/legislative-transparency/council-minutes?lang=en, (last accessed 10.01.2014)
17 Extraordinary European Council Summit minutes of 11th March 2011, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/119780.pdf, (last accessed 10.01.2014)
18 Other, 'informal' meetings have been held but are not classified as 'extraordinarily' unplanned meetings. A second extraordinary meeting was held on 6 March 2014; see http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/141292.pdf
19 "Lisbonne: le Conseil européen nouveau est arrivé!" (11 Dec 2009): http://bruxelles.blogs.liberation.fr/coulisses/2009/12/lisbonne-le-conseil-européen-nouveau-est-arrivé-.html.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the European Council?

Despite Treaty provisions on openness, the meetings of the European Council are closed by law and agendas and minutes of European Council meetings do not have to be made public. The institution is not explicitly addressed by the EU regulation on public access to documents but does commit in its internal rules to compliance with the regulation and to publishing non-sensitive documents in a shared document register with the Council. The budgetary transparency of the European Council is hindered in law by its joint budget with the Council, making it difficult to separate the activities and spending of the two. No provisions are in place to oblige European Council actors to disclose private interests or assets.

The objective of transparency is broadly enshrined in European law by the Lisbon Treaty which states that the EU institutions, including the European Council, are obliged to conduct decision-making in as open a manner as possible whilst doing so in as close a way as possible to the citizen.[20] The European Council is bound by the duty to incorporate this general objective into its Rules of Procedure,[21] and to elaborate its own rules concerning access to documents.[22]

Nevertheless, the European Council meets twice every six months[23] and such meetings are closed to the public.[24] The President of the European Council in cooperation with the member state holding the Council Presidency must make known the envisaged dates for European Council meetings one year in advance of the onset of their Presidency. Under special circumstances, the European Council can be recalled by the President outside of normal meeting times. [25] Deliberations are covered by the obligation of professional secrecy[26] and most Council decisions are reached by consensus.[27] There is no legal provision concerning the minutes of European Council meetings that instructs that they be made public.[28] A provision does, however, exist which allows the European Council to make the votes leading to the adoption of a decision to be made public (if applicable), along with the statements concerning it and the items in the minutes that relate to it, but this remains an option rather than an instruction.[29] No full disclosure of the minutes is foreseen.

Though a draft agenda must be drafted 4 weeks in advance of an ordinary European Council meeting, there is no provision insisting that this be disseminated to anyone outside the European Council and Council, other than the Commission President.[30] A provision contained in the European Council RoPs allows for 'meetings in the margins of the European Council with representatives of third States or international organisations or other personalities [...to…] be held in exceptional circumstances'[31], but there are no provisions requiring transparency of those. Although the European Council is not directly addressed by the Regulation on public access to documents,[32] it submits itself in its rules of procedure to the same rules on public access to documents that govern the Council, including the publication of certain non-sensitive documents on the Council's document registry.[33]

With regard to financial transparency, the European Council is obliged to publish its annual budget in the Official Journal of the EU;[34] however, the Council and European Council budgets are merged into one shared budget.

The vetting of European Council members is not provided for in EU legislation nor are there any rules and guidelines on interest or asset disclosure and obligations on declaring interactions with third parties for the President of the European Council. While a list of the Presidential cabinet members is available on the European Council website,[35] there is no legal provision which makes this mandatory.

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20 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 1 (TEU)
21 European Council Decision of 1 December 2009 adopting its Rules of Procedure (2009/882/EU) (RoPs)
22 TEU art 15(3)
23 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 15(3) (TFEU)
24 RoPs Annex, art 4(3)
25 Ibid, Annex art 1(1)
26 Ibid, Annex art 11
27 Ibid, Annex art 6(1)
28 Ibid, Annex art 8
29 Ibid, Annex art 10(1)
30 Ibid, Annex art 3(1)
31 Ibid, Annex art 4(3)
32 Regulation (EC) 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, [2001], OJ L145/13 (ATD Regulation)
33 RoPs Annex, art 10(2)
34 Regulation 966/12 of the European Parliament and of the Council of 25th October 2012 on the Financial Rules applicable to the General Budget of the European Union (2012), OJ L298/1, art 34
35 List of Cabinet members of European Council President, http://www.european-council.europa.eu/the-president/cabinet, (last accessed 18/09/2013)

TRANSPARENCY (PRACTICE)

To what extent is there transparency in relevant activities of the European Council in practice?

The European Council shares a document register with the Council and makes efforts to make many of its documents immediately available through this channel. However, it is not possible to glean from the documents on the register how representative of the full range they are and no separate transparency report for the European Council is available. Detailed information on the proceedings of European Council meetings is not disclosed and important side-line negotiations are not subject to scrutiny. Its website offers an array of information on its activities, and features information on the President and cabinet – though this does not extend to disclosure of personal interests/assets. A register of gifts received by the President's office is under development.

The European Council publishes its own institutional website, which hosts databases of information on the general activities of the institution, including an online calendar of European Council meetings[36] and a weekly advanced update of the President's meetings and trips.[37]

The Council Document Register, available on its respective website, provides online access to documents pertaining to the European Council.[38] (See Council transparency (practice) for further details and joint figures.) According to the 2012 Access to Documents Report of the Council, it was reported that approximately 88% of the documents specifically concerning the European Council recorded in the document register were immediately available, with the other 12% were being generally disclosed upon request from the public.[39]

While the agendas of European Council meetings are published in advance, minutes of meetings are not published in a timely or systematic manner. As the European Council has not held a vote in the past, no voting records are published. Reporting from the meetings is limited to the conclusions of summits,[40] with documents submitted to the European Council,[41] and background notes on meetings[42] published on the institution's website. A video archive of post-summit press conferences is also available.[43] While detailed information on the proceedings of meetings is limited, the material available does, reportedly, accurately reflect events, despite the fact that a significant volume of 'canvassing' frequently takes place on the side-lines, often on issues unrelated to the meeting itself. This is considered to be an innate feature of such an intergovernmental body – in contrast to similar discussions in the margins of meetings of other institutions – and something that cannot realistically be captured in official documents.[44]

Despite no legal obligation to publish information on the Cabinet of the President, the composition of the body is published online and indicates the area of responsibility of each Cabinet member, though no biographical information or interest declarations are published.[45] Biographical information on the President is published online[46] but no public disclosure of interests or assets is being undertaken.[47] A decision was taken by the Council to establish a public register of gifts received by the Cabinet of the President (including the President himself) in early 2014.[48] At the time of writing, the register was under preparation and would, according to the Council, shortly be available.[49]

The Council and European Council budgets are merged into a single shared budget, and published accordingly. This is justified to a large degree by the overlap in resources between the two institutions (e.g. the shared secretariat) but diminishes transparency over the detailed expenditure of each institution.

36 European Council meetings webpage, http://www.european-council.europa.eu/council-meetings?lang=en, (last accessed on 31 October 2013)
37 European Council webpage on Meetings and Trips of the President, http://www.european-council.europa.eu/the-president?lang=en, (last accessed on 31 October 2013)
38 Council Decision (2009/937/EU) of 1 December 2009 adopting the Council's Rules of Procedure, [2009], OJ L325/35, art 10(2) (Council RoPs)
39 Council Annual Report on Access to Documents 2012, http://www.consilium.europa.eu/media/2063344/web_en_access_to_doc_2013.pdf, (last accessed on 31 Oct 2013)
40 European Council Summit Conclusions webpage, http://www.european-council.europa.eu/council-meetings/conclusions?lang=en, (last accessed on 31 October 2013)
41 European Council webpage on Documents Submitted, http://www.european-council.europa.eu/council-meetings/documents-submitted-to-the-european-council?lang=en, (last accessed on 31 October 2013)
42 European Council Webpage on Background Notes, http://www.european-council.europa.eu/council-meetings/background-notes?lang=en, (last accessed on 31 Oct 2013)
43 European Council Video Streaming webpage, http://www.european-council.europa.eu/council-meetings/video-streaming-archives?lang=en, (last accessed on 31 Oct 2013)
44 Interview with staff from the Council Directorate 2 (Transparency), 12 December 2013
45 European Council webpage on Cabinet Members, http://www.european-council.europa.eu/the-president/cabinet?lang=en, (last accessed on 31 October 2013)
46 European Council webpage on Biography of the President, http://www.european-council.europa.eu/the-president/biography?lang=en, (last accessed on 31 October 2013)
47 Council response to ATD request Ref. 13/1608-mj/mf dated 29 October 2013
48 Decision No 37/2013 of the Secretary-General of the Council establishing a public register for gifts transferred by the President of the European Council [not published in Official Journal]
49 Council response to ATD request Ref. 13/1608-mj/mf dated 29 October 2013

The Council Press Centre[50] deals with press enquiries for the European Council and permits entry to media professionals holding a permanent EU Press Badge. For European Council summits, journalists are required to request a special permit, available from 'about five weeks before the meeting'.[51]

50 Website of the Press Centre of the Council of the European Union, (http://www.consilium.europa.eu/press/press-centre), last accessed on 15 August 2013
51 Council Media Accreditation webpage, http://www.european-council.europa.eu/council-meetings/media-accreditation.aspx?lang=en, (last accessed on 31 October 2013)

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the European Council has to report on and be answerable for its actions?

The EP is the only institution to which the European Council is directly accountable, through regular reporting obligations. It is also obliged to cooperate with the Commission President (himself a member of the European Council).The European Council is also subject to the scrutiny of the EU Ombudsman and OLAF. While its decisions and actions can also be brought for review before the CJEU, the terms under which it can be challenged are narrower than those for other institutions, owing largely to its lack of legislative powers. The European Council's authority over Treaty change and amendment is dependent upon the consent of the EP or national parliaments.

The CJEU is broadly invested with the right to hold EU institutions to account for their legislative decisions. [52] However, as the European Council is instructed by the Treaties not to exercise legislative functions,[53] the CJEU is only entitled to review any recommendations or decisions issued by the European Council, and of those, only ones which intend 'to produce legal effects vis-à-vis third parties'.[54] Such a review can lead to, in principle, a legal infringement action being brought against the European Council if it fails to act following a negative review.[55] It is clear however, that the scope under which the European Council's activities can be held to account by the CJEU, comparative to other institutions, is narrower.

In addition to this, the Lisbon Treaty predicates the role of the EU Ombudsman. The creation of this office empowers citizens to address instances of maladministration in the activities of the EU institutions, including the European Council but also mandates the Ombudsman to review such activities on his own initiative.[56] Meanwhile, OLAF retains the right to immediate access to the European Council and its documentation, in the course of internal investigations:[57] aside from this, the European Council remains inviolable to all other external bodies unless with the express permission of the CJEU.[58]

In terms of its accountability towards other institutions, the European Council membership includes the Commission President who is entitled to attend all normal European Council meetings. Furthermore, the European Council President is instructed to ensure that the preparation and continuity of the work of the European Council is carried out in cooperation with the Commission President and on the basis of the work of the Council.[59] After every meeting of the European Council, a report must be presented to the European Parliament by the European Council President. The European Council member who represents the rotating Council Presidency must also present to the EP, the priorities and results of the Presidency period. [60] This extends the accountability of the Council Presidency to the level of the European Council. There is little reporting obligation on the European Council outside its duty to report to the EP.

The once-renewable term of the office of European Council President stands at 2.5 years,[61] a relatively short mandate comparative to other institutions, but which potentially allows the performance of the office-holder to be given more direct consideration in any reappointment proceedings.

Regarding the act of Treaty revision, the European Council can veto the decision to convene a 'convention' (procedure for treaty change) but must obtain the consent of the EP in order to do so and go ahead with treaty amendments on a lower political level.[62] When it comes to amendments concerning union policies and internal actions, the European Council is only required to *consult* the EP and Commission (and ECB where pertinent). However, in this instance, member state national parliaments retain a final veto power.[63] Accountability to the national level is therefore reflected in provisions on treaty change.

52 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47 art 263 (TFEU)
53 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 15(1), (TEU)
54 TFEU art 263
55 TFEU art 265
56 Ibid. art 228
57 Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25th May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (1999), OJ L 136/1, art 4(2)
58 Protocol (No. 7) to the Treaties on the Privileges and Immunities of the European Union, OJ C 326/266
59 TEU arts.15, 15(6)
60 European Council Decision of 1 December 2009 adopting its Rules of Procedure (2009/882/EU), art 5 (RoPs)
61 TEU, art 15(5)
62 TEU art 48(3)
63 TEU art 48(6)

ACCOUNTABILITY (PRACTICE)

To what extent is there effective oversight of European Council activities in practice?

In the short period since its formal establishment, neither the European Council nor any of its members have been brought before a court for a breach of obligations (connected to their actions within the remit of their role as European Council members). The European Council has however fallen subject to a small number of recommendations against it by the Ombudsman who, in one case, highlighted a lack of accountability towards citizens, in particular: the observation was accepted by the European Council. The European Council fulfils its post-summit reporting obligations but more accountability in the audit procedure could be achieved by a separation of reporting between the Council and European Council.

Despite the possibility existing to challenge European Council decisions or recommendations at the CJEU, to date this has never occurred.[64] Mechanisms for European Parliamentary oversight are being used: MEP's are entitled to pose questions to the European Council, and these are being dealt with by the shared Council secretariat.[65] Between 2010 and 2013, four cases were opened by the Ombudsman following complaints of maladministration against the European Council, all of which were closed with decisions in favour of the complainant.[66] One of the four cases in question constituted a complaint made by an individual who claimed a disparity existed between the response provided by the Council to him, as a citizen, and the quality of the responses provided to MEP's in response to Parliamentary questions.[67] Following the Ombudsman case, the European Council later apologised for its dismissive response.

Over the last years, despite the existing legal mechanism, no national parliament has used their veto to block an internal policy change effected by the European Council. Though not a parliament veto, nor strictly a veto at all, the British and Czech delegations refused to sign the 2012 'fiscal compact', a treaty pre-empting deeper fiscal union between member states. Consequently, the treaty was adopted but outside the aegis of the European Council, becoming simply an intergovernmental agreement.[68] This demonstrates the possibility for the work of the European Council to proceed outside the legal constraints of the institution, should there be sufficient political will, but no possibility of consensus amongst all members. Nevertheless, such action removes any potential recourse to the normal accountability mechanisms in place to oversee the work of the institution.

The public calendar of the President[69] of the European Commission shows consistency in the fulfilment of the mandated reporting obligations of the European Council towards the European Parliament following a European Summit.

Ombudsman considers European Council 'dismissive' towards citizen

In 2011, the European Council President's use of a service car in his non-working time was questioned by a citizen, who asked for clarification of the applicable rules. The institution responded by forwarding a reply to a similar question previously posed by an MEP. While the basic query was answered, the citizen, subsequently supported by an opinion of the European Ombudsman, found the manner of the response dismissive in comparison with that provided to the MEP. The level of regard for citizens demonstrated by the European Council was challenged by the Ombudsman who recommended that the institution issue a formal apology.

Source: http://www.ombudsman.europa.eu

The European Council, as is the case for all EU institutions, is audited externally by the European Court of Auditors and granted discharge by the European Parliament. However, as this is done so as a joint audit with the Council of the European Union, findings are applicable to both and there is difficulty in pinpointing to which of the two institutions comments are specifically applicable. The separation of audit reports would allow for greater accountability and this call has been echoed by the European Parliament's Budgetary Control committee.[70]

As regards the sanctions imposed on European Council members in response to breaches of accountability obligations, different rules are applicable to different members. Heads of state serving as members cannot be sanctioned at EU level thus no such mechanism has ever been used. The President of the European Council can be sanctioned with removal from office[71] but this procedure has never, to date, been invoked. Furthermore, the

64 'InfoCuria' Case law of the Court of Justice search register, http://curia.europa.eu/juris/recherche.jsf, (last accessed 8 January 2014)
65 EU Parliamentary Questions website, http://www.europarl.europa.eu/plenary/en/parliamentary-questions.html#sidesForm, (last accessed 8 January 2014)
66 Case register of the European Ombudsman, http://www.ombudsman.europa.eu/en/cases/home.faces, (last accessed 8 January 2014)
67 Decision of the European Ombudsman closing his inquiry into complaint 0808/2011/MHZ against the European Council
68 BBC News, 'EU Summit: All but two leaders sign fiscal treaty' (2 March 2012), http://www.bbc.co.uk/news/world-europe-17230760, (last accessed 29 January 2014)
69 Press Releases search function of European Council website, http://www.european-council.europa.eu/the-president/press-releases.aspx?lang=en, (last accessed 9 January 2014)
70 EP CONT Committee Second Report on discharge in respect of the implementation of the European Union general budget for the financial year 2011, Section II – European Council and Council
71 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 15(5) (TEU)

current (and first) European Council President was granted re-election in March 2012 following the end of his first, once renewable, 2.5 year mandate. Similarly, while the President of the Commission can also be sanctioned by removal from his post,[72] this has never been done, whether related to his capacity as a member of the European Council or otherwise. With regard to the effectiveness of OLAF investigations into the European Council in practice, no cases have been made public to date.

72 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 247 (TFEU)

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the European Council?

Very few rules govern the integrity of members and staff of the European Council. There are no EU-level ethics rules for national members of the European Council, and only vague provisions for the European Council President in the EU Treaties. General integrity rules apply to the EU staff assigned to, or supporting, the European Council.

In the absence of a common code of conduct for the European Council, integrity rules are different for the President, for each national member and for the Commission President. Only the President of the European Council can be censured in case of 'impediment or serious misconduct' for which a qualified majority of the European Council members is needed.[73] In the case of the presidential cabinet, the EU's staff rules apply, but there is no separate code governing the conduct of these officials specific to their particular role.

If existing at national level, the heads of state and government can be subject to integrity mechanisms. In the same way, the European Commission President will have to abide by the Commission's integrity rules.[74] Nonetheless, no coherent provisions apply to all European Council members, or to their interaction with lobbyists and other third parties.

As the European Council uses the General Secretariat of the Council for administration and support, all the integrity rules applicable to Council staff are also applicable when they fulfil tasks relating to the European Council. (See Council Integrity Pillar)

73 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 15(5) (TEU)
74 Code of conduct for Commissioners, http://ec.europa.eu/commission_2010-2014/pdf/code_conduct_en.pdf, (last accessed 07.01.2013)

INTEGRITY (PRACTICE)

To what extent is the integrity of members of the European Council ensured in practice?

The absence of uniform integrity rules for the European Council makes it difficult to assess the safeguarding of integrity and sanctioning of potential misbehaviour. National members of the European Council are not subject to any integrity rules at EU level. No code of conduct is applied to the President of the European Council beyond obligations regarding gifts, and no specific rules apply to his cabinet: despite instances of direct lobbying. The integrity of the European Council's administration is governed by the EU Staff regulations.

The European Council is formally composed of the leaders of member state governments, the President of the European Council and the President of the European Commission,[75] who are assisted by the General Secretariat of the Council (GSC):[76] different integrity rules are applied to each.

As regards the rules applicable to national members, sanctioning is restricted in practice, as in law, with government representatives falling outside the scope of EU provisions. Furthermore, the GSC specifically acknowledges its lack of competence to sanction breaches of rules on the unauthorised disclosure of information,[77] and recognises its powers stretch only to highlighting the rules drawn up by the Council itself:[78] a practice visible in an internal note from 2008.[79] Some divergence is acknowledged as existing between how strictly national representatives respect such rules, but deliberate leaks are considered to be offset by the desire to retain mutual trust between delegations.[80]

Regarding integrity practices specific to the President of the European Council, rules have been developed internally to formalise procedures on the acceptance and recording of gifts and hospitality.[81] These rules prohibit the President from accepting gifts valued above 150 EUR without reporting them to the GSC for registration.[82] Furthermore, at the end of his term, the President of the European Council is obliged to renounce the temporary use of any gift exceeding that value of which he may have been making use and, should he wish to keep it, is required to make a donation of a value equivalent to that of the gift, to a charity. A Head of Protocol is designated to facilitate this process and gift values are assessed by the Finance Directorate of the GSC.[83] Aside from these provisions, no other integrity rules have been elaborated specifically for the European Council President: this is despite the fact that the office is subject to direct lobbying from represents of vested interests,[84] potentially channelled through the President's cabinet.

The cabinet of the European Council President is itself a body of entirely temporary staff.[85] Cabinet personnel are not bound by specific integrity rules linked to their function, however, they are bound by obligations in the EU Staff Regulations (SR), of the GSC as such, EU staff rules apply by virtue of the fact that the cabinet is paid from the EU budget.[86] Although no instances of breaches of the provisions in the SR have been noted, given the arguably more political function of this category of civil servant, the absence of specific integrity rules can be viewed as problematic.

75 European Council Decision of 1 December 2009 adopting its rules of procedure, OJ L 315/51, art. 4(4) (EUCO ROP)
76 Ibid, art 13(1)
77 Council Staff Note (CP15/11) of 24 January 2011 on the unauthorised disclosure of information
78 Interview with Council Transparency Unit, 12 December 2013
79 Council Staff Note (CP 200/08) of 4th December 2012 as a Reminder of the instructions on the production and distribution of documents
80 Interview with Council Transparency Unit, 12 December 2013
81 Decision No 37/2013 of the General Secretariat of the Council establishing a public register for gifts transferred by the President of the European Council
82 Ibid, art. 1
83 Ibid, art. 2
84 E.g. in the instance reported here: http://corporateeurope.org/lobbycracy/2011/03/business-against-europe-businesseurope-celebrates-social-onslaught-europe.
85 Section II (Council and European Council) of the General budget of the EU 2012, Section II (establishment plan)
86 The cabinet does not, however, feature in the organisational chart of the Council. See Organisational Chart of the Council of the EU, http://www.consilium.europa.eu/media/1884553/gsc_organisation_chart_en.pdf, (last accessed on 7 January 2014)

RESOURCES

To what extent is the European Council equipped with resources to allow it to effectively carry out its duties?

In the absence of a separate European Council budget, a distinct assessment of the resources of the European Council is challenging. Specific staff and salary allocations are only made for the European Council President and his cabinet while all other resources are provided through the Council. Yet, despite the increase in exceptional meetings of the European Council, and an overall increase in summits between 2010 and 2013, no apparent obstacles have been posed by resource limitations. No major calls for additional resources have been made by the European Council, and unused funds assigned to member state delegations have been reallocated to the construction of new premises.

The budget of the European Council is merged with that of the Council of the European Union and is therefore determined by the budgetary estimates made by the Council General Secretariat and approved by co-decision of the Council and European Parliament (see Council Resources for specific details, including on general budget figures).[87] The European Parliament has recommended separating the budgets of the European Council and the Council of the European Union, not least to allow for a proper discharge of their accounts to be undertaken.[88]

Out of the joint Council/European Council budget for 2013 of 535.5m EUR, approximately 1.1m EUR was allocated for remunerations and similar budget items for 'Members of the Institution', with the European Council President being the only member of the Council and European Council receiving specific remuneration from the EU budget.[89] The employment conditions for the European Council President are analogous to those of the Commission President.[90] A further 600k EUR was allocated for 'Travel expenses of staff related to the European Council'. All other expenditures, including building costs or costs of interpretation and of travel allowances for national delegations cannot be assessed separately. The staff allocated specifically to the European Council President in the 2013 staff allocation plan was 33 temporary agents, which has remained constant since 2011.

The Council reported an overall under spending of 44m EUR in its 2012 financial year and attributes approximately two thirds of this to budget allocations for member state delegations.[91] Nonetheless, the number of European Council summits held between 2010 and 2013 has seen no decrease and in fact, nine summits were held in 2011,[92] indicating that there are no resource problems regarding the organisation of meetings. Unspent allocations have been used, in part, to finance the acquisition of new Council buildings thus indicating no financial obstacle relating to premises or infrastructure.[93] A new building primarily for the use of the European Council President, his cabinet, and national delegations is expected to be handed over during 2014, after construction costs of about 303m EUR in 2013 prices.[94]

87 Council Decision of 1st December 2009 adopting the Council's Rules of Procedure, (2009), OJ L325/35, art 23 (Council RoPs)
88 EP CONT Committee Second Report on discharge in respect of the implementation of the European Union general budget for the financial year 2011, Section II – European Council and Council (COM(2012)0436 – C7-0226/2012 – 2012/2169(DEC)), pg. 7
89 See the "Remarks" and "Legal basis" sections of the 2013 Council budget, Chapter 1 0 "Members of the Institution".
90 Council Decision 2009/909/EU of 1 December 2009 laying down the conditions of employment of the President of the European Council, OJ L322/35
91 Council Financial Activity Report 2012 of 22nd October 2013, OJ C 307/1, pp. 6-7
92 The legally mandated annual minimum number of European Council Summits is 4
93 Council Financial Activity Report 2012, p10
94 Reply by the Council to European Parliament Questions E-002198/2013 of 15 May 2013

SAFEGUARDING THE INTEGRITY OF OTHER EU INSTITUTIONS AND MEMBER STATES

To what extent does the European Council function as a safeguard for the integrity of EU institutions and of EU member states?

The European Council retains oversight and sanction powers regarding breaches by member states of the EU's values, including the rule of law and democracy; however, these powers have never formally been invoked. The role of the European Council in the appointment of key EU offices has been subject to controversy, with concern raised on the suitability of candidates and the frequent lack of detailed procedures or of objective criteria against which to assess them. New rules in force as of 2014 may shed brighter light on the impact of its role in the election of the Commission President.

The European Council is mandated by the EU Treaties to determine the existence of serious and persistent breaches by Member States[95] of fundamental EU values.[96] The possibility of suspending certain rights of a member state, such as voting powers, would theoretically result. To date, the clause has never been formally invoked by the European Council as a body. The reluctance of the European Council to invoke the use of this provision in established instances of member state governmental corruption[97] is perhaps indicative of a weakness in its oversight function.

The European Council is mandated to define, as of 2014, the number of European Commissioners,[98] and to select the candidate for Presidency of the Commission.[99] It also appoints, in agreement with the incumbent Commission President, the EU's High Representative for foreign affairs and security policy.[100] Appointment of the Commission President must be done while taking into consideration the results of the EP elections, a rule that will first be applied in 2014. No criteria is outlined in the treaty detailing desired qualities for selecting or proposing the European Commission President or the High Representative, and the appointment of the incumbent high representatives but also other high-level nominations have sparked relative controversy surrounding the suitability and level of qualification of candidates for these positions.[101]

The Executive Board of the European Central Bank is also appointed by the European Council.[102] Appointments to the ECB Executive Board must be made in accordance with criteria concerning national professional standing and experience.

95 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 7(2) (TEU)
96 Ibid, art 2
97 V. Pop, 'Romanian Government Hit by Corruption', EU Observer, (8 October 2013), available at http://euobserver.com/justice/121697, (last accessed on 27 January 2014)
98 TEU, Art. 17(5).
99 TEU, art 17(7)
100 Ibid., art 18
101 'Europe's Motley Leaders; Behold, two mediocre mice', The Economist (26 November 2009), pg. 12, available at http://www.economist.com/node/14966247 (last accessed on 27 January 2014)
102 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 283(2) (TFEU)

PRIORITISING ANTI-CORRUPTION

To what extent does the European Council prioritise public accountability and the fight against corruption as a concern?

The European Council's multi-annual political agendas, embodied by The Hague (2004-2009) and Stockholm (2010-2014) programmes respectively reflect an increasing awareness of the financial repercussions to the EU of corruption and poor governance and demonstrate political will to tackle such problems. References to the same issues within the annual reports of the European Council are, however, less frequent. Conclusions of European Council meetings in recent years show increasing attention to financial fraud but less attention to anti-corruption and public sector integrity more broadly.

The EU as a whole is instructed by the Lisbon Treaty to counter 'fraud and other illegal activities affecting the financial interests of the Union'.[103] At the same time, the European Council is charged by the Treaties with providing the EU with general political direction and defined priorities[104] as well as with the responsibility for defining the strategic guidelines for strategic and operational planning in the area of freedom, security and justice.[105] Therefore it is necessary to examine the extent to which the European Council has raised the topics of anti-corruption and fraud in its activities.

An examination of the political roadmaps of the European Union, as adopted by the European Council, provides an indicator of the level of prioritisation of anti-corruption initiatives. The Hague Programme[106] laying out the EU policy agenda for 2004-2009 contained objectives including the development of ethics and integrity measures for public officials, asset disclosure, reporting of bribery of public officials, and training in financial investigation in its broader category of anti-corruption measures. It also foresaw an evaluation of member state anti-corruption policies and implementation reporting on measures against private sector corruption. The Stockholm Programme,[107] covering the political agenda 2010-2014 sought to build further on the Hague Programme with a focus on economic crime and corruption but maintained references to the objective of good governance and the broader fight against corruption. Notably, the European Council called upon the Commission in the Stockholm Programme to examine the technicalities for EU accession to GRECO[108] and to develop indicators for measuring national efforts in the fight against corruption.

In an examination of all European Council conclusions between 2010 and 2013, only one mention of 'corruption' can be identified: this with regard to the fight against corruption and defence of the rule of law in accession states. Calls for the need to address tax fraud, however, were made eight times between 2010 and 2013. It is clear, therefore, that financial integrity within national economic policy is seen as a greater priority for the European Council than institutional integrity or broader anti-corruption concerns.

In the 2012 annual European Council report, the institution calls on 'the Council and the Commission […] to rapidly develop concrete ways to improve the fight against tax fraud and tax evasion'.[109] This focus is a reiteration of a message within the 2011 annual report[110] and follows no mention of either fraud or corruption in the report published for the year 2010. Thus, we witness increased continuity in the attention drawn to this issue of financial crime, but with minimal focus given to corruption more explicitly.

103 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47 art 310(6) (TFEU)
104 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 15 (TEU)
105 TFEU art 68
106 Communication from the Commission to the Council and the European Parliament, The Hague Programme: Ten priorities for the next five years The Partnership for European renewal in the field of Freedom, Security and Justice COM(2005) 184 final
107 The Stockholm Programme, An Open and Secure Europe serving and protecting citizens (2010), OJ C 115/1
108 Council of Europe Group of States against Corruption (GRECO)
109 European Council 2012 Annual Report, p.32 para. 9, http://www.european-council.europa.eu/media/887270/euco-annualreport-updated-2012-en.pdf, (last accessed 19/09/2013)
110 European Council 2011 Annual Report, p35, http://www.european-council.europa.eu/media/555285/qcao11001enc.pdf, (last accessed 19/09/2013)

COUNCIL OF THE EUROPEAN UNION

Strengths	Weaknesses
• Informal practice of voting by consensus acts as a strong safeguard for Council independence • Exercising budgetary oversight powers regarding Commission and other institutions • Judicial oversight of Council actions functioning	• No common integrity rules and sanctioning mechanisms for national representatives in the Council • Lack of internal whistle-blowing provisions • Lack of disclosure of all documents related to legislative process and of transparency of member state positions overall • Opacity of trilogue and conciliation procedures (inter-institutional discussions to reach agreement on draft legislation) and internal administration • Doubts concerning effective vetting of members of other institutions appointed by the Council

Recommendations

- The Council should develop an institution-specific ethics code, including sanctions, addressing the risks specific to national delegates
- The Council should systematically publish all documents related to legislative procedures, including member state positions, and produce more detailed reporting overall
- EU legislators should increase transparency, in a systematic manner, of trilogue and conciliation procedures
- EU legislators should strengthen Council procedures and transparency regarding the appointment of members of other institutions

About the Council of the European Union

The Council of the European Union (the Council), also known as the Council of Ministers, was first formally established in 1967 under the then European Communities and in 1993 became known as the Council of the European Union under the Maastricht Treaty.

The Council exercises the role of co-legislator, alongside the European Parliament (EP), for the majority of EU legislation, while retaining wide exclusive powers in the area of foreign and security policy. Additionally, it exercises broad budgetary authority over the finances of the EU, alongside the EP. Despite renunciation of some executive power to the Commission over the years, the Council has seen its legislative powers strengthened with the expansion of policy areas where decision-making by specific majorities has replaced the need for consensus.

The Council represents the governments of EU member states, and its Presidency rotates every six months, among them. The Presidency chairs Council meetings, sets its agenda, and facilitates work with other institutions. To ensure continuity through a common political agenda, three successive presidencies cooperate over an 18-month period.

Though formally a singular body, the work of the Council is actually broken down into 11 separate policy areas, and relevant national ministers work within those policy groups which together hold around 100 sessions annually. Each Council policy group meeting is prepared by layers of working and preparatory groups, which convene around 3500 meetings per year. The 'General Affairs Council' ensures consistency in the work of all policy groups. The Council's work is supported by a General Secretariat numbering over 3100 staff, which provides administrative and budgetary coordination and is a liaison point for the Council as an institution.

The Council is seated primarily in Brussels though meetings in April, June and October are held in Luxembourg. Under extraordinary circumstances and in informal settings, the possibility remains for meetings to be held elsewhere.

INDEPENDENCE (LAW)

To what extent is the Council independent and free from subordination to external actors by law?

The Council is endowed with a good margin of political and operational autonomy and is independent in terms of setting the order of its rotating Presidency, its rules of procedure and in appointing its own Secretary General. The dual functions of member state officials in the Council are nonetheless recognised as relinquishing some institutional independence to national governments. Indeed, Council members cannot be individually sanctioned at EU level, nor can the Council as a whole be dismissed. While the Council doesn't possess the right of legislative initiative, it does hold the power to request the Commission to make specific proposals.

While the Council's status as an EU institution is based in the Treaties, its 'independence' is not made explicit therein. The independence of its members – that is, representatives of EU governments at ministerial level – is limited by their democratic accountability to their citizens and national parliaments.[1]

The Council is led by a rotating Presidency,[2] held by a single member state for a six-month period. While the Council decides on the order of rotation of its presidencies,[3] it is the European Council that determines the conditions for the system of rotation.[4] Moreover, the latter holds power to decide upon the list of Council policy groups in which the different policy areas are discussed.[5]

The Council appoints its own Secretary General, decides on the organisation of its General Secretariat and has autonomy over its own rules of procedure[6] as well as over its schedule of meetings.[7] Voting procedures are defined by the Treaties, including the right of the European Council to authorise the Council to act on qualified majority voting where the Treaties foresee unanimity.[8]

There are no provisions allowing the dismissal of individual members of the Council or the dissolution of the full Council. Legal provisions explicitly grant member state representatives, their advisers and technical experts, immunity 'in the performance of their duties and during their travel to and from the place of meeting'.[9]

The Council as an institution has autonomy over the execution of its budget, with responsibility for budgetary administration lying at the technical level.[10]

Although the right of legislative initiative is granted to the Commission, the Council can request from the Commission *'any studies the Council considers desirable for the attainment of the common objectives'* as well as 'any appropriate proposals'.[11] International agreements with non-EU countries and international organisations can only be negotiated and signed after authorisation by the Council, yet a wide range of agreements outside the EU's foreign and security policy are dependent upon consent of the European Parliament.[12] The Council can also adopt a regulation laying down the multi-annual budgetary framework for the EU and only requires the consent of the EP.[13]

There is a clear legal obligation on national experts seconded (SNEs) to the Council General Secretariat to act only in the interests of the Council[14] (not the Union, as in other cases) and not to undertake any activity for an external body or private company.[15] SNE's can only be seconded from a public administration or international organisation.[16]

1 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, arts. 10(2), 13, 16, (TEU)
2 TEU, art. 10(2)
3 Ibid
4 European Council Decision of 1 December 2009 on the exercise of the Presidency of the Council (2009/881/EU), OJ L 315/50
5 TEU, arts. 16(6), 16(9); Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 236 (TFEU)
6 TFEU, art. 240
7 TEU, art. 237
8 TEU, art. 48(7)
9 Protocol (No. 7) to the Treaties on the Privileges and Immunities of the European Union, OJ C 326/266, art. 1
10 Council Decision of 1st December 2009 adopting the Council's Rules of Procedure, (2009), OJ L325/35, Annex, art 23(5), (Council RoPs)
11 TFEU, art. 241
12 Ibid., art. 218(3)
13 TFEU, art. 312
14 Council Decision of 5 December 2007 concerning the rules applicable to national experts and military staff on secondment to the General Secretariat of the Council (2007/829/EC), art 5(1)
15 Ibid
16 Ibid, paragraph (3) of Preamble

The High Representative is legally mandated to preside over the Foreign Affairs Council, rather than the Presidency who otherwise chairs all policy groups.[17] The High Representative is also formally mandated to 'take part in the work of the European Council'[18] and designated as the head of the EEAS;[19] this institutional cross-over has the potential to invite external influence over the CFSP policy of the Council.

17 TEU, art. 18(3)
18 Ibid, art. 15(2)
19 Ibid, art. 27(3)

INDEPENDENCE (PRACTICE)

To what extent is the Council free from subordination to external actors in practice?

From a law-making perspective, evidence suggests that the Council is not restrained in exercising its independence and does actively assert its mandate. There have been no publicised cases in recent years of attempts to unduly infringe on the independence of the Council by outside bodies (external or inter-institutional), most likely due to the high-level of voluntary consensus based decision making undertaken by the Council. Despite the risk of the rotating presidency country being able to 'capture' the agenda for national purposes, the desire in reality to be seen as an 'honest broker' is felt to neutralise this threat.

The Council is led by a rotating Presidency,[20] held by a single member state for a six-month period. While the member state government holding the Council Presidency for any given period may encounter more potential opportunities to influence internal procedures (e.g. agenda setting powers), staff[21] report that this poses little threat in practice due to the Presidency country's normally strong desire to be seen as the 'honest-broker'[22].

With regard to the European Council's power to instruct the Council to vote by qualified majority rather than total unanimity, no concerns regarding an abuse of this mechanism have been raised. Examination of Council voting records shows that despite the legal possibility for qualified majority voting, votes are nearly always decided unanimously, or with close to unanimity.[23] Therefore, the power of such an enforced requirement from the part of the European Council would have little effect on actual practice.

While no sanctions or removal mechanisms legally exist, no instances of calls for Council representatives to step down from their role at European level have been publicised. The absence of concern for this issue at EU level reinforces the national level authority over representatives' actions, underlining the *de facto* subordination of the Council, to an extent, in this regard.

It is also pertinent to note that while expenses accrued by national representatives composing the Council are covered by the EU budget, salaries remain paid by member state governments. This financial tie to the will of domestic governments is something to take into account when considering the risks to the independence of individual Council members, though this is an arguable inevitability in a functionally intergovernmental body.

The Council possesses the right to request that the Commission undertake any studies that it deems desirable for the attainment of common objectives of the EU or to make legislative proposals.[24]As such, the Council has made use of this power, including during disputes over EU staff remuneration,[25] and it has indeed been the source – via such requests – for legislation ultimately decided by co-decision.

20 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, arts. 10(2) (TEU)
21 Interview with staff from the Council Directorate F2 (Transparency), 12 December 2013
22 Council Presidency priorities for Irish Presidency (Jan 2013-July 2013)
23 All Council voting records as recorded by www.votewatch.eu taking place between15 Nov - 5 Dec 2013
24 TFEU, art. 241
25 See Commission document COM(2012)476 final.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the Council?

The Council is bound by a stringent public access to documents law, and has to pro-actively publicise its legislative work. However, large sections of the activities of national policy-makers in Council matters, such as foreign policy, are excluded as exceptions to EU transparency rules. Furthermore, a complete absence of rules regulating visibility (e.g. the publication of agendas and minutes) in lower-level meetings poses a concern for transparency.

EU institutions, including the Council of the EU, are obliged to conduct decision-making in as open a manner as possible, whilst doing so in as close a way as possible to the citizen.[26] This applies in particular in the context of legislative decision-making[27], where Council discussions and votes are legally subject to publication and public access, while otherwise deliberations are subject to professional secrecy. [28] The obligation for public deliberations is legally applied only to Council meetings at ministerial level, and legislative decisions can also be taken by written procedure. [29] Deliberations on certain non-legislative proposals, or proceedings in EU Common Foreign and Security Policy (CFSP), do not have to be public.[30]

The Council is bound to adhere to EU regulation on access to documents[31], including the obligation to have a public register of documents, and pro-transparency provisions are embedded within its Rules of Procedure.[32] The General Secretariat of the Council is legally responsible for ensuring that the public is informed in time ahead of public debates and video recordings of public meetings have to be available for at least one month. [33],[34] Physical access to the Council sessions for the public is not allowed, but the media can access parts of the premises.

The General Secretariat is obliged to publish provisional meeting agendas for Council and working party meetings 'as soon as they have been circulated'.[35] Council minutes must contain any decisions/conclusions reached, references to any documents submitted related to agenda items, and Council statements, but there is no explicit legal requirement for ad verbatim reporting from Council meetings.

There are no legal obligations regarding the publication of the composition of Council working groups and committees; only a list of the different policy groups and groups has to be published.[36] Working groups of the Council are only obliged to provide documents which recount deliberations. However, the General Secretariat is entitled but not obliged to produce information notes or reports on the state of discussions in the Council or one of its preparatory bodies.[37] Council involvement in Conciliation Committees is also subject to public disclosure[38] but notes pertaining to these meetings may not betray the origins of member state positions. There are no provisions on the transparency of trilogues, where only the rotating Presidency represents the Council.

Neither ministers and national officials involved in Council matters, nor staff of the General Secretariat, are obliged by EU rules to publish declarations of interests, contacts with outside interests or gifts received. Appointments and removals of Council staff do not have to be publicised. Deliberations and proceedings undertaken by the Disciplinary Board of the Council shall also remain secret.[39]

The Council is obliged, to publish its annual budget in the Official Journal of the EU.[40] With regard to transparency in public procurement, the Council is bound by the responsibility to declare in 'an appropriate and timely manner' the recipient, nature and purpose of the procurement.[41]

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26 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 1 (TEU)
27 TEU art 16(8)
28 Ibid art 6
29 Council RoPs art 12
30 Council RoPs, arts 8-9
31 See chapter on the European Commission for details on Regulation (EC) 1049/2001 of the European Parliament and the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, [2001], OJ L145/13 (ATD Regulation)
32 Council Decision (2009/937/EU) of 1 December 2009 adopting the Council's Rules of Procedure, [2009], OJ L325/35 (Council RoPs)
33 Ibid art 7(3)
34 Ibid art 7(3)
35 Ibid art 11
36 Ibid art 19(3)
37 Ibid art 11(4)(b)
38 Ibid art 7(4)
39 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), Annex IX, art 8
40 Regulation 966/12 of the European Parliament and of the Council of 25th October 2012 on the Financial Rules applicable to the General Budget of the European Union (2012), OJ L298/1, art 34
41 Ibid art 35

TRANSPARENCY (PRACTICE)

To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the Council in practice?

Transparency of the work of the Council is primarily fostered through a comprehensive website and an online document register. Despite the existence of the register, evidence suggests that its representativeness of the range of documents actually produced by the Council is limited. Statistics indicate that many documents remain unregistered; meanwhile, internal Council notes suggest powers to classify documents may be being used excessively, hindering public access. The tracing of specific member state activity and positions is very difficult and transparency provisions thus only apply in reality to a limited portion of the Council's work. The Council's reaction to a recent ruling of the CJEU, with the potential to increase public insight into Council negotiations, points to an institutional resistance to transparency. There is no obligation for Council members to declare (potential) conflicts of interest, or their interaction with third parties or during inter-institutional 'trilogue' discussions of draft legislation.

The general work of the Council is made publicly accessible through a variety of channels including an online Document Register,[42] Public Information Service,[43] a Press Office,[44] a visits Service,[45] a unit on Public Access to documents (ATD),[46] a publications/documentation service[47] and a Council library and archive centre (the latter only accessible to the public upon appointment).

The Document Register features information on the latest documents available, non-public documents, and on the dates of finalisation and registration of documents - allowing clearer insight into how long information becomes publicly available after being drafting. The interface itself is noted as undergoing improvements in the context of a re-design.[48] ATD requests can only be made in writing (including electronically) but that no justifications for the request need to be provided by the applicant.[49] They also note efforts made to ensure that staff working within the Transparency unit become more au fait with the internal consultative procedure following a request so as to increase efficiency of response rates.[50]

Although the Council is bound under the EU regulation on public access to documents to state the number of sensitive documents that are not listed on its public document register,[51] the figures that it declares in its annual reporting on the implementation of access to documents rules have been called into question.[52] In its analysis of Council document disclosure, Statewatch notes that while 117,000 'restricted' documents have been produced by the Council since 2001, only 13184 are actually listed as existing in the Council document register.[53] This underlines that even though exceptions to public disclosure are already being applied by the Council, it takes a further restrictive stance on disclosing even the existence of such documents. Additionally, the classification of documents known as 'DS' ('document de séance) is used within the Council to categorise documents drawn up by and for working party level meetings. Despite the reality that these documents are acknowledged as forming part of the legislative decision-making process, they are not listed in the public register.[54]

An examination of the relative number of documents released by the Council (encompassing documents also pertaining to the European Council) following ATD requests between 2010 and 2012 shows an overall relative decrease in transparency (release of documents on initial request) in spite of the decreasing number of petitions. The same pattern stands for responses to confirmatory applications; despite an increasing number of requests between 2011-2012, less disclosure resulted in relative terms. The average number of days taken to respond to initial document access requests stands at 16 in 2012, a slight decrease from 17 in 2010 whilst the number of days

42 Council Public Document register, http://www.consilium.europa.eu/documents/access-to-council-documents-public-register?lang=en, (last accessed 29 October 2013)
43 Council online Public Information Service, http://www.consilium.europa.eu/contacts/info-public?lang=en, (last accessed 29 October 2013)
44 Council Press Office website, http://www.consilium.europa.eu/press, (last accessed 29 October 2013)
45 Council Visits Service website, http://www.consilium.europa.eu/contacts/information-visits-to-the-council?lang=en, (last accessed 29 October 2013)
46 Council Public Access to documents register, http://www.consilium.europa.eu/documents/access-to-council-documents-public-register.aspx?lang=EN, (last accessed 29 October 2013)
47 Council Publications/Documentation service website, http://www.consilium.europa.eu/contacts/order-a-publication/free-council-publications?c=c5cAy8Roem19Q3dj0VKcFoY2noY3ZUaM5Mn5hLii8z0GGVQ1YjThJA2&LANG=EN&BookType=0&langbook=EN&ID=, (last accessed 29 October 2013)
48 Note from SG of Council to Working Part on Information 14849/13 of 18th October 2011, http://register.consilium.europa.eu/pdf/en/13/st14/st14849.en13.pdf, (last accessed 30 October 2013)
49 Interview with staff from the Council Directorate F2 (Transparency), 12 December 2013
50 Ibid
51 Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43 (ATD Regulation), art. 17(1)
52 Bunyan T, 'Statewatch analysis: Constructing the secret EU state: "Restricted" and "Limite" documents hidden from view by the Council', available at http://www.statewatch.org/analyses/no-240-restricted-documents.pdf , (last accessed on 27 March 2014)
53 Ibid.
54 Ibid.

taken to respond to a confirmatory application stands at 28.[55] Furthermore, no calculation of the average number of days taken to reply to requests is cited. Over 2011-2012 the number of documents listed in the document register has increased and the relative proportion of those documents which is made immediately publicly available has remained constant.[56]

From the Transparency International EU office's own broad disclosure request to the Council,[57] it can be ascertained that the Council maintains a relatively well-structured database for recording data on public document requests. Systematic data recording is maintained and includes data on time taken to handle requests and justifications for refusal. An institution-wide common filing system is reportedly in the process of being developed.[58]

The 'Open Sessions' webpage on the Council website allows live streaming of all Council sessions which are open to the public.[59] However, it must be remembered that only a relatively small portion of the Councils meetings are subject to this coverage thus calling into question the level of transparency actually afforded to the bulk of Council decision-making.

Council meeting timetables for meetings held in the Justus Lipsius building in Brussels are accessible through an online calendar[60]. Agendas are available for Council meetings at ministerial[61], COREPER I[62] and II, special committee and preparatory levels and are presented as such in an online database.[63] However, no agendas or minutes from trilogue or conciliation committee meetings are made available. While in principle, the rotating Presidency could deliberately delay the publication of agendas, this is reportedly protected from occurring due to its desire to be seen as an honest broker.[64]

Two lists of Council minutes, one relating to general matters and another specifically concerning the adoption of legislative acts, are accessible online.[65] The Council website hosts an online archive of public voting results[66]. Monthly summaries of legislative acts of the Council are also available online[67] but are not published until a varying number of months later.

The ruling of the CJEU of the 17 October 2013 on Council vs. Access Info EU,[68] while not immediately constituting binding EU law, has shone light on the Council practice of blacking out member state positions in minutes discussing legislative proposals before the documents are made public. The struggle of the pro-transparency Council minority against the transparency-sceptic majority is something recognised by Hillebrandt, Curtin and Meijer in their examination of Council transparency,[69] demonstrating a culture of reluctance to interpret transparency regulations in a more liberal light. The ruling of the Court clearly supports a broader reading of transparency provisions in practice. The Council has responded to the ruling by calling for a 'policy review' of whether names of delegations should continue to be recorded in minutes at all.[70] Despite deciding that (for the time being), delegation names will remain in documentation, the Secretariat has simultaneously raised the issue of document restriction rules, emphasising the rules concerning unauthorised disclosure of 'limite' (or 'sensitive unclassified') documents.[71] As such, it could be reasonably deduced that the Council will increase instances of classifying such documents as 'limite', thus maintaining the content of the documents, but rendering them less accessible to the public.

Additionally, the Council (in cooperation with the other main institutions) reports that it is currently developing a system on EUR-LEX whereby the public can access visual depictions (e.g. timeline representations) of the life-

55 Council Annual Report on Access to Documents 2012, http://www.consilium.europa.eu/media/2063344/web_en_access_to_doc_2013.pdf, (last accessed 31 October 2013), Annex I, table 17, (last accessed on 31 October 2013)
56 ibid, Annex I
57 Access Info Europe and TI-EU Request to Council on Asktheeu.org of 11 July 2013, http://www.asktheeu.org/en/request/access_to_documents_requests_201#incoming-2647, (last accessed 4 November 2013)
58 Interview with staff from the Council Directorate F2 (Transparency), 12 December 2013
59 Council 'Open sessions' webpage, http://www.consilium.europa.eu/council/open-sessions?lang=en, (last accessed 29 October 2013)
60 Council meetings calendar, http://www.consilium.europa.eu/council/calendar-of-meetings?lang=en&cmsid=1934, (last accessed 29 October 2013)
61 An examination of the date of publication of the last 20 agendas of Council meetings between June and October 2013 show an average of 3.75 days between agenda publication and meetings being held.
62 An examination of the date of publication of the last 20 published agendas of COREPER I meetings between May and November 2013 show an average of 2.55 days between agenda publication and meetings being held.
63 Council webpage for agendas of meetings, http://www.consilium.europa.eu/documents/legislative-transparency/timetables-and-agendas/agendas-of-meetings?lang=en, (last accessed on 29 October 2013)
64 Interview with staff from the Council Directorate F2 (Transparency), 12 December 2013
65 Council Minutes webpage, http://www.consilium.europa.eu/documents/legislative-transparency/council-minutes?lang=en, (last accessed 29 October 2013)
66 Council webpage for Public Vote results, http://www.consilium.europa.eu/documents/legislative-transparency/public-votes?lang=en&mode=g, (last accessed 29 October 2013)
67 Monthly summaries of Council acts webpage, http://www.consilium.europa.eu/documents/legislative-transparency/monthly-summaries-of-council-acts?lang=en, (last accessed 29 October 2013)
68 CJEU ruling on Case C-280/11 P of 17 October 2013, http://curia.europa.eu/juris/document/document.jsf;jsessionid=9ea7d0f130d5801ba6bb58754e10922bb58c4d456e75.e34KaxiLc3eQc40LaxqMbN4OahyTe0?text=&docid=143182&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=385800, (last accessed 30 October 2013)
69 Hillebrandt M., Curtin D., Meijer A., Transparency in the Council of Ministers of the EU, An Institutional Approach, (Amsterdam Centre for European Law and Governance Working Paper Series 2012 – 04)
70 Note from SG of Council to COREPER of 29th November 2013 concerning Public Access to Documents, Ref: 17177/13
71 Note from SG of Council to Delegations of 6th March 2014 concerning outcome on Public Access to Documents, Ref: 7356/14

cycle of legislative proposals and individual institutional input and interventions.[72] Currently, no contact between third parties and council members or the input of the former is systematically recorded or disclosed that could shed light on the legislative process.

No declarations of interest of Council members are publicly available, nor are any lists of members composing the different Council policy groups.

The Council and European Council budgets are merged into one shared budget. This is justified to a great degree by the resource overlap between the two institutions but in terms of visibility, exact spending figures are rendered difficult to pinpoint for the activities of each institution.

The Council Press Centre[73] permits entry to media professionals holding a permanent EU Press Badge, and national broadcasters are permitted to rebroadcast the stream of Council proceedings at their own initiative.[74]

Though the Council disposes of a specific tendering portal for public procurement calls[75], it does not publish any information concerning the outcome of calls/tenders on the same website.

72 Note from SG of Council to Working Part on Information 14849/13 of 18 October 2011, http://register.consilium.europa.eu/pdf/en/13/st14/st14849.en13.pdf, (last accessed 30 October 2013)
73 Website of the Press Centre of the Council of the European Union, (http://www.consilium.europa.eu/press/press-centre), last accessed on 15 August 2013
74 Webpage of TV/Radio Office of the Council of the European Union, (http://www.consilium.europa.eu/press/tv-and-radio-studios?lang=en), (last accessed on 15 August 2013
75 Council Online Tendering Portal, https://tendering.consilium.europa.eu/default.aspx, (last accessed on 13 November 2013)

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the Council has to report on and be answerable for its actions?

As a co-legislator in the EU system, the Council is subject to judicial oversight by the Court of Justice of the EU regarding its legislative activities. However, the breadth of this accountability is more limited in the areas of foreign policy and international agreements, where the Council, in most cases, exercises more autonomy. The Council is subject to scrutiny by the European Ombudsman for instances of maladministration though the latter possesses no legal force. OLAF's scope of internal investigative powers extends to the premises and documentation of the Council General Secretariat but not immediately to those of member states' permanent representations to the EU. Debate over the European Parliament's legal right to question the Council on its signing off of the budget has been a source of conflict and stands as an on-going question regarding how accountable the Council should be, in line with other institutions.

The Lisbon Treaty includes a safeguard for the judicial oversight of the Council by the Court of Justice of the EU (CJEU), which falls within the latter's mandate to 'ensure that in the interpretation and application of the Treaties the law is observed'.[76] It furthermore specifically instructs the CJEU to review the legality of any of legislative acts which may affect a third party or which have been flagged by a member state, thereby ensuring scrutiny of the Council's legislative activity.[77] There remains however, derogation to this rule on most[78] matters concerning common foreign and security policy (CFSP) as dictated by the Council.[79]

Accountability in this latter area is triggered through the Council's obligation to 'regularly consult' the EP on its foreign policy work. The EP may pose questions on Council actions, make recommendations and hold a twice yearly debate on the progress made on implementing CFSP policy.[80] Furthermore, when the EU has defined a position on a subject which is on the agenda of the UN Security Council, the High Representative, 'acting under the authority of the Council', shall be invited to present the Union's position. [81] In instances of signing international agreements, the Council is legally mandated to '[conduct the] opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them'[82] but requires the consent of the EP (who must be continuously and immediately informed of developments[83]) to proceed with a broad range of agreements.[84] As is the case with regard to normal legislative activity, member states, the Commission, and/or the EP can request review by the CJEU on the legal compatibility of an agreement with the EU Treaties.[85]

Though the Council is instructed to invite the Commission to its deliberation meetings (and the European Central Bank in some instances), the provision is not binding and permits the Council to deliberate without the presence of either if it so wishes, thus limiting its accountability in this respect.[86]

The public also have avenues for recourse with regard to the Council. Through the European Ombudsman, citizens can lodge complaints against the Council for alleged instances of maladministration. The Ombudsman can also review Council activities on his own initiative.[87]

With regard to the individual accountability of Council members – i.e. the member state officials who compose its policy groups – reference is made in the Lisbon Treaty, which acknowledges that these national ministers are 'democratically accountable either to their national parliaments or to their citizens' but no specific provisions are laid down at EU level.[88]

Nevertheless, OLAF has the legal right to investigate alleged instances of fraud, corruption or illegal activity by Council staff, and has a right to immediate access to the Council and its documentation.[89] Beyond this, the Council

76 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art. 19, (TEU)
77 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 263 (TFEU)
78 TEU, art 40
79 TFEU, art. 275
80 TEU, art. 36
81 TEU, art. 34
82 TFEU, art. 218(2)
83 TFEU, art. 218(10)
84 TFEU, art. 218(6)
85 TFEU art. 218(11)
86 Council Decision (2009/937/EU) of 1 December 2009 adopting the Council's Rules of Procedure, [2009], OJ L325/35, art 5 (Council RoPs)
87 TFEU art 228
88 TEU art 10
89 Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) (1999), OJ L136/1, art. 4(2)

remains inviolable to all other external bodies unless with the express permission of the CJEU. [90] There are no legal provisions which extend this right of immediate access, however, to the premises of member states' permanent representations to the EU.

In terms of financial accountability, the Council is named by the treaties, alongside the EP as the budgetary discharge authority for Union finances.[91] The treaty foresees the submission of the Council's budget to the Commission and, following its insertion into the general budget of the EU, joint scrutiny of the budget by the Council and EP, with eventual discharge being granted by the latter.[92] A practice of mutual agreement between the Council and EP, to not scrutinise the budgets of one another, based on a gentlemen's agreement reportedly made in 1970[93] has been the source of much tension over the last years, with the existence, and binding legality of such an agreement being called into question following Council reluctance to answer EP questions on its expenditure.

90 Protocol (No. 7) to the Treaties on the Privileges and Immunities of the European Union, OJ C326/266
91 TFEU art 319
92 Ibid
93 EP CONT Committee Workshop Briefing Paper: Discharge of the Council's budget , http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cont/dv/workshop_council_/workshop_council_en.pdf, (last accessed on 30 January 2014), pg. 94

ACCOUNTABILITY (PRACTICE)

To what extent do the Council and its members report on and answer for their actions in practice?

The right to call the Council to account through legal review of its decisions appears relatively well exercised while less use has been made of available channels to lodge complaints with the Ombudsman. The European Parliament has refused to sign off on the Council's budget on a number of occasions, citing a lack of openness and cooperation by the Council in the scrutiny procedure. This has, however, not resulted in any legal consequences for the Council. With regard to foreign policy, the EP has also shown evidence of exercising its right to critique the Council's overall implementation of this policy area. The individual accountability of Council members is very low, as no EU-level sanction or vetting mechanisms are available. The lack of transparency in administrative decision-making also undermines effective accountability.

The right of the Court to review legislative decisions of the Council is an accountability mechanism enshrined in law.[94] As such, a search on the number of cases brought before the CJEU against the Council between the dates in question[95] yields 335 results.[96] Although not all consist of legal challenges against Council decisions, the actual frequency of cases is demonstrative of the exercise of this mechanism. During the same timeframe, 7 cases concerning the Council were opened by the EU Ombudsman, although these focused primarily on instances of alleged maladministration, in line with the latter's mandate.[97] Mechanisms for parliamentary oversight are being used, and the Council General Secretariat is duly responding to questions posed by European Parliamentarians.

The Council is audited externally, as a European institution, by the European Court of Auditors and granted budgetary discharge by the budgetary committee of the EP (CONT). Observations made in the ECA 2011 statement of assurance on the spending of institutions underline shortcomings in the application and design of procurement procedures[98] within the Council and prompted the call for a stricter application of such by the EP CONT committee in 2013.[99] This observation demonstrates the exercise of auditing at EU level as an accountability mechanism for the Council.

However, a great deal of tension has been evident over the past number of years concerning the legality of the gentlemen's agreement forged between the Council and EP in the late seventies, allegedly foregoing the EP's right to question the Council on the implementation of its budget. Consequently, the EP has refused the Council discharge on three occasions[100] citing its refusal to comply with EP requests for information and contesting the legal power of the Parliament to exercise oversight on its accounts, as reason for its refusal.[101] Despite this, the formal discharge of the Council budget is effected in tandem with that of the general EU budget, and as such, the partial Council-specific discharge refusal has no practical consequences for the institution. The Council's unwillingness to cooperate in such a procedure reflects reluctance towards financial accountability and transparency.

As regards its reporting obligations to the European Parliament in the area of CFSP, the Council submits an annual report on its implementation of the policy area which is debated in the EP.[102] The 2012 report prompted the drafting and adoption[103] of an own-initiative report by the EP AFET committee[104] which concluded with recommendations for the Council for future CFSP considerations. While the EP cannot enforce sanctions for non-adherence to such recommendations, the accountability mechanism as elaborated in law does appear to be being used.

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94 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47 art. 263 (TFEU)
95 Jan 2010-Dec 2013
96 InfoCuria Search on Case Law of the Court of Justice,
97 EU Ombudsman website search function, http://www.ombudsman.europa.eu/en/cases/home.faces, (last accessed on 14 January 2014)
98 ECA Annual Report on the Implementation of the Budget for the financial year 2011 (12 November 2012), OJ C 344/1, http://eca.europa.eu/portal/pls/portal/docs/1/18320745.PDF , (last accessed on 29 December 2013)
99 EP CONT Committee Second Report on discharge in respect of the implementation of the European Union general budget for the financial year 2011, Section II – European Council and Council (COM(2012)0436 – C7-0226/2012 – 2012/2169(DEC)), pg. 7
100 G. Sebag, 'MEP's postpone clearing Council accounts, 2009 repeat looming', *Europolitics*, (27 March 2012), available at http://www.europolitics.info/institutions/meps-postpone-clearing-council-accounts-2009-repeat-looming-artb330149-37.html, (last accessed on 30 January 2014)
101 2011 discharge report, http://www.europarl.europa.eu/document/activities/cont/201305/20130523ATT66574/20130523ATT66574EN.pdf, (last accessed on 30 January 2014)
102 European Parliament Legislative Observatory, Procedure file 2013/2081(INI), available at http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2013/2081(INI) (last accessed on 14 January 2014)
103 EP voting result on report on the implementation of the Common Security and Defence Policy, http://www.votewatch.eu/en/annual-report-from-the-council-to-the-european-parliament-on-the-common-foreign-and-security-policy--2.html, (last accessed on 14 January 2013)
104 Draft report on the implementation of the Common Security and Defence Policy (based on the Annual Report from the Council to the European Parliament on the Common Foreign and Security Policy), File no. 2013/2105(INI) available at http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2013/2105(INI) (last accessed on 14 January 2014)

The lack of provisions at EU level on the vetting of national representatives taking part in the work of the Council renders it impossible to sanction individual actions at EU level in case of misconduct. In this way, Council members remain accountable for their individual actions only to their national governments or citizens.

Press releases following Council meetings normally include the names of ministers participating as members[105] but such visibility is absent vis-à-vis technical level committee meetings.

While all deliberations on legislative matters are legally mandated to be held in public, in practice, potential loopholes exist. For instance, negotiations during COREPER and trilogues are closed and no minutes are made publicly available.

105 For example: Press release on Council Foreign Affairs committee meeting 20 January 2014, http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/140673.pdf, (last accessed on 24 January 2014)

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the Council?

No specific EU-level integrity safeguards apply to ministers and member state officials in the Council, apart from rules on confidentiality and the dissemination of documents, and general rules of procedure. As such, their conduct is regulated on an entirely national basis with no common, minimum EU standards. Legal safeguards are in place to govern the conduct of Council General Secretariat officials, including with regard to managing potential conflicts of interest and ensuring they act in the best interests of the Union. Rules on Seconded National Experts working in the Council are notably more stringent that corresponding rules in other institutions, and in parts, exceed rules incumbent upon EU officials.

At the EU level, aside from the Council implementing rules on document secrecy,[106] no integrity rules are applicable to national ministers or officials exercising functions within the Council. The EU Staff Regulations[107] and Council Rules of Procedure[108] are not binding on ministers and national officials who are governed only by their national law, if it all, on a scope of integrity issues.

The objective of a European public administration that functions openly, accountably and without corruption is enshrined by the European Charter of Fundamental Rights, under the provision bestowing a right to good administration on all EU citizens,[109] as well as in the Lisbon Treaty, which guarantees institutional openness.[110] 'Integrity' is also notably included as one of the five (non-binding) Principles of EU Civil Service drafted by the EU Ombudsman.[111]

The Council General Secretariat (GSC) is duly subject to legally binding obligations in the EU Staff Regulations regarding staff conduct: the rules also detail disciplinary procedures[112] should civil servants breach their obligations. Integrity safeguards pertain to recruitment and conduct while in service, introducing an obligation to disclose the employment of spouses/partners, [113] and to seek authorisation for external activities[114] (as detailed in the section on the European Commission), *inter alia*. General provisions on whistleblowing and procedures to follow when reporting potential misconduct are also laid down in the SR, [115] however the Council has not put in place any specific internal rules in this regard.

As EU civil servants, GSC staff are obliged to act in the best interests of the Union,[116] and the Staff Regulations specifically dictate that they must not accept gifts, payments or favours from any source outside the EU institutions[117] without the permission of their respective Appointing Authority (here, the Secretary General of the Council), but there is no legal provision that requires any such approved gifts or favours to be recorded. There is also no legal obligation for GSC staff to publish asset declarations. With regard to interactions with lobbyists or national governments, GSC officials are explicitly instructed to neither seek nor take instruction from any source outside the institution.[118] Any input or influence potentially linked to such interactions is also required to be reported immediately to the Council Appointing Authority.[119]

Apart from the rules designated by the Staff Regulations, there is no legal mandate for the establishment of an internal ethics committee or ethics training programmes for Council secretariat staff.[120]

In the case of national experts seconded (SNEs) to the GSC, there is a clear legal obligation for them to act only in the interests of the Council[121] (not *the Union* as in other cases) and not to undertake any activity for an external

106 Council Note of 24/09/2002, No. 134/02 to Personnel
107 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)
108 Council Decision (2009/937/EU) of 1 December 2009 adopting the Council's Rules of Procedure, [2009], OJ L325/35 (Council RoPs)
109 Charter (2012/C 326/02) of Fundamental Rights of the European Union [2012], OJ C326/391, art 41
110 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 298(1) (TFEU)
111 Public Service Principles for EU Civil Service, available at http://www.ombudsman.europa.eu/en/resources/publicserviceprinciples.faces), (last accessed on 20 August 2013)
112 SR, Annex IX
113 Ibid art. 13
114 Ibid
115 Ibid arts. 21(a), 22(a)
116 Ibid art. 11
117 Ibid
118 Ibid art. 11
119 Ibid art. 11(a)(2)
120 Ibid art. 24(a)
121 Council Decision of 5th December 2007 concerning the rules applicable to national experts and military staff on secondment to the General Secretariat of the Council (2007/829/EC), art 5(1)(a)

body or private company.[122] SNEs can only be seconded from a public administration or international organisation[123] and failure to comply with the rules on secondment can result in termination of the secondment.[124] Furthermore, they are obliged to inform the GSC of any possible future employment for a period of three years after the end of their secondment to the Council, [125] and upon secondment, they are obliged to declare both their financial interests and those of all close family members. [126] Both these provisions are notably more stringent that those in place for SNEs in other institutions, and indeed, for most EU officials.

In terms of integrity mechanisms built in to public procurement contracts awarded by the Council, convictions for corruption and fraud are explicitly named as criteria under which participants can be excluded from a procurement procedure, under the EU's financial rules (for more information, please see the section on the European Commission).[127]

122 Ibid art. 5(1)(h)
123 Ibid paragraph (3) of Preamble
124 Ibid art. 5(5)
125 Council Decision of 5th December 2007 concerning the rules applicable to national experts and military staff on secondment to the General Secretariat of the Council (2007/829/EC), art 5(3)
126 Ibid art. 4(4)
127 Regulation 966/12 of the European Parliament and of the Council of 25th October 2012 on the Financial Rules applicable to the General Budget of the European Union (2012), OJ L298/1, art 106(e)

INTEGRITY (PRACTICE)

To what extent is the integrity of Council members ensured in practice?

The Council General Secretariat (GSC) retains the power to circulate reminders about the application of ethics rules, approved by the Council itself, but recognises the lack of genuine sanction mechanisms in place to enforce them. The GSC makes efforts to ensure the implementation of ethics provisions amongst its own staff. However, doubts remain over the systematic nature of internal awareness-raising regarding the rules in place. Investigation and sanctioning of misconduct are taking place, but only for GSC staff.

No vetting of the integrity and/or financial interests of national representatives to the Council or of the Presidency is conducted at EU level and none is reported publicly as being conducted by the GSC.

With regard to rules on the unauthorised disclosure of information,[128] as national representatives are formally outside the scope of any legal provisions governing this, the GSC has no competence to sanction breaches, and its powers stretch only to highlighting the rules drawn up by the Council itself.[129] It is reported that the level of adherence to these rules varies across national delegations.[130] An internal Council document also points to the existence of a problem of unauthorised disclosure of documents; though the former does not specify to what degree, nor in which part of the Council the problem exists.[131]

As national representatives are not legally subject to EU ethics and integrity rules, and are rather the authors of such rules,[132] there are no reports of EU-related integrity breaches with regard to Council work. There are also no publicly available declarations of interests of Council members nor any mechanisms to address potential conflicts of interests they may hold.

With former Prime Ministers and Council Presidents convicted of corruption,[133] former ministerial Council members investigated for corruption[134] and with high level diplomats chairing the main Council committee (COREPER) during a Council Presidency moving to lobbying-related jobs soon afterwards,[135] the absence of specific integrity rules and checks in practice regarding the Council-level activities of national politicians and administrators is a concern.

Doubts over the integrity procedures relating to GSC staff have also been raised in the context of the case of former Commissioner Dalli.[136] However, certain implementing rules have been drawn up internally to ensure the correct application and awareness of the relevant ethics provisions by staff, to complement their legal obligations under the EU Staff Regulations (SR).[137].

The general whistle blowing provisions[138] contained within the SR and EU Financial Regulation are underlined by the Council in an internal staff note which emphasises the need for increased awareness of whistleblowing procedures, as well as the need to reinforce staff whistle-blower protection internally. The note outlines practical steps to reach these objectives. However, the last issuance of this reminder seems to have been in 2006.[139] Similarly, implementing guidelines on gifts and hospitality further to SR provisions[140] have been elaborated, in which staff are instructed to discourage all types of gifts, and in the case where refusal is not possible, to transmit the gift immediately to the Council finance directorate. Permission must be explicitly given by the Appointing Authority in order for exceptions to be made.[141]

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128 Council Staff Note (CP15/11) of 24 January 2011 on the unauthorised disclosure of information
129 Interview with staff from the Council Directorate F2 (Transparency), 12 December 2013; Council Staff Note (CP 200/08) of 4 December 2012 as a Reminder of the instructions on the production and distribution of documents
130 Interview with staff from the Council Directorate F2 (Transparency), 12 December 2013
131 Council Staff Note (CP15/11) of 24 January 2011 on the unauthorised disclosure of information
132 Interview with staff from the Council Directorate F2 (Transparency), 12 December 2013
133 'Ex-Slovenian PM Janez Jansa convicted of corruption', BBC News, (5 June 2013), available at http://www.bbc.co.uk/news/world-europe-22781752 (last accessed on 20 January 2014); note that Jansa was prime minister during Slovenia's Council Presidency in the first half of 2008,
134 A. Chrisafis, 'French former government minister charged with corruption', The Guardian, (9 February 2012), available at http://www.theguardian.com/world/2012/feb/09/eric-woerth-corruption-lilane-bettencourt (last accessed on 20 January 2014)
135 http://corporateeurope.org/revolvingdoorwatch/cases/jean-de-ruyt
136 M. Vella, 'Potential Dalligate accomplice still member of EC staff', Malta Today, (22 December 2013), available at http://www.maltatoday.com.mt/en/newsdetails/news/national/Potential-Dalligate-accomplice-still-member-of-EC-staff-20131221 (last accessed on 20 January 2014).
137 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)
138 Ibid, art. 22(a-b)
139 Council Staff Note (CP 190/06) of 11th December 2006 from the Advisers Department on Articles 22a and 22b of the Staff Regulations – Article 60 of the Financial Regulation Procedure for reporting serious misconduct or negligence
140 SR, art. 11
141 Council Staff Note (CP 63/13) of the 19th September 2013 on Decision No 34/2013 of the Secretary-General of the Council laying down rules for the application of the provisions of the Staff Regulations concerning favours and gifts

With regard to identifying and sanctioning misconduct by Council staff, the GSC's Advisers Unit under the instruction of the Appointing Authority, undertakes administrative investigations for breaches of the SR. 2013 saw the publication of the first internal Annual Activity Report of the Advisers Unit on its investigations.[142] There were 'infrequent disciplinary incidents' and sanctions resulting from three enquiries in 2012. Sanctioned behaviour included false declarations, infringement of working time rules and inappropriate behaviour towards colleagues. Sanctions for these cases included a reprimand, withholding of an amount from a retirement pension, and removal from post. The relative severity of the penalties levied, as well as the consistency of such (if breaches are indeed systematically picked up on) is indicative of a good level of vigilance regarding the enforcement of sanctions.

142 Council Staff Note (CP 24/13) of 29 April 2013 on administrative enquiries and disciplinary procedures at the GSC

RESOURCES

To what extent is the Council of the European Union equipped with resources to allow it to effectively carry out its duties?

The Council has reduced its budget in recent years but no major calls for extra resources from within the General Secretariat have been issued, and no concerns have been raised on the adequacy of its resources by the EP. Human resource levels have remained relatively stable in recent years, but will fall by 5% up to 2017. Figures demonstrate that recent reductions in administrative support functions have been offset by an increase in policy posts. Spending on further training for existing staff has increased over recent years, including in the area of financial oversight.

The Council is mandated, as is the case for all other EU institutions, to draw up a draft budget for its estimated annual expenditure on an advance yearly basis and submit such a draft to the Commission for consolidation.[143] This is done under the responsibility of the Secretary-General of the Council.[144]

The Council budget (grand total expenditure for Council/European Council, appropriations) of 2013 stood at 535.5m EUR, an increase from 533.9m EUR in 2012 (up by 0.3 %) but down from 563.3m EUR in 2011 with further reductions in staff expenditure due also to apply to the Council as of 2014.[145] Around 60% of the 2013 budgetary appropriations were allocated to staff costs, with 22% spent on arrangements for meetings and the remainder covering buildings, infrastructure, IT and furniture. This includes travel budgets for national delegations (almost 20m EUR in 2013) and interpretation budgets partially allocated to each member state (almost 84m EUR in 2013) for both the Council and European Council.146 Additional budgetary needs, including for the financing of the Council Presidency (62m EUR for the Lithuanian Presidency in 2013[147]) are covered through national budgets, but the Council reported an under spending of 44m EUR in its 2012 financial year, two thirds of which originated from budget allocations to member state delegations,[148] indicating the sufficiency of overall resources.

Over the years 2011-2013, the overall staff of the General Secretariat of the Council has slightly decreased from 3137 in 2011 to 3117 in 2013 (not counting staff allocated specifically to the European Council). In that time, the number of assistant posts (AST) held by the Council has decreased whilst the number of policy-level posts (AD) has inversely, increased.[149] The Council is further subject to a 5% cut in its staffing levels up to 2017, as is the case for all EU institutions, with reductions to apply as of 2014.[150]

Irrespective of imminent cuts, the Council has not, in recent years, pointed to critical insufficiencies in its resourcing levels. [151] Furthermore, despite strained relations with the European Parliament with regard to the scrutiny and discharge of its annual accounts, the Council has not been subject to parliamentary concerns over the adequacy of its resources nor on any negative impact on its ability to carry out its work. Indeed, concern has rather been raised on the level of under-spending in certain areas, alongside the identification of shortcomings in the Council's budgetary transparency, undermining the effectiveness of parliamentary scrutiny.[152]

In terms of the adequacy of resources permitting institutional transparency, resource limitations are not reported to currently compromise work.[153] Furthermore, budgetary allocations for further training for existing staff members of the Council has seen an overall increase of 11% between 2010 and 2013[154] and the Council acknowledges that efforts were being made in 2012 to reinforce the competencies of officials engaged in financial transactions.[155]

143 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 314 (TFEU)
144 Council Decision of 1 December 2009 adopting the Council's Rules of Procedure, (2009), OJ L325/35, art 23 (Council RoPs)
145 Summary of the European Council Agreement on the MFF negotiations, http://www.consilium.europa.eu/special-reports/mff/summary-of-the-european-council-agreement, (last accessed on 28 December 2013)
146 Council Budget webpage, http://www.consilium.europa.eu/council/council-budget?lang=en, (last accessed on 28 December 2013)
147 http://www.euractiv.com/general/lithuanian-eu-presidency-fresh-b-linksdossier-528577
148 Council Financial Activity Report 2012 of 22 October 2013, OJ C 307/1, pp. 6-7
149 General Budgets of the EU, Section II (Council) 2013, 2012, 2011, available at http://eur-lex.europa.eu/budget/www/index-en.htm , (last accessed on 28 December 2013)
150 Summary of the European Council Agreement on the MFF negotiations, http://www.consilium.europa.eu/special-reports/mff/summary-of-the-european-council-agreement, (last accessed on 28 December 2013)
151 See the Council's recent financial activity reports available at http://www.europarl.europa.eu/committees/en/cont/home.html (last accessed on 30 January 2014)
152 See, for example, the European Parliament report on the discharge of the Council's 2011 accounts available at http://www.europarl.europa.eu/document/activities/cont/201305/20130523ATT66574/20130523ATT66574EN.pdf (last accessed 30 Jan 2014)
153 Interview with staff from the Council Directorate F2 (Transparency), 12 December 2013
154 General Budgets of the EU, Section II (Council) 2013, 2012, 2011, available at http://eur-lex.europa.eu/budget/www/index-en.htm , (last accessed on 28 December 2013)
155 Council Financial Activity Report 2012, pg. 6

OVERSIGHT OF OTHER EU INSTITUTIONS AND BODIES

To what extent does the Council provide effective oversight of the Commission and other EU institutions and bodies?

The Council has considerable influence regards to the adoption of the annual budget proposed by the European Commission and it decides on salaries of staff and members of several EU institutions. It is co-responsible for the signing off of the EU budget, with the Commission replying in detail to the Council's budgetary sign off observations. There are doubts over the exercise of its oversight role when nominating, vetting or censuring members of other institutions and bodies.

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In terms of budgetary oversight, the Council is mandated to provide a recommendation to the European Parliament (EP) on which they may jointly grant discharge to the Commission (EC) for the annual accounts of the EU as a whole.[156] The Commission is required to take measures to address the observations of the Council in its discharge[157] and the Commission in practice replies in detail to Council observations.[158] This procedure also pertains to other EU institutions and agencies, with regard to their respective budgets, who share these reporting obligations to the Council.

The Council must also be informed by institutions if they wish to carry over unspent budgetary resources from one financial year to another and justify that the correct financial procedural rules have been applied.[159] It also retains authorisation power over inter-institutional budgetary transfers.[160] The EC is required to submit an annual report to the Council on the effectiveness of financial tools and the Council holds the power to request a proposal from the EC to wind down any instrument it considers ineffective.[161] It is furthermore, the Council which determines the salaries of key institutional figures and which retains oversight on approving any further payment to be made in this respect outside of normal remuneration.[162] Concerning its procurement activities, the Council maintains the right to be informed annually by the EC of the number of new entries listed in its Central Exclusion Database for procurement awards,[163] though has no formal power to issue recommendations or opinions on its use as a follow-up.

Council appoints Croatian Auditor against opinion of the European Parliament

In October 2013, the decision to appoint Neven Mates as the Croatian member to the European Court of Auditors was approved by the Council in spite of a negative opinion having been delivered on his nomination by the EP. The EP budgetary control committee judged Mr Mates unqualified for the post and called for the Council to justify its reasoning for appointment. To date, however, the Council has not explained its decision to override the EP's opinion.

Source: EU Observer (http://www.euobserver.com); European Parliament (http://www.europarl.europa.eu)

The Council's oversight role also extends to the nomination, vetting, and censure of members and the leadership of a number of other EU institutions and bodies. It adopts the list of European Commissioners in cooperation with the President elect of the Commission that needs to be confirmed by the European Parliament.[164] It cannot, however, censure the Commission.[165] The Council oversees the composition of the 'specialised courts' (such as the Civil Service Tribunal) of the Court of Justice. It possesses the sole right to make appointments to such.[166] In addition, the Council appoints the members of the panel vetting new members of the Court of Justice and of the General Court.[167]

156 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 319 (TFEU)
157 Ibid, art. 319(3)
158 See for example Commission Staff Working Document SWD(2013)348 final.
159 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art. 15(5) (Financial Regulation)
160 TFEU, art. 27(2)
161 Financial Regulation, art. 140(8),(9)
162 TFEU, art. 243
163 Financial Regulation, art. 108(1)
164 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 17(7) (TEU)
165 TFEU, art. 17(8)
166 Ibid., art. 257
167 TFEU, art. 255

The Council also adopts the list of members of the European Court of Auditors (ECA) following member state proposals and after consulting the EP.[168] In recent deliberations on the appointment of the Croatian candidate to the ECA, the Council confirmed the member state proposal despite an EP budgetary control committee opinion to the contrary,[169] raising questions over the effectiveness of the Council's oversight role when vetting and nominating members of other institutions, for instance out of diplomatic considerations. The Council furthermore participates in the appointment and potential censure of the Director and Deputy Directors of Europol.[170] However, to date, it has never exercised its oversight function in terms of censure.

The Council holds authorisation power over the signing of agreements between the EU and third country states or international organisations.[171] In cases of the granting of economic aid, the Council also holds authorisation over the proposal made by the Commission.[172] By virtue of the close working relationship between the Council and the High Representative, and the fact that the Foreign Affairs Council policy group is in fact chaired by the latter, the Council maintains a *de facto* degree of oversight on External Action of the EU. This is underlined when taking into account the possibility for the rotating Presidency of the Council to chair such meetings in the absence of the High Representative.[173] The Council in its General Affairs composition oversees the preparations of European Council meetings.

In case of legislative inaction by the Commission, the Council possesses the right to request that the former undertake any studies that the latter deems as desirable for the attainment of common objectives of the EU or to make legislative proposals.[174] The Council has made use of this in particular during disputes over EU staff remuneration. The Commission has made use of its right to refuse to act on a request for legislative proposal[175] but appears to comply with its obligation to provide a report if requested by the Council.[176]

168 TFEU, art. 286(2)
169 A. Rettman, 'EU Countries Ignore MEP's on Court Appointment', EU Observer, (11 July 2013), available at http://euobserver.com/institutional/120826, (last accessed on 14 November 2013)
170 Council Decision of 6 April 2009 establishing the European Police Office (Europol), (2009) OJ L 121/37, art. 38
171 Ibid, art. 218
172 Ibid, art. 42
173 Council Decision of 1 December 2009 adopting the Council's Rules of Procedure, (2009), OJ L325/35, art. 2(5), (Council RoPs)
174 TFEU, art. 241
175 See Commission document COM(2011)181 final.
176 See Commission document COM(2012)476 final.

FOSTERING AND COORDINATING ANTI-CORRUPTION ACTIVITY

To what extent does the Council foster anti-corruption and integrity governance coordination?

The Council is legally mandated to coordinate member state efforts in combatting fraud and corruption in lieu of EU competence to enforce an EU level criminal code. It has encouraged national level liaison via the establishment of a dedicated European anti-corruption network although the Commission remains empowered to lead and execute specific anti-corruption programmes. Given the lack of Council recognition of corruption as a stand-alone offence, it risks being considered within a narrow, economic crime scope. The current process to establish EU policy priorities may further perpetuate this approach, propagating this narrow consideration of corruption across other institutions. Under its foreign policy mandate, the Council has signed the UN Convention against Corruption on behalf of the EU, and has demonstrated will to exercise sanctions in response to instances of corruption in non-EU states.

Despite the EU not disposing of any legal competence to impose a binding criminal code, it can legislate, to some degree, on areas which compose a cross-border element[177]. The fight against corruption and fraud is mentioned explicitly in the Lisbon treaty as a policy area dictated by the European Parliament and the Council.[178] The Council and EP are legally assigned the right to legislate on the minimum EU rules concerning sanctions and legal definition of offences related to corruption to coordinate national activities and produce a more 'consistent and coherent system of legislation'. In line with this, in 1997, the Council established a Convention against corruption involving EU and national level officials.[179] In lieu of any EU-level code of sanction, the Convention foresees the penalisation of 'active' and 'passive' acts of corruption as being embedded into national criminal law. Despite the demonstrated concern about the behaviour of officials, no further administrative legislation, even outside the scope of a potential EU criminal framework, has been pursued by the Council.

Certain other provisions of the Lisbon treaty legally reinforce the Council's right to coordinate at EU level, including its legal mandate to define the strategic guidelines for legislative and operational planning in the area of freedom, security and justice[180]. In 2008, the Council established a European network of contact points against corruption, aimed at facilitating contact between relevant national bodies so as to enhance cooperation on the fight against anti-corruption.[181]

In the EU's 2010 Internal Security Strategy,[182] the Justice and Home affairs Council policy group referred to corruption as one of the main challenges to internal security and called for further action. As such, the system of the 'policy cycle' was established, whereby Europol, the EU's law enforcement agency produces 'SOCTA' (the serious organized crime threat assessment) and 'OCTA' (the organized crime threat assessment) reports. These reports, evaluating and systematically analysing criminal activity in the EU, shape construction of the priorities of the Council in this area.[183] Problematically however, representatives from Europol confirm that corruption is not treated internally as a defined category of criminal activity.[184] Rather, it is viewed as an enabler of other crimes and as such, is not a problem that is targeted by specific actions. Consequently, corruption is framed as a largely financial and economic problem by the Council, thus placing an excessively narrow focus on a much broader issue.

In terms of implementation of the work on economic crime and corruption, the mandate is explicitly given to the Commission and member states[185] who lead the implementation of the Stockholm programme[186] as of 2010. The verbal commitment of the Council on these matters is expressed in the EP plenary minutes of September 2011[187] where the Council representative acknowledges the Council's desire to push member states in transposing anti-corruption legislation fully and more correctly.

177 See Europa webpage on Criminal law policy, http://ec.europa.eu/justice/criminal/criminal-law-policy/, (last accessed on 3 September 2013)
178 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 83 (TFEU)
179 Council act of 16 May 1997 drawing up the Convention on the fight against corruption involving officials of the European Communities or officials of member states of the European Union, OJ C195
180 TFEU, art. 68
181 Council Decision 2008/852/JHA of 24 October 2008 on a contact-point network against corruption, OJ L301
182 Internal Security Strategy for the European Union: Towards a European Security Model (2010), available at http://www.consilium.europa.eu/uedocs/cms_data/librairie/PDF/QC3010313ENC.pdf, (last accessed on 3 February 2014)
183 Europol webpage on SOCTA reports, available at https://www.europol.europa.eu/content/eu-serious-and-organised-crime-threat-assessment-socta, (last accessed on 3 February 2014)
184 Meeting with staff from Europol, 6 November 2013
185 The Stockholm Programme, An Open and Secure Europe serving and protecting citizens (2010), OJ C 115/1, art. 4.4.5
186 The Stockholm Programme — An open and secure Europe serving and protecting citizens, OJ C115/1
187 Council note 'Summary of the European Parliament Plenary meeting on 14 September 2011 Closing the gap between anti-corruption law and reality', Council register No. 14364/11

An external mandate to deter corruption can be implicitly read in the provisions on the Council's role in Common Foreign and Security Policy (CFSP) which includes references to 'the rule of law', 'good global governance' and 'sustainable economic development'.[188] The Council signed an accession agreement on behalf of the EU, to the UN Convention on Corruption in 2008[189] and has since demonstrated will to exercise sanctions on the basis of this convention.[190]

188 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art. 21(2) (TEU)
189 Council Decision of 25 September 2008 on the conclusion, on behalf of the European Community, of the United National convention against corruption, OJ L287
190 For example, Council decision 2011/172/CFSP of 21 March 2011 concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Egypt, OJ L76/63

EUROPEAN COMMISSION

Strengths	Weaknesses
• Network of staff 'ethics correspondents' across Commission departments in place • Internal whistle-blowing provisions in place • Comprehensive framework of internal financial controls in place • Large volume of documents and information on institution made available • High level of independence in operational activities • Existing mechanisms to hold the EC to account are being actively used	• Loopholes in internal integrity safeguards resulting from complex system of rules • Public document registry is available but its usability is limited, e.g. by the lack of a full text search functionality • Deficiencies in the independence and resourcing of bodies exercising internal investigative and monitoring functions • Limited transparency and accountability in key areas of Commission's work: e.g. advisory committees, expert groups, trade negotiations • Lack of comprehensive rules regarding use of external expertise nor systematic disclosure of engagement with third-parties • Mechanisms to debar entities from EC procurement procedures underused • Decreasing level of ambition regarding development of anti-corruption legislation applying to member states

Recommendations

- The European Commission should clarify and harmonise its internal integrity rules for all staff categories
- The European Commission should reform the compliance and sanction mechanisms regarding the conduct of Commissioners, particularly regarding post-employment rules, making its ethics committee fully independent with binding sanctions powers, ensuring comprehensive verification of asset declarations, and reporting annually on implementation of the Code of Conduct for Commissioners
- The European Commission should introduce comprehensive and harmonised transparency and accountability provisions for its use of external input, including through comitology committees and expert groups
- The European Commission, and EU legislators where necessary, should improve the effectiveness of exclusion and deterrence mechanisms in public procurement including making public the Central Exclusion Database

About the European Commission

European-level executive administrations have existed since the establishment of the High Authority of the European Community for Steel and Coal in 1951, supplemented by the Commissions of the European Economic Community and of Euratom in 1958. These three bodies were merged in 1967, creating a single European Commission (EC).

The EC's mandate is to safeguard the general interest of the EU, exercising a range of functions: it has an almost exclusive right to propose new EU laws; facilitates discussions between institutions to support the passing of legislation; it upholds the treaties and ensures EU law is correctly implemented; and holds responsibility for the execution of the EU budget. Although it undertakes much of the EU's external representation, it cannot legislate on foreign and security policy. The EC also adopts much secondary legislation, supported through a system of advisory member state committees (so-called 'comitology') and groups of external experts and lobbyists.

Formally, the EC is made up of a College of Commissioners, and an administration of almost 33000 staff. The College is the EC's political arm, serving for 5 years, and comprising 28 commissioners – one per EU country, though not officially national representatives – including a president. The EC's administration is led by a Secretary General, five of whom have been appointed since 1958.

The Commission is currently divided into 33 policy-focused directorates-general and 11 horizontal services, (e.g. internal audit, publications) and administers 6 executive agencies. Its headquarters are in Brussels, with further premises in Luxembourg.

The size and tasks of the EC have evolved over time, with the most profound internal overhaul of the institution resulting from the resignation of the Santer Commission in 1999 amid charges of fraud and mismanagement. Wide-ranging administrative reforms were launched in 2000 led by then Vice-President Kinnock, largely addressing financial controls and accountability.

Sources: http://ec.europa.eu.
J. Peterson, 'The College of Commissioners', and L. Hooghe and H. Kassim, 'The Commission's Services', in 'The Institutions of the European Union 3rd ed', ed. by J. Peterson & M. Shackleton, (Oxford: OUP, 2012)

INDEPENDENCE (LAW)

To what extent is the European Commission independent by law?

The independence of the European Commission (EC) is explicitly safeguarded in the EU Treaties and it retains an almost complete monopoly to initiate new EU laws. It enjoys considerable independence in its role to adopt secondary law and uphold EU competition law, and has broad autonomy in deciding upon its work – however, institutions with legislative functions (e.g. the EP and Council) can exert limited influence. The EU budgetary authority constrains EC financial autonomy. Several EU institutions exercise powers in the appointment and removal of the EC's political leadership, though the EC President has a role in the selection of Commissioners-designate, and can compel individual resignations. Legal provisions ensure that Commissioners and administrative staff work independently from outside influence, though only weak provisions cover EC use of external expertise or recording of contact with lobbyists.

The EC is designated as an official EU institution in the EU Treaties,[1] wherein the principle of its *complete independence* is explicitly ensured.[2] It has an almost exclusive right of legislative initiation,[3] though must provide the European Parliament (EP) and Council with financial evaluations for any proposals with budgetary (and human resource) implications.[4] The EP and Council do retain powers to request proposals from the EC; however, the latter is not compelled to submit proposals in such cases, but must justify any decision not to do so.[5]

The EC has the power, subject to Council-determined limits and those of the Treaties, to 'collect any information and carry out any checks' needed to undertake its tasks.[6] It determines its own work programme (in view of the EU's general political directions and priorities, defined by the European Council[7]), but has committed to take EP priorities into account when doing so.[8] The EC has also agreed not to make public any legislative proposal or 'significant initiative or decision' before notifying the EP; furthermore, the EC and EP agree in advance 'key initiatives' in the EC work programme to be presented in EP plenary.[9] Significantly, these latter commitments are laid down only in an inter-institutional agreement.

The EU Treaties allow for the EC to adopt certain secondary legislation derived from a basic act, to either 'supplement or amend certain non-essential' parts of it (delegated acts), or to ensure uniform conditions of implementation (implementing acts). In exercising these powers, the EC's independence is marked, but ranges in degree. Notably, it can propose and adopt delegated acts without the involvement of member state (comitology) committees. However, the EP *or* the Council can revoke a delegation or veto a delegated act, subject to high voting thresholds and provided this right is specified in the basic act: the latter must, indeed, explicitly lay down the conditions for the delegation.[10] For implementing acts, member state committees (chaired by a non-voting EC representative)[11] are consulted: depending on policy area, different procedures are followed which imply either a substantive or only non-binding committee opinion.[12] In specific cases, the normal committee procedure may be bypassed.[13] The EP and Council have a right of scrutiny regarding implementing acts though either can express only a *non-binding* opinion that a draft act exceeds the EC's implementing powers.[14] [15]

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1 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 13 (TEU)
2 Ibid, arts 17(1) (3)
3 TEU, art 17(2)
4 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art 31 (Financial Regulation)
5 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts 225 and 241 (TFEU). The EP can request 'any appropriate proposal' from the EC on matters for which it considers an EU act necessary to implement the Treaties; similarly, the Council can ask the EC to undertake studies that the former 'considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.
6 Ibid, art 337
7 TEU, art 15
8 Framework Agreement of 20 October 2010 on relations between the European Parliament and the European Commission [2010] OJ L304/47, art 35 (EP-EC framework agreement)
9 Ibid, art 13
10 TFEU, arts 290, 291. Where applicable, any revocation or veto is exercised by simple majority in the EP or by qualified majority in the Council, within a deadline explicitly stated in the basic act.
11 Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [2011] OJ L55/13, art 3.2 (Comitology Regulation)
12 Ibid, arts 4-6
13 The EC may adopt implementing acts without a committee procedure in exceptional cases to avoid significant disruptions to agricultural markets or to protect the EU's financial interests, but must then submit the act to an Appeal committee of member state representatives. A basic act may also allow the EC to adopt immediately applicable implementing acts in urgent situations without prior submission to a committee. A *post hoc* committee procedure is then initiated. See Comitology Regulation, arts 7, 8)
14 Ibid, art 11. This opinion can be expressed at any time, provided the basic act was adopted under the ordinary legislative procedure. The EC must inform the EP or Council of actions taken in response to the opinion expressed.
15 Under a non-binding common understanding, the EC is to ensure the transmission of relevant documents to the EP and Council when preparing and drafting delegated acts. However, it is compelled to provide access to comitology-related documentation to these two institutions, and must 'make available' to them meeting agendas and draft and final implementing acts when these are provided to committees. See Common understanding 8753/11 of 10 April 2011 on delegated acts [2011], art 4, and Comitology Regulation, art 10

Though other EU institutions play no formal role in the EC's expert groups,[16] specific provisions to safeguard the independence of the EC from third-party influence when using external expertise, including via expert groups, are weak: general, non-binding guidelines are in place, alongside specific rules for expert groups. The former refers only to the expectation that experts 'act in an independent manner', with the latter reiterating the need for the EC to act in the general Union interest.[17] No rules are in place to oblige Commissioners or officials to record, or publicly disclose engagement with entities engaged in lobbying for specific interests.

As 'guardian of the Treaties', the EC enjoys broad discretionary powers regarding infringements of Union law, and herein can initiate proceedings against a member state for failure to fulfil any Treaty obligations incumbent upon the latter, of if it fails to comply with a CJEU ruling.[18] In its role to combat infringements of EU competition law,[19] the EC has broad investigative powers, including for inspection (e.g. via 'dawn raids') and access to information, and can impose fines on commercial entities, at its own initiative. The EC must inform national authorities of any such raids: in addition, it is compelled to consult a committee of member state authorities when considering whether to initiative infringement actions, but opinions of the committee are not binding upon the EC.[20] All such actions are nonetheless subject to judicial review by the CJEU.

In terms of financial autonomy, the EC budget is agreed upon by the Council and EP (as the budgetary authority), based upon an EC proposal. The EC must also inform these institutions in advance when intending to make staff/administration-related budgetary transfers above specific thresholds; they can then subject these transfers to a formal approval procedure, where justified.[21] The Council alone decides upon the salaries, allowances and pensions of the EC President and Commissioners, and the salaries of EC staff.[22]

The independence of Commissioners is a criterion for their selection and they must act in the general interest of the Union, though 'independence' is not explicitly defined in this regard. Legal Treaty provisions safeguard their independence from governments/other institutions and their professional impartiality, and are elaborated in a code of conduct.[23] Member states are specifically required to respect this independence.[24]

The EC President is, though, elected by the EP,[25] upon a proposal from the European Council decided by qualified majority, after taking into account the EP election results and 'appropriate consultations'.[26] The Council proposes the other Commissioners-designate, though with the EC President-elect's accord, and the Commission as a body is then subject to an EP vote of consent : further to which, the European Council appoints the Commission for a five-year term, by qualified majority.[27] The European Council also holds unanimous power to alter the number of Commissioners and to establish any system of rotation.[28]

The College as a body is responsible to the EP, and can be dismissed *en bloc*.[29] Individual members must resign if requested by the EC President,[30] and the latter must 'seriously consider' doing so if asked by the EP.[31] The Council (by simple majority) or the Commission can also apply to the Court of Justice for the compulsory retirement of a Commissioner guilty of misconduct. Replacement Commissioners are appointed by the Council, in agreement with the EC President but only in consultation with the EP.[32]

Irrespective of extra-institutional involvement in the establishment/removal of the College of Commissioners, the

16 The EC has agreed to provide the EP with 'full information and documentation' on group meetings where representatives from all member states have been invited, and may invite EP experts to attend group meetings. See EP-EC framework agreement, art 15 and Annex 1, arts 1-3

17 Communication from the Commission on the collection and use of expertise by the Commission: Principles and guidelines [2002], COM(2002) 713, page 9, and Communication from the President to the Commission on the Framework for Commission Expert Groups: Horizontal rules and public register, [2010] C(2010) 7649, page 3

18 TFEU, art. 258, 260

19 TFEU, arts. 101-106

20 TFEU, art. 105; Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, [2002], OJ L1/1, arts. 14, 18, 19, 20, 21, 23, 24

21 TFEU, art 314; Financial Regulation, arts 26-27 and Commission Delegated Regulation (EU) 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union [2012] OJ L362/1, art 16

22 TFEU, art 243; Protocol (No 7) on the privileges and immunities of the European Union [2012] OJ C326/266, art 12; and Council Regulation (EU) No 1239/2010 of 20 December 2010 adjusting with effect from 1 July 2010 the remuneration and pensions of officials and other servants of the European Union and the correction coefficients applied thereto [2010] OJ L338/1

23 TEU, art 17(3), and Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 245 (TFEU). This is, however, without prejudice to the fact that the High Representative of the Union for Foreign Affairs and Security Policy, who is a Vice-President of the EC, is mandated by the Council of the EU with regard to work on common foreign and security policy and common security and defence policy (see TEU, art 18(2)); Code of Conduct for Commissioners C(2011) 2904

24 TFEU, art 245

25 TEU, art 14

26 The detailed arrangements for the consultations between Parliament and the European Council on the election of the Commission President may be determined 'by common accord', but this has not been done to date (10 Sep 2013). See Declarations annexed to the final act of the intergovernmental conference which adopted the Treaty of Lisbon, signed on 13 December 2007 [2012] OJ C326/337, Declaration 11

27 TEU, art 17(7). The High Representative of the Union for Foreign Affairs and Security Policy is, however, appointed, or his/her term ended, by the European Council acting by qualified majority and in agreement with the EC President (see TEU, art 18(1)). For the Guidelines for the approval of the Commission see the Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, Annex XVII

28 TEU, art 17(5) and TFEU, art 244

29 TEU, art 17(8), TFEU, art 234. Dismissal follows a motion of censure carried by the high threshold of a two-thirds majority.

30 TEU, art 17(6)

31 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, Annex XIV, rule 5 (EP RoPs). The EC President must provide a justification to the EP if refusing to call for a resignation.

32 TFEU, arts 246, 247

EC President is responsible for the internal organisation of the EC and division of College responsibilities, and appoints the Vice-Presidents[33] – but he is to consult the EP when reshuffling duties within the College.[34] The EC adopts its own rules of procedure,[35] but has agreed to consult the EP when revising the Commissioners' Code of Conduct, where related to conflicts of interest/ethical behaviour.[36]

The independence of the EC's administrative corps is safeguarded through provisions in the EU Treaties,[37] with binding obligations laid down in the Staff Regulations (SR) for officials, temporary and contract agents, and special advisors.[38] A binding Code of Good Administrative Behaviour also compels staff to act independently, 'objectively and impartially in the Community [*sic*] interest and for the public good'.[39] Internal (soft law) rules are in place to safeguard the independence of national experts when seconded to the EC (whether from the public or private sectors), including a pre-secondment conflict of interest verification and provisions to prevent external influence. [40]

33 TEU, art 17(6), and TFEU, art 248. Again, this is without prejudice to the High Representative's position as a Vice President, and Treaty-designated portfolio (see TEU, art 18(4)).
See also Commission Decision C(2001) 3714 of 5 December 2001 amending its rules of procedure [2001] OJ L345/94, Annex, arts 19, 21

34 EP RoPs, Annex XIV, rule 7

35 TFEU, art 249

36 EP RoPs, Annex XIV, rule 8

37 TFEU, art 298(1)

38 Staff must act in the interest of the Union, and not seek or take instruction from bodies external to the EC, including governments; not accept unauthorised gifts/payments; refrain from involvement in matters in which they hold an interest, and inform EC hierarchy where such instances arise, inter alia. See 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, principally, arts 11, 11a, 12-26a (Staff Regulations). Please also see the indicator report on Integrity (Law).

39 Rules of procedure of the Commission C(2000) 3614, [2000] OJ L308/26, Annex, art 2

40 Commission Decision C(2008)6866 of 12 November 2008, laying down rules on the secondment to the Commission of national experts and national experts in professional training, arts 6.5, 7. Provisions are in place to, *inter alia*, prevent unauthorised external activity, and to oblige the secondee to provide information on their spouse's employment. Both the secondee and their employer are obliged to notify the EC of any change of circumstance that might cause conflicts of interest to arise. Post-secondment obligations are weak, requiring the secondee only to remain 'loyal' to the EU and act with 'integrity and discretion' in post secondment duties.

INDEPENDENCE (PRACTICE)

To what extent is the European Commission independent in practice?

The EC has relatively strong independence with regard to steering its own activities. Other actors do not unduly prevent it from exercising its core functions to initiate new EU laws and, as "guardian of the treaties", to supervise the execution of EU law. However, there is some political pressure from member states and other institutions, including through a strengthening of the agenda setting power of the European Council during the Eurozone crisis. This does not, however, point definitively to systematic vulnerability to interference, with the EC having demonstrated resistance to such pressure. Nevertheless, serious concerns remain on the EC's independence from commercial interests when it comes to external advice through expert groups or special advisors.

The EC enjoys broad independence given its right to initiate legislation, and scope of influence over EU policy debates. Even despite increased European Council powers since the Lisbon Treaty and demonstrated during the economic crisis, some consider that 'no other institution…has the independence to identify new directions that European integration needs to take'.[41]

However, while its independence is shown by its broad competences over other actors (e.g. in areas of state aid to industry[42] and on anti-competitive behaviour within the single market[43]), and which it is exercising,[44] the Commission is accused by some of growing politicisation – not least in view of the heightened role of the EP in the selection of the Commission President and college from 2014, and what this might mean for the relationship between the two institutions, and more significantly, for the Commission's relationship with the biggest party in the EP..[45]. Commissioners have, understandably, often held positions in political parties at the national level, but may also maintain leadership positions in European political parties while in office,[46] and actively participation in party events, such as preparation meetings held before European Council meetings.[47] This proximity to political parties leaves Commissioners open to exposure to risks related to political party financing and the influence of vested interests, and may pose a risk to college decision-making purely in the Union's interests.

Yet despite this, the strength of the current president – reflected in increasing 'presidentialisation' of the Commission since 2004[48] - may be a bulwark against undue national or political influence – *at least over individual Commissioners*: similarly, the strengthened role of the Secretariat General.[49] Deference to the EP may also be overstated: EP questioning may be putting more pressure on the EC's resources, rather than the latter's direct ability to determine priorities and actions, *per se*, though the EC does take issues into account when it feels these assist with achieving its objectives.[50] There has, though, been an increase in the number of legislative initiative reports from the EP seeking proposals from the EC (18 between 2009-2013, compared with 29 between 1994-2009). The EC has only chosen not to take on board the EP's call in one of these instances since 2009. Nevertheless, the strength of this mechanism to force the EC to act against its objectives is disputed and not yet tested.[51] In addition, the EC has strong resistance to influence from the EU co-legislating institutions in procedures

41 J. Peterson, 'The College of Commissioners', in *The Institutions of the European Union 3rd ed*, ed. by J. Peterson & M. Shackleton, (Oxford: OUP, 2012), pg. 119 Indeed, the CJEU has also broadly be seen to rule in favour of the EC when considering disputes over competence.

42 See, for example http://ec.europa.eu/competition/state_aid/what_is_new/news.html

43 The scope of the EC's autonomy in the exercise of its role to prevent anti-competitive practices is being scrutinised by the CJEU, for example, with regard to the exercise of its inspection powers (dawn raids). See, for example, G. McElwee, 'European Commission Dawn Raids: EU General Court Reins in "Fishing Expeditions"', McDermott, Will & Emery, (10 December 2012), available at http://www.mwe.com/European-Commission-Dawn-Raids-EU-General-Court-Reins-in-Fishing-Expeditions-12-10-2012/ (last accessed on 9 January 2014)

44 For information on Commission decisions regarding infringements of EU law since 2002, see http://ec.europa.eu/eu_law/infringements/infringements_decisions_en.htm (last accessed on 9 January 2014)

45 C. Grant, 'What is wrong with the European Commission?', Centre for European Reform, (27 June 2013), available at http://www.cer.org.uk/insights/what-wrong-european-commission (last accessed on 28 October 2013). Politicisation in this context is meant as an increase in susceptibility to political influence – whether from political parties or national member state, *inter alia* – in decision-making, rather than considering solely the Union's interests.

46 See Berlin Social Science Center, 'How party politics, professional and national background shape the EU Commission', http://www.wzb.eu/en/news/how-party-politics-professional-and-national-background-shape-the-eu-commission (last accessed on 21 January 2014). At the time of writing, the President and three sitting Commissioners were part of the presidency of a single European Political Party. See http://www.epp.eu/structure (last accessed on 21 February 2014).

47 The participation of sitting Commissioners in such meetings, on the same day, and separated by political family, is evidenced by photos from the political party preparation meetings held on 24 October 2013. See http://www.flickr.com/photos/eppofficial/sets/72157636901088603/; http://www.flickr.com/photos/partyofeuropeansocialists/sets/72157636792782466/; http://www.flickr.com/photos/aldeparty/sets/72157637077114556/ (last accessed on 21 February 2014)

48 See submission of Professor Hussein Kassim in the dossier from the public hearing of the EP Committee on budgetary control of 17 September 2013, on 'Accountability of the European Commission as administrator responsible of the management and control of the EU budget over the last 10 years', pp. 59-70, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cont/dv/hearingdossier_/hearingdossier_en.pdf (EP accountability hearing)

49 Though this has also drawn criticism regarding the increasing power of the EC administration in the face of its legitimate political leadership: see M. Beunderman, 'EU Commission sees civil servants' power grow', *EU Observer* (22 February 2007), available at http://euobserver.com/political/23553 (last accessed on 28 October 2013) Though research suggests that this is not a systematic trend: see EP accountability hearing, pg. 39

50 The content of some questions, and the sheer volume submitted by individual MEPs, appear to be of particular concern in this regard. TI-EU analysis based on research interviews.

51 See Library of the European Parliament, 'Parliament's legislative initiative', [Library briefing] (24 October 2013), esp. pg. 5

governing delegated acts,[52] with the former able to delay the provision of draft acts to the EP and Council without sanction, [53] while reporting obligations may not be overly restrictive.[54]

Institutional/member state pressure has though recently been put on the EC's independence with regard to resources, with current staff cuts being a result of political pressure from across the Union.[55] Similarly, with the Council having the mandate to determine the salaries of EC staff, it recently won a dispute at the CJEU to prevent payment of previously agreed annual EC salary increases for 2011.[56]

These resource constraints could lead the EC to resort to more external advice and outsourcing of tasks, increasing risks that have already been identified regarding the extent to which it is free from influence by commercial interests. This continues to be of grave concern to civil society observers with regard, in particular, to expert groups: some groups gather between 60-80% of their non-governmental membership from corporate interests.[57] Though progress has been made on addressing transparency issues, the EC remains unwilling to define strictly the concept of 'balance' to safeguard against private interests dominating individual groups,[58] arguing that composition should be assessed on a case by case basis, in light of the mandate of the group and the specific expertise required. This is despite concerns raised by MEPs[59] (including the freezing of budget funds in 2011[60]) and calls from the European Ombudsman for action on the issue, including the clarification of rules and standards surrounding the use of external experts.[61] Though groups are being modified and improvements have been noted by the EP and Ombudsman, the use of open calls for members is still neither mandatory nor systematic, and individual members are still not required to submit declarations of interest.[62]

Weaknesses in the resistance to outside influence have also been noted with regard to Commissioners' Special Advisers, with the European Ombudsman upholding a complaint about the vigilance with which conflict of interest checks are done with regard to them.[63] That Commissioners' cabinets play a key role in the finalisation of EC decision-making may heighten the risk of outside influence being exerted at this level.[64]

At the administrative level, research suggests that independence from national pressures appears to increase due to the sectorial nature of the institution's internal organisation and also by the time spent within the institution.[65] Most senior management positions are now filled through internal selections, while Commissioners and their Directors-General may no longer be from the same member state, strengthening safeguards.[66] More generally, the number of actors involved in recruitment procedures is considered by institutional respondents to make it difficult for undue interference in selection processes.[67]

There have been no new national experts seconded (SNEs) to the EC from outside the public sector since 2010, despite the current rules allowing for this possibility.[68]One SNE - from a national administration – has been subject to disciplinary actions since 2010: reprimanded in 2012 for unauthorised disclosure of information potentially harmful to the EC – with 'a lack of appropriate supervision by his hierarchy' cited in the case.[69]

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52 See EC Accountability (practice) sub-chapter for further discussion.

53 D. Guéguen & V. Marissen, *Handbook on EU secondary legislation*, (Brussels: PACT European Affairs, 2013), pg. 54

54 '…it should be noted that where the Commission has to report on the delegation of power, it will apparently only have to produce one such report, on the occasion of the first renewal of the delegation.' S. Peers & M. Costa, 'Accountability and Implementing Acts after the Treaty of Lisbon', European Law Journal, Vol. 18 No. 3 (2012), (427-460), pg. 452

55 See EC Resources (practice) sub-chapter.

56 These increases are based on an agreed formula indexing against civil servant pay in a number of member states and have not been paid to EC staff since then. Preliminary opinions from the CJEU suggested that the Council had been in contravention of the agreement, but a final CJEU judgement ruled otherwise. See T. King, 'ECJ sides with Commission on EU staff pay dispute', *European Voice*, (12 September 2013), available at http://www.europeanvoice.com/article/2013/september/ecj-sides-with-commission-on-eu-staff-pay-dispute/78174.aspx (last accessed on 28 October 2013), and J. Fontanella-Khan, 'Brussels bureaucrats forced to take pay freeze after ECJ ruling', *Financial Times*, available at http://www.ft.com/intl/cms/s/0/309a70ce-5124-11e3-9651-00144feabdc0.html#axzz2lMmQI04K (last accessed on 22 November 2013)

57 ALTER-EU, 'A year of broken promises', (November 2013), pg. 3, available at http://www.alter-eu.org/sites/default/files/documents/Broken_Promises_web.pdf (last accessed on 5 November 2013)

58 Letter from the EC Director for Relations with the European Parliament, the Committees and General Institutional Issues to Corporate Europe Observatory, of 18 October 2013

59 See for example, Corporate Europe Observatory, 'MEPs ask serious questions about Commission's tax haven strategy', (12 June 2013), available at http://corporateeurope.org/financial-lobby/2013/06/meps-ask-serious-questions-about-commissions-tax-haven-strategy (last accessed 28 October 2013)

60 Friends of the Earth Europe, 'Budget blocked until safeguards against their capture by special interests and increased transparency are introduced', [Press release], (27 October 2011), available at http://www.foeeurope.org/press/2011/Oct27_ALTEREU_EP_blocks_expert_groups_budget.html (last accessed on 28 October 2013)

61 ALTER-EU, 'Ombudsman recommends Commission does more to tackle dominance of business interests within its expert groups', (27 June 2013), available at http://www.alter-eu.org/documents/2013/06/ombudsman-friendly-solution-for-more-balanced-expert-groups (last accessed on 28 October 2013)

62 Letter from the EC Director for Relations with the European Parliament, the Committees and General Institutional Issues to Corporate Europe Observatory, of 18 October 2013

63 Decision of the European Ombudsman of 11 July 2011 closing his inquiry into complaint 476/2010/ANA against the European Commission, in particular paragraphs 109-113. '…the Sworn Statement should not be seen as a substitute for the Commission's assessment of the absence of a conflict of interest'.

64 For a summary of some of the internal decision-making procedures, see M. Hartlapp, J. Metz & C. Rauh, 'The agenda set by the EU Commission: the result of balanced or biased aggregation of positions?', LSE 'Europe in Question' Discussion Paper Series no 21/2010 (April 2010), esp. pp. 11-15

65 L. Hooghe, 'Images of Europe: How Commission officials conceive their institution's role', Journal of Common Market Studies, Vol 50 No 1, pp. 87-111 (2012), pg. 99

66 Only 4 posts in both 2011 and 2012 were filled through external calls.European Commission, *Human Resources Report of the European Commission – 2013*, (2013), (Luxembourg; Publications Office of the European Union), pg. 31; European Commission, *Human Resources Report of the European Commission – 2012*, (2012), (Luxembourg; Publications Office of the European Union), pg. 47

67 TI-EU analysis based on research interviews.

68 Email of 10 September 2013 from Head of EC Unit HR B2 to Mark Perera, GESTDEM 2013/3941

69 Activity Report of the Investigation and Disciplinary Office of the Commission (IDOC) 2012, pg. 27

TRANSPARENCY (LAW)

To what extent are there regulations in place to ensure transparency in the relevant activities of the European Commission?

The EC is subject to specific legal provisions to ensure the transparency of its activities, including on public access to its documents, though a number of exceptions limit this access and proactive disclosure is not broadly mandatory. 'Legislative documents', though not strictly defined, should be made public, though loopholes in the law remain regarding the mandatory publication of documents from consultations and trilogues. Financial information must be published, as must notices of open recruitment competitions. Rules on the public disclosure of interest declarations are limited, though more stringent at the political level of the institution.

The EU Treaties enshrine the principle of open Union decision-making that is done 'as closely as possible to the citizen',[70] and ensure citizens' access to 'documents of the Union's institutions...'.[71] Secondary legislation binds the EC to provide public access to all documents (*not* information) it holds – subject to exceptions related to the protection of its decision-making processes, of public security, of commercial interests or of data protection, *inter alia*[72] – and to a register of documents.[73] Exceptions not related to sensitivity, privacy or commercial interests apply for a maximum period of 30 years.[74] Public access to environmental information – particularly where emissions-related – is guaranteed in legislation, with proactive disclosure encouraged.[75]

The EC has to carry out broad consultations to ensure that the Union's actions are 'coherent and transparent'.[76] Before proposing legislation, it must, aside from cases of exceptional urgency, 'consult widely',[77] and should also maintain 'open, transparent and regular dialogue with representative associations and civil society'.[78] General (soft law) principles and minimum standards for consultations have been elaborated,[79] but these do not apply to 'comitology' procedures.[80] [81] Additional legal provisions for public participation apply to the preparation of plans and programmes relating to the environment.[82]

Despite these minimum standards, no clear provisions apply to the mandatory publication of all EC consultation documents (green and white papers, communications)[83], nor of EC positions in trilogue proceedings. However, 'legislative documents' drawn up or received in the course of adoption procedures, should be made 'directly accessible':[84] the scope of this class of documents is not, though, strictly defined.

The EC must ensure that its 'proceedings are transparent'.[85] At the political level, agendas and minutes of the College of Commissioners are therefore to be made public:[86] the meetings themselves are, however, not open to the public and discussions are confidential.[87] Following adoption, access may be given to preparatory documents sent to the College regarding legislative acts and official EC documents;[88] however, there are no specific transparency provisions in place to disclose documents related to inter-service consultations – wherein EC

70 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 1 (TEU)
71 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 15 (TFEU)
72 Regulation (EC) 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43 (ATD Regulation)
Exceptions relate to the protection of public security, military affairs, international relations, financial, monetary or economic policy, privacy and integrity of the individual, commercial interests, court proceedings and legal advice, inspections/investigations/audits and the institution's decision-making processes.
73 The coverage of which '...shall be extended gradually', as per Commission Decision C(2001) 3714 of 5 December 2001 amending its rules of procedure [2001] OJ L345/94, Annex art. 8(1) (EC ATD rules)
74 ATD Regulation, art 4(7)
75 Regulation (EC) 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13, arts 1, 4(1), and 6(1) (Aarhus Regulation)
76 TEU, art 11(3)
77 Protocol (No. 2) on the application of the principle of subsidiarity and proportionality [2012] OJ C326/206, art 2. The exception applies only in cases of extreme urgency, and the EC must give reasons for why it has not undertaken consultation(s) in such cases.
78 TEU, art 11(2)
79 Communication from the Commission towards a reinforced culture of consultation and dialogue, [2002] COM(2002) 704
80 Ibid, pg. 16
81 Comitology procedures relate to the functioning of committees established by basic legal acts (regulations, directives or decisions) to assist the EC with the implementation of EU law. They are made up of representatives of member states and chaired by an EC official. See Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [2011] OJ L55/13, arts 1, 3.2
82 Aarhus Regulation, art 9
83 Protocol (No. 1) on the role of National Parliaments in the European Union [2012] OJ C326/203, art 1
84 ATD Regulation, art 12(2)
85 TFEU, art 15(3)
86 EC ATD rules, Annex, art. 9(2)
87 Rules of procedure of the Commission C(2000) 3614, [2000] OJ L308/26, art 9
88 EC ATD rules, Annex, art 9(3)

departments comment upon draft proposals.

While access to documents legislation also applies to comitology committees, documents submitted to committee members are confidential in the first instance, and 'discussions are confidential'.[89] The EC must though maintain a public register of committee proceedings with only *references* to agendas, minutes, and voting records, *inter alia*.[90] The EC also commits to maintaining a register of its expert groups,[91] their respective members, and information on groups' activities and member selection processes (not specifically documents). No explicit transparency or publication provisions are in place for meetings at EC administrative (operational) levels.

The EC's Rules of Procedure are to be published in the *Official Journal*,[92] and its financial rules are laid out in publicly available regulations.[93] Lists of EC staff with key financial duties[94] must be provided to the European Court of Auditors and budgetary authorities.

As the political leadership of the EC, Commissioners specifically must complete declarations of their professional and financial interests, and those of their spouse, prior to appointment hearings with the European Parliament. These must be updated at least annually and are subject to the President's scrutiny.[95] Internal rules provide for the publication of CVs and declarations of interests for Special Advisers to Commissioners on the EC website.[96] No legal provisions are in place regarding the publication of declarations of interests for officials, other staff categories, seconded national experts, and members of comitology committees or of expert groups. A public register of gifts valued above 150 EUR received by Commissioners is to be maintained, while no such register for staff is specifically provided for in the SR.[97]

Notice of open competitions for EC officials must be published in the *Official Journal* (in languages according to the competition).[98] However, this stipulation can be waived for recruitment of senior officials and posts requiring 'special qualifications',[99] the latter are not, though, elaborated upon in law.'[P]ublic calls for applications shall be used as far as reasonably practicable'[100] for the selection of members of expert groups. No legal provisions are in place regarding the selection procedure for comitology committee members, nor for publication thereof.

The EC budget and accounts must be published in the *Official Journal*, as must information on recipients of funds from the Union budget.[101] Where above 15k EUR in value, information on a contract, including the contractor, must be published on the internet.[102]

A voluntary, public register of entities lobbying the EC is also to be maintained in cooperation with the European Parliament.[103]

89 Rules of procedure 2011/C 183/05 for the appeal committee (Regulation (EU) No 182/2011) adopted by the appeal committee on 29 March 2011, [2011] OJ C183/13, arts 12(2) and 12(3), and
Standard Rules of Procedure EC 2011/C 206/06 for Committees [2011] OJ C206/11, arts 13(2) and 13(3)

90 Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [2011] OJ L55/13, art 10

91 Informal and formal groups that provide advice and expertise to the EC. See Communication from the President to the Commission on the Framework for Commission Expert Groups: Horizontal rules and public register, [2010] C(2010) 7649

92 Rules of procedure of the Commission C(2000) 3614, [2000] OJ L308/26, art 28

93 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1 (Financial Regulation), and
Commission Delegated Regulation (EU) 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union [2012] OJ L362/1 (Financial Regulation implementing rules),

94 Financial authorisation, internal audit, and accounting duties. Financial Regulation, art 65(8)

95 Code of Conduct for Commissioners C(2011) 2904, arts 1.3-1.5

96 Commission Decision C(2007) 6655 of 19 December 2007 on the rules on Special Advisers to the Commission [2007], section 6, pg. 4

97 Code of Conduct for Commissioners C(2011) 2904, art 1.11

98 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, Annex III, art 2

99 Ibid, art 29(2)

100 Communication from the President to the Commission on the Framework for Commission Expert Groups: Horizontal rules and public register, [2010] C(2010) 7649, Annex 1, Rule 9(1), pg., 10

101 Financial Regulation, arts 34, 35

102 Ibid, art 35 and Financial Regulation implementing rules, art 21

103 Agreement between the European Parliament and the European Commission on the establishment of a transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation [2011] OJ L191/29

TRANSPARENCY (PRACTICE)

To what extent is there transparency in relevant activities of the European Commission in practice?

Through a very large and complex website containing much information on its work and internal functioning, an enormous volume of documents and data is available to the public on the European Commission. A document registry is maintained but is only of limited use. Serious transparency deficiencies remain regarding trilogues, advisory committees and expert groups, and trade negotiations. The EC receives the largest number of access to documents requests of any EU institution, the majority of which receive positive replies. However, criticism has been made by the Ombudsman regarding its handling of these requests. Commissioners' declarations are disclosed, but problems remain with how well this information can be used. No corresponding information is provided regarding senior staff. Much financial information is publicly available, but not information on entities debarred from EU procurement.

The EC manages a public website – available in all EU languages – which contains information on its activities, including its annual work programme; corporate and Directorate-General-specific annual reports; reports on the application of access to documents rules, and the activities of comitology committees. The Commission's organisational structure, a searchable staff directory; and information on its budget and finances can also be found.[104] A dedicated 'Transparency portal'[105] guides users to information on legislation; open public consultations, grant and tender opportunities; the EC document register; and EC ethics-related information and more.

Commissioners' declarations of interest are published on a single EC webpage; however, these are not published in an open, searchable format. No such information is published for (senior) staff. A list of gifts valued above 150EUR received by members of the College is published by the EC, and which identifies the specific recipient, but not with sufficient details in all cases. [106] A similar list of gifts above 50EUR offered to staff exists,[107] but is not published proactively. There is no comprehensive information on contacts with external third parties, for either Commissioners or staff.

The EC has maintained an online document registry since 2002, which has been gradually expanded[108] to include a range of references to public documents produced since 2001: this does *not* include internal documents.[109] Featured document categories include proposed legislation, communications, and secondary legislation adopted by the EC. While the EC should report on the number of sensitive documents not recorded in the register,[110] its most recent report bypassed the issue by stating that, '[n]o sensitive documents were created or received by the Commission in 2012, that would fall within one of these categories of documents'.[111] The register does not include information on new additions, does not in fact make directly accessible all public documents, and has no full-text search, which limits its usability.

Agendas and summary minutes (without detail on discussions) of College meetings are published, the former in advance of the next scheduled meeting: both include references to meeting documents. Agendas and minutes from Chef-de-cabinet meetings are not made public, demonstrating a clear drop in transparency below the EC's political level.

Commission positions, agendas, and minutes from on-going trilogue discussions are not made available, which has raised concerns. [112] However, access to documents requests have led to the disclosure of 'flash reports' from these meetings.[113]

The EC receives the highest number of access to documents (ATD) requests[114] of any EU institution: 6477 in 2011

104 See http://ec.europa.eu
105 See http://ec.europa.eu/transparency/
106 Please see http://ec.europa.eu/commission_2010-2014/pdf/cadeaux_recus_par_le_college3_fr.pdf, (last accessed on 01 October 2013)
107 Information supplied by the EC OIB in their response to access to documents request ref. GESTDEM 2013/2153, through which lists for 2011-2013 were released.
108 Approximately 18850 documents were added to the register on average from 2010-2012, however, just over 2000 less documents were added in 2012 than in 2011. Statistics on total numbers of documents produced are not available. See Report COM(2013) 515 from the Commission of 10 July 2013 on the application in 2012 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, and reports COM(2012) 429 and COM (2011) 492 for application in 2011 and 2010 respectively. (EC ATD reports 2012, 2011, 2010).
109 Indicating the title, date, available language versions, and department responsible for the document.
110 ATD Regulation, arts 9 and 17(1)
111 Report COM(2013) 515 from the Commission of 10 July 2013 on the application in 2012 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, para. 1.2 (EC ATD Report 2012)
112 'There is, in all this, a sidelining of checks and balances and a lack of formality and transparency.' See D. Chalmers, G. Davies & G. Monti, *European Union Law* 2nd edn, (Cambridge: CUP, 2010) p. 109. See also, R. Kardasheva, *Trilogues in the EU legislature*, (Unpublished research paper, King's College London, 2012) p.21, or H. Mahoney, 'Complex EU law-making dubbed 'infernal, undemocratic', *EUObserver*, 4 March 2013, available at http://euobserver.com/political/119181
113 Letter of 11 June 2013 from Jens Nymand-Christense, EC Director for Relations with the European Parliament, the Committees and General Institutional Issues, to Ronny Patz
114 Meaning requests made under the ATD Regulation

and 6014 in 2012. Of these, 6055 in 2011, and 5274 in 2012 were handled under Regulation 1049/2001.[115] ATD requests can be made to the EC via an online form linked directly to its document register – in which case they are managed and recorded centrally by a dedicated Transparency department[116] - as well as via direct correspondence with specific EC departments. The EC reports that its activities in the field of monitoring the application of EU law, in particular, competition policy, comprise the vast majority of applications and appeals.[117]

Full access was granted in 80.2% and 74.5% of initial cases in 2011 and 2012 respectively. Upon appeal, additional access was granted in 57.6% and 43.1% of cases, respectively. While this demonstrates a broadly positive approach to handling requests, it reveals deficiencies to publish documents proactively, given that requests are generally made for documents that were not publicly accessible.[118] The main bases for refusals to grant access have for several years been the protection of inspections, investigations and audits, and of internal decision-making. Timeliness appears to be a clear issue of concern[119] [120], with 1143 cases in 2011-2012 receiving a response only after 30 days or more, and in 219 instances, responses took over 178 days.[121] [122] [123]

The EU Ombudsman has opened a number of inquiries into ATD issues at the EC, and has subsequently issued critical/further remarks in a majority of cases.[124] The CJEU continues to rule on ATD cases concerning the EC, with a steady number of cases brought against EC decisions in recent years.[125] Not all of them are won by the complainant and the Court has for example upheld refusals by the EU to disclose documents related to the progress of trade agreements.[126] Though the EC has now begun to publish some of its initial positions in trade negotiations,[127] these are small in number, and the transparency of the progress of negotiations remains subject to intense criticism by civil society, including with regard to disclosure of input from commercial interests in the preparation of EU positions.[128] Despite the EC's stated aim to ensure broad public consultation prior to initiating trade negotiations and its obligation to report regularly to the Council and EP,[129] 'draft texts of the negotiations are not made public during the negotiations…[e]ven when certain chapters (or topics) are "closed"'.[130]

An online comitology register[131] makes available information on these specialist committees, e.g. the legal act establishing the committee; meeting agendas; summary records (not full minutes); and attendance lists (by member state only, not stating the name of individual representatives). Voting records are published, though these do not indicate the votes of individual member states. Neither rules of procedure nor meeting documents are systematically published, while draft implementing measures are only published if these have already been made public; in other cases, only a document reference is provided. This greatly impedes transparency and has been the subject of broad criticism, including from the EP.[132]

A register of EC expert groups is also available online, in a downloadable format since April 2013. Following

115 See EC ATD reports 2007 and 2012
116 The Transparency unit is located with the Directorate-General Secretariat General (SG/B5)
117 EC ATD report 2012, pp. 7, 9
118 EC ATD report 2012, pp. 2, 4, 8, 10
119 See European Ombudsman, 'Annual Report 2012', (2013), especially pp. 6, 39, available at http://www.ombudsman.europa.eu/activities/annualreports.faces (last accessed on 31 October 2013): also, A. Wille, 'The European Commission Accountability Paradox', in *The Real World of EU Accountability*, ed. by M. Bovens, D. Curtin & P. 't Hart, (Oxford: OUP, 2010), pg. 81
120 For example, in 2010, the EU Ombudsman recommended that the EC adopt greater openness with regard to documents related to on-going investigations of potential infringements of EU law by member states; however the EC chose not to take on these proposals. The Ombudsman noted that CJEU case law supports the EC's 'confidentiality practices' in this regard, so did not consider this a form of maladministration per se. See European Ombudsman, Summary of the decisions on complaints 1947/2010/PB and 2207/2010/PB against the European Commission, available at http://www.ombudsman.europa.eu/en/cases/summary.faces/en/52080/html.bookmark (last accessed on 29 October 2013)
121 Response to the access to documents requests GESTDEM 2013/3752, submitted by TI-EU and Access Info Europe to obtain the record of all access to documents requests handled by the EC in 2011 and 2012, accessible at http://www.asktheeu.org:8080/en/request/access_to_documents_requests_in#incoming-2914 (EC ATD meta-request)
122 Many of the cases resolved only after 178 days or more may concern requests for a number of documents, filed by the same applicant, at the same time and addressing the same DG, and that received an answer on the same day. However, while the subject of each request was an element requested under GESTDEM 2013/3752, this information though recorded was not disclosed.
123 In 255 cases in 2011-2012, no information in the central GESTDEM database is held regarding the final outcome of the request, often including whether a response was issued at all. Of these cases, 49 concern DG RELEX, 42 OLAF (See OLAF Transparency (practice) indicator assessment for further details), and 42 DG SEC GEN itself. See EC ATD meta-request
124 In 2010: 23 complaints, 13 closed with a critical/further remark; 22 new ATD-related inquiries. See EC ATD report 2010, pg. 4.
In 2011: 17 complaints, 8 closed with a critical/further remark; 10 new ATD-related inquiries. See EC ATD report 2011, pg. 5.
In 2012: 18 complaints, 10 closed with a critical/further remark; 20 new ATD-related inquiries. See EC ATD report 2012, pg. 5.
125 14 new cases were brought against the EC in 2010 and 2012, and 15 in 2011. See EC ATD reports 2010, 2011, 2012
126 This was in a 2013 ruling regarding public access to minutes and correspondence from free trade negotiations between the EU and India. See Access Info Europe, 'European Court of Justice ruling entrenches EU secrecy in international relations', [Press release] (7 June 2013), available at http://www.access-info.org/en/lobbying-transparency/405-ceo-eu-india-court-ruling (last accessed on 29 October 2013)
127 See http://trade.ec.europa.eu/doclib/press/index.cfm?id=943 (last accessed on 9 January 2014)
128 See, for example, Corporate Europe Observatory, 'Busting the myths of transparency around the EU-US trade deal', (25 September 2013), available at http://corporateeurope.org/trade/2013/09/busting-myths-transparency-around-eu-us-trade-deal (last accessed on 9 January 2014)
129 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 207(3) (TFEU)
130 European Commission DG TRADE, 'Trade negotiations step by step', (September 2013), pg. 5, available at http://trade.ec.europa.eu/doclib/docs/2012/june/tradoc_149616.pdf (last accessed on 9 January 2014)
131 See http://ec.europa.eu/transparency/regcomitology/index.cfm
132 'In its opinion, it [the EP] receives little information...and it cannot rely on others to monitor the committees in its place as little information on the committees is made publicly available.' G. J. Brandsma, 'Accountable Comitology?' in *The Real World of EU Accountability*, ed. by M. Bovens, D. Curtin & P. 't Hart, (Oxford: OUP, 2010) p. 156. See also D. Guéguen, 'Bad news for EU decision-making: Comitology no longer exists', *EurActiv,* 19 April 2013, available at http://www.euractiv.com/future-eu/bad-news-comitology-longer-exist-analysis-519247

serious external criticism and the freezing of the budgetary reserve for these groups by the EP until greater safeguards were put in place,[133] progress has been made to include information on the activities, selection procedures, rules of procedure, open calls for members, names of members representing third party organisations, and of individual members.[134] However, this information is still not systematically provided for all groups; nor are interest declarations of individual members required or published.

Information on grants and tenders, including calls is spread across a large amount of websites and subpages, registers and documents: Information on open calls for tenders above 60k EUR are published on a dedicated, though complex to navigate, procurement database,[135] while contracts between 25-60k EUR are advertised by policy sector on the EC website,[136] though not systematically. Below this level, advertisement is not usual.[137] Information on grant opportunities are available via policy sector on the EC website.[138] Information on recipients of EU Commission funds is provided in a searchable and downloadable database. This does not, however, include information on public procurement contracts below 15k EUR in value, and, as of 2012, where a recipient's name is withheld on confidentiality grounds, no information at all on the grant/contract is disclosed.[139] Though the EC maintains a database of entities disbarred from procurement,[140] this is not public. No decisions imposing administrative/financial penalties on entities breaching procurement rules have been published since it became legally possible in January 2013 with the only known case predated these rules.[141]

133 See, for example, N. Nielsen, 'MEPs unblock funds for EU expert groups', *EUObserver*, 22 September 2012, available at http://euobserver.com/institutional/117633
134 See http://ec.europa.eu/transparency/regexpert/index.cfm
135 See Ted (Tenders electronic daily), a supplement to the Official Journal, at http://ted.europa.eu
136 See http://ec.europa.eu/contracts_grants/contracts_en.htm
137 European Commission, *Doing business with the European Commission* (2009), (Luxembourg; Publications Office of the European Union), pg. 3
138 http://ec.europa.eu/contracts_grants/grants_en.htm
139 See http://ec.europa.eu/budget/fts/index_en.htm
140 The Central Exclusion Database is managed by the EC Directorate-General for Budget
141 Email from EC DG for Budget to TI-EU, dated 18 October 2013

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that Commissioners and European Commission officials have to report and be answerable for their actions?

Treaty provisions and soft law ensure that the EC is accountable to the European Parliament which has the power to dismiss it. Legal checks and balances govern EC actions: these are strongest in terms of its role to initiate legislation and to manage the EU budget, but are weak with regard to its prerogatives over secondary law. Its financial activities are bound by strict audit rules and political oversight by other institutions. Measures are in place to ensure judicial oversight and allow citizen redress. Commissioners and staff can be held accountable for misconduct, with bodies with broad investigative powers in place to address fraud and corruption – however, questions remain on the independence of the latter. Staff are obliged to report illegal conduct and cooperate with investigations, but, like Commissioners, are immune from prosecution in the correct exercise of their duties.

Under the EU Treaties, the European Commission (EC) is responsible as a body to the European Parliament (EP)[142] and can be dismissed *en bloc*, though a high voting threshold is necessary.[143] Its right of legislative initiation is checked, *inter alia*, by an obligation to provide the EP and Council with financial evaluations for any legislative proposals with budgetary (and human resources) implications,[144] and to respond to any questions from the EP or members thereof.[145] The EC must also provide justification to the EP and Council where it does not submit proposals for EU acts when requested to by either institution.[146] A (soft law) inter-institutional agreement foresees, *inter alia*, regular dialogue between the EC and EP, allowing for regular 'question hours' with the EC President and individual Commissioners; encourages the regular provision of information (including on the EC's role in negotiating and concluding international agreements) and exchange of confidential information; provides for EP input into the development of the EC work programme, and also requests the EC to prioritise invitations to attend EP proceedings.[147] The EC must also produce an annual report on EU activities, which *must* be discussed by the EP.[148]

Checks and balances on the EC's powers to adopt secondary legislation[149] are in place but are limited. The EC can propose and adopt delegated acts without the involvement of member state (comitology) committees, and while the EP *or* the Council can revoke a delegation or veto a delegated act, (provided this right is specified in the corresponding basic act along with the conditions for the delegation) this is subject to high voting thresholds and strict deadlines.[150] EC obligations to provide the EP and Council with relevant documents when preparing and drafting delegated acts are only laid out in a non-binding 'common understanding'. [151]

For implementing acts, member state committees[152] are consulted, but binding opinions are only issued depending upon the policy area and, *ergo*, procedure followed.[153] Should no qualified majority opinion for or against a draft act be expressed at the committee stage, the EC can, subject to certain cases, adopt it.[154] In specific cases, the normal committee procedure may even be bypassed.[155] The EP and Council have a right of scrutiny regarding

142 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 17(8) (TEU)

143 TEU, art 17(8), Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 234 (TFEU). Dismissal follows a motion of censure carried by a two-thirds majority presented by 1/10th of the EP's members: see Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 107 (EP RoPs).

144 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art 31 (Financial Regulation)

145 TFEU, art 230

146 TFEU, arts 225 and 241. The EP can request 'any appropriate proposal' from the EC on matters for which it considers an EU act necessary to implement the Treaties; similarly, the Council can ask the EC to undertake studies that the former 'considers desirable for the attainment of the common objectives, and to submit to it any appropriate proposals.

147 See Framework Agreement of 20 October 2010 on relations between the European Parliament and the European Commission [2010] OJ L304/47, arts 11-13, 23-29, 35, 45, 46, Annexes II-IV (EP-EC framework agreement). The Framework Agreement is not legally-binding *per se*, as this is not explicitly indicated in the agreement, and no specific EP control or sanction measures for non-adherence to the agreement by the EC are laid down. Nonetheless, irrespective of its informal nature, convention demonstrates that the institutions do not deviate from the agreement.

148 TFEU, arts 233, 249(2)

149 See Independence (Law) indicator report for further explanation.

150 TFEU, arts 290, 291. Where applicable, any revocation or veto is exercised by simple majority in the EP or by qualified majority in the Council, within a deadline explicitly stated in the basic act.

151 Common understanding 8753/11 of 10 April 2011 on delegated acts [2011], art 4, and Comitology Regulation, art 10

152 Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [2011] OJ L55/13, art 3.2 (Comitology Regulation)

153 Ibid, arts 4-6

154 Ibid, arts 5.4 and 6.3. In such cases, the EC cannot adopt an act if: it concerns taxation, financial services, the protection of the health or safety of humans, animals or plants, or definitive multilateral safeguard measures; or the basic act specifically prohibits adoption when no committee opinion is expressed; or a simple committee majority opposes the draft act.

155 The EC may adopt implementing acts without a committee procedure in exceptional cases to avoid significant disruptions to agricultural markets or to protect the EU's financial interests, but must then submit the act to an Appeal committee of member state representatives. A basic act may also allow the EC to adopt immediately applicable implementing acts in urgent situations without prior submission to a committee. A *post hoc* committee procedure is then initiated. See Comitology Regulation, arts 7, 8.

implementing acts though either can express only a *non-binding* opinion that a draft act exceeds the EC's implementing powers.[156] The EC is, though, compelled to provide access to comitology-related documentation to these two institutions.[157]

The EC also holds responsibility to negotiate trade agreements on behalf of the EU, but must request authorisation to open such negotiations from the Council, which sets out the general objectives to be reached. The EC is obliged to report regularly to the Council and EP during negotiations, and must cooperate with a special Council committee throughout. Final agreements are adopted by the Council.[158]

With responsibility to execute and manage the EU budget, the EC has strict reporting obligations to the budgetary authority (Council and EP) and the European Court of Auditors (ECA): including public monthly and tri-annual reporting on budget implementation and annual reporting.[159] As an institution, it is bound by the EU Financial Regulation, and must provide an annual report on its activity to the EP and Council, submit its accounts to scrutiny by the ECA, and have in place an independent internal auditor and a system of internal controls.[160] The ECA has a full right of access to the EC, and the EC is obliged to provide responses to any ECA observations made on its accounts, including within special reports.[161] The EP, on the basis of a Council recommendation, and ECA annual (and special) report(s) and statement of assurance, grants final approval on the EC's accounts, or may postpone or refuse approval. The EC must provide any information requested by the EP in this regard and must report on any follow-up actions pursuant to recommendations made during this political oversight procedure.[162]

Judicial oversight of the actions of the EC is covered under Treaty provisions, which compel the Court of Justice (CJEU) to review the legality of any legislative acts[163] that have legal effects on third parties, and action can be brought by other institutions, member states, and also by organisations and individuals,[164] including on secondary legislation: cases can also be brought due to an alleged failure by the EC to act upon its Treaty obligations. The CJEU can void all or parts of an act, and the EC is obliged to follow Court rulings.[165] Environmental NGOs can also request internal EC review of administrative acts adopted under environmental law, or any failure to adopt an act, and initiate CJEU proceedings.[166] The CJEU also has jurisdiction in disputes between the EC and its staff.[167]

The EP holds power to open a temporary committee of inquiry to investigate contravention or maladministration of EU law by the EC,[168] while citizens can address complaints of EC maladministration to the European Ombudsman (whether personally affected or not): though the EC must supply the latter with any information to assist enquiries, Ombudsman recommendations are not binding.[169] Citizens can also lodge complaints with a European Data Protection Supervisor (EDPS) (and contest any subsequent decision at the CJEU), who can issue binding orders to the EC.[170]

The EC President is elected by the EP, upon a European Council proposal, while the Council proposes Commissioners who then undergo individual EP hearings: the EC as a body is appointed by the European Council subject to an EP vote of consent.[171] The EC President can oblige a Commissioner to resign,[172] and must 'seriously consider' doing so if asked by the EP.[173] The CJEU can retire compulsorily, or remove benefits from, a Commissioner guilty of misconduct, if asked by the Council (by simple majority) or the Commission.[174] The Council appoints replacement Commissioners, in agreement with the EC President, and can unanimously decide (on an EC President proposal) that a vacancy need not be filled.[175] For additional details on these provisions, please refer to the Independence (Law) sub-chapter.

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156 Comitology Regulation, art 11. This opinion can be expressed at any time, provided the basic act was adopted under the ordinary legislative procedure. The EC must inform the EP or Council of actions taken in response to the opinion expressed.
157 Ibid, art 10. This includes the obligation to 'make available' to the EP and Council, meeting agendas and draft and final implementing acts when these are provided to committees
158 TFEU, art. 207
159 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art 150 (Financial Regulation)
160 Ibid, arts 32, 66(9), 98-100, 158-163.
161 Financial Regulation, arts 161, 162(1), 162(4), 163, 165(2)
162 See TFEU, art 319, and Financial Regulation, art 165
163 Except recommendations and opinions
164 Under TFEU, art 263(4), an individual can challenge an act addressed to them directly, or that directly and individually concerns them, but can also challenge secondary acts without establishing individual concern: 'a regulatory act that is of direct concern to them and does not entail implementing measures'.
165 TFEU, arts 263-267
166 Regulation (EC) 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies [2006] OJ L264/13, arts 10/12
167 TFEU, art 270
168 TFEU, art 226, and EP RoPs, Annex IX. Committees of inquiry are not established if concurrent legal investigations are on-going.
169 TFEU, arts 20(2(d)), 228. Ombudsman enquiries are not held if concurrent legal investigations are on-going.
170 Regulation (EC) 45/2001 of the European Parliament and of the Council of 18 December2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data [2001] OJ L8/1
171 TEU, art 17(7). The High Representative of the Union for Foreign Affairs and Security Policy is, however, appointed, or his/her term ended, by the European Council acting by qualified majority and in agreement with the EC President (see TEU, art 18(1)). For procedures related to Commissioner-designate hearings, please see EP RoPs, Annex XVII.
172 TEU, art 17(6)
173 EP RoPs, Annex XIV, rule 5. The EC President must provide a justification to the EP if refusing to call for a resignation.
174 TFEU, art 247
175 TFEU, arts 246, 247

EC staff have an obligation to report fraud or corrupt activity, and detailed internal provisions are in place to protect whistle-blowers, which define the scope of whistle-blowing at the Commission, lay out a number of alternative reporting procedures, and include a number of protective measures against retaliatory action.[176] All staff enjoy legal immunity only in the proper exercise of their duties and provisions protect them from carrying out instructions deemed 'manifestly illegal'.[177] Disciplinary measures can though be brought following (administrative) investigations by the EC's Investigation and Disciplinary Office and/or OLAF, and a mandatory Financial Irregularities Panel,[178] for breaches of staff obligations.[179] Aside from other sanctions (e.g. dismissal) staff are financially liable for misconduct harming the EU's financial interests, [180] while secondments can be terminated for national experts who breach their obligations.[181] Staff must, moreover, cooperate and supply requested information to OLAF – who have full rights of access to the EC and its information – in order to investigate alleged fraud, corruption or illegal activity against EU financial interests.[182] However, OLAF itself sits under the organisational hierarchy of the EC, with its Director nominated by the EC, inviting concerns about its independence, though this is safeguarded in law.[183]
For more information on the provisions on disciplinary measures, please see the Integrity (Law) sub-chapter.

The EC has to carry out broad consultations to ensure that the Union's actions are 'coherent and transparent'.[184] Before proposing legislation, it must, except in urgent cases, 'consult widely',[185] and should also maintain 'open, transparent and regular dialogue with representative associations and civil society'.[186] General (soft law) principles and minimum standards for consultations have been elaborated,[187] but these do not apply to 'comitology' procedures.[188] [189] Additional legal provisions for public participation apply to the preparation of plans and programmes relating to the environment.[190]

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177 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, arts 21a, 22a, 22b, 23 (Staff Regulations);Staff Regulations. Reporting can be done to the EC hierarchy, to OLAF, to the Presidents of the European Court of Auditors, the Council or the European Parliament, or to the European Ombudsman. See also, Financial Regulation, art 66(8) Communication SEC(2012) 679 final of 6 December 2012, from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing;
Protocol (No 7) on the privileges and immunities of the European Union, [2012] OJ C326/266, art 11a

178 Staff Regulations, principally, arts 22, 86 and Annex IX; Financial Regulation, Chapter IV, and art 73(6) Financial Regulation implementing rules, arts 74-76, 119.

179 The Investigation and Disciplinary Office covers breaches of the Staff Regulations; OLAF investigates allegations of illegal activity linked to the EU's financial interests; the Financial Irregularities Panel pertains principally to breaches of financial rules. See, for example, http://ec.europa.eu/anti_fraud/investigations/eu-staff/index_en.htm, (last accessed 5 September 2013)

180 Staff Regulations, art 22 and Annex IX, art 9.1

181 Commission Decision C(2008)6866 of 12 November 2008,laying down rules on the secondment to the Commission of national experts and national experts in professional training, arts 7(2), 10 (2(c))

182 Regulation (EC) 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF) [1999] OJ L136/1 (OLAF Regulation), arts 4(2), 4(6), 7

183 Commission decision SEC(1999) 802 of 28 April 1999 establishing the European Anti-fraud Office (OLAF) [1999] OJ L136/20, arts 3, 5; OLAF Regulation, art 12

184 TEU, art 11(3)

185 Protocol (No. 2) on the application of the principle of subsidiarity and proportionality [2012] OJ C326/206, art 2

186 TEU, art 11(2)

187 Communication from the Commission towards a reinforced culture of consultation and dialogue, [2002] COM(2002) 704

188 Ibid, pg. 16

189 Comitology procedures relate to the functioning of committees established by basic legal acts (regulations, directives or decisions) to assist the EC with the implementation of EU law. They are made up of representatives of member states and chaired by an EC official. See Regulation (EU) 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers [2011] OJ L55/13, arts 1, 3.2

190 Aarhus Regulation, art 9

ACCOUNTABILITY (PRACTICE)

To what extent is there effective oversight of the activities of the European Commission and its officials in practice?

The broad range of mechanisms in place to hold the EC to account are being actively used by other EU institutions and bodies as well as the wider public. Effective scrutiny is, however, sometimes hampered by a lack of information provided to outside actors and resource constraints on the side of those charged with monitoring the EC's work. Reporting obligations and justifications are being adhered to, and external audits are held annually. Serious concerns remain, however, on the genuine accountability of the EC when adopting secondary legislation. In addition, while cases of alleged internal misconduct/illegal activity are being reported and pursued, questions remain on the impact of resource constraints on internal investigative capacity; the effective use of available sanctions; and the opacity of the EC's regular cooperation with OLAF.

The collapse of the Santer Commission prompted an increase in the internal and external checks and balances incumbent upon the EC.[191] The strengthening of mechanisms to ensure political accountability have even been deemed as 'an accountability overload'.[192] In recent years, then, the full range of accountability mechanisms has been used by all relevant EU institutions and bodies as well as by outside actors: from OLAF investigations against sitting Commissioners; the EP blocking of Commissioners-designate,[193][194] questioning of members of the Commission and senior officials, and budget freezes: to EU Court and Ombudsman cases against the Commission.

The EP is exercising its power to submit written and oral questions to the EC 'quite vigorously',[195] with approximately 25000 questions posed from 2011 to, 2013.[196] In view of the high number, the EC has not been able to answer all of them in time[197] and has put in place measures to reduce workload and to react to resource-intensive requests, for instance by concentrating on 'short and political answers',[198] which may have impacted the quality of information.

Concern has similarly been raised regarding whether the volume of accountability 'output' is comprising its overall effectiveness, with more decisions moved to EP Committees, leaving 'little time for [plenary] debate and scrutiny'.[199] Nonetheless, a new 'Question time' format for plenary questioning of Commissioners was introduced in late 2011, based fully on spontaneous questions, with only the scope of the sessions outlined in advance: in 2012, seven Commissioners participated in five such sessions.[200]

The 'yellow card' system allowing one third or more national parliaments to object on subsidiarity and proportionality grounds to a legislative proposal from the EC has been used twice: in the first such instance, in 2012, the EC did abandon the proposal. In the second case, the European Commission decided to maintain its proposal.[201]

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191 M. Bovens, D. Curtin & P. 't Hart, 'The Real World of EU Accountability: Comparisons and Conclusions', in *The Real World of EU Accountability*, ed. by M. Bovens, D. Curtin & P. 't Hart, (Oxford: OUP, 2010) pp. 178-179.

192 Bovens et al, pg. 189. President Barroso emphasised the importance of these accountability arrangements to the College in 2010: 'An important aspect of this is that all members of College fulfil their responsibilities in terms of attendance in the European Parliament and the Council, and indeed obligations to other bodies such as the European Economic and Social Committee and the Committee of the Regions.' Communication C(2010) 1100 of 10 February 2010 from the President on the Working Methods of the Commission 2010-2014, pg. 3

193 In 2010 the EP exercised its powers to veto a Commissioner-designate, effectively forcing the withdrawal of the original Bulgarian nominee for the Barroso II Commission. See, for example, S. Taylor, 'How Jeleva was forced out', *European Voice*, 21 January 2010, available at http://www.europeanvoice.com/article/imported/how-jeleva-was-forced-out/66933.aspx (last accessed 16 October 2013)

194 In 2012, the EP subjected a replacement Commissioner-designate to an intense hearing procedure prior to ultimately confirming support in 2012. See, European Parliament, *MEPs grill commissioner-designate for health and consumers*, [Press Release] (14 November 2012), available at http://www.europarl.europa.eu/news/en/news-room/content/20121113IPR55474/html/MEPs-grill-Commissioner-designate-for-health-and-consumers (last accessed on 28 October 2013); BBC, 'Malta's Tonio Borg appointed EU Health Commissioner', *BBC News Europe*, (28 November 2012), available at http://www.bbc.co.uk/news/world-europe-20523924 (last accessed on 28 October 2013)

195 A. Wille, 'The European Commission Accountability Paradox', in *The Real World of EU Accountability*, ed. by M. Bovens, D. Curtin & P. 't Hart, (Oxford: OUP, 2010), pg. 75

196 2011 Annual Activity Report of the Secretariat-General of the EC, 20 March 2011, pp. 24-25, available at http://ec.europa.eu/atwork/synthesis/aar/doc/sg_aar_2011.pdf (EC SG AAR 2011); and 2012 Annual Activity Report of the Secretariat-General of the EC, 27 March 2013, pg. 10, available at http://ec.europa.eu/atwork/synthesis/aar/doc/sg_aar_2012.pdf (EC SG AAR 2012)

197 EC SG AAR 2011,pp. 24-25; EC SG AAR 2012, pg. 10

198 EC SG AAR 2012, pg. 10.

199 Wille, pg. 76

200 EC SG AAR 2012, pg. 10. President Barroso emphasised the importance of such accountability arrangements to the College in 2010: 'An important aspect of this is that all members of College fulfil their responsibilities in terms of attendance in the European Parliament and the Council, and indeed obligations to other bodies such as the European Economic and Social Committee and the Committee of the Regions.' Communication C(2010) 1100 of 10 February 2010 from the President on the Working Methods of the Commission 2010-2014, pg. 3

201 See H. Brady, 'The EU's 'yellow card' comes of age: Subsidiarity unbound?, *Centre for European Reform,* (12 November 2013), available at http://www.cer.org.uk/insights/eus-yellow-card-comes-age-subsidiarity-unbound (last accessed on 21 November 2013)

Serious concerns continue to be highlighted regarding the lack of scrutiny powers over the adoption of secondary legislation by the EC. While the EP's right to information on comitology proceedings has increased, commentators still point to its lack of control and sanctioning if it considers the EC has exceeded its powers regarding implementing acts, and the lack of accountability of national members of comitology committees, even by their own national capitals.[202]

Under the procedure for delegated acts, the EP and Council have 'lost the flow of detailed information...previously generated' by comitology proceedings.[203] [204] Though wide member state consultation does initially appear to have been undertaken in practice,[205] expert groups have since become the 'key mechanism for scrutiny of draft delegated measures',[206] and the major shortcomings in the transparency and selection practices of these groups[207] mean their accountability to the EP and public, and in turn, that of the delegated acts procedure, is considered by some as gravely deficient. The Parliament has, however, shown that it can retain power when freezing budget funds in 2011 until the EC implemented new rules to increase the balance and transparency of expert groups responsible for external advice and overseeing delegated acts.[208]

Though the EC is complying with its obligations to consult the Council and report to both it and the EP during the negotiation of trade agreements – ensuring institutional accountability mechanisms are functioning – public scrutiny of the progress of negotiations has been subject to criticism by civil society, primarily in terms of the lack of transparency therein. [209]

The EC does comply with its performance and financial reporting obligations – both at departmental and institutional level[210] – and the discharge procedure is functioning formally:[211] the ECA undertakes annual audits and ad-hoc audits into specific topics; material provided by the EC is scrutinised by the EP Committee responsible; and the EC does respond to requests for additional information from the EP,[212] and to observations made during the procedure.[213]. Nevertheless, the quality – and selective nature – of information included in annual activity reports (which ultimately inform institutional-level reporting) has been called into question, given that directors-general have large discretion over the content of reporting,[214] being required to express their own opinion without being bound by any instruction from their respective Commissioner. The Commission notes that these reports are, however, audited by the ECA, who have conversely identified an improving trend in report quality and completeness.[215]

The jurisdiction of the CJEU over the EC is being exercised, with an increasing number of cases being handled: yet the number of pending cases continues to rise at both the main Court and General Court.[216] The EP and national governments continue to raise serious concerns over the efficient and timely handling of cases due to the workload and resources available to the Court, recognising the detrimental effect this has on access to justice, and calling for increases in the size of the judiciary.[217] How far the EC can be held accountable for inaction, in addition, has been called into question, particularly in the wake of its seemingly political decision not to initiate infringement proceedings against France in 2010, following the forced expulsion of Roma migrants, 'despite the open legal questions raised by the French practices and sound civil society-based evidence showing their incompatibility with

202 See G. J. Brandsma, 'Accountable Comitology?', in *The Real World of EU Accountability*, ed. by M. Bovens, D. Curtin & P. 't Hart, (Oxford: OUP, 2010); S. Peers & M. Costa, 'Accountability and Implementing Acts after the Treaty of Lisbon', European Law Journal, Vol. 18 No. 3 (2012), 427-460

203 Brandsma, pg. 453

204 And it appears that they may not be receiving draft delegated acts from the EC prior to adoption, hampering their ability to influence an act in advance, nor prepare for scrutiny of an adopted act within the short timelines available to them. D. Guéguen & V. Marissen, *Handbook on EU secondary legislation*, (Brussels: PACT European Affairs, 2013), pg. 54

205 Brandsma, pg. 453. Though the tripartite and non-binding 'Common Understanding' between the EC, EP and the Council regarding cooperation in the adoption of delegated acts, appears to have consolidated practice established following the entry into force of the Lisbon Treaty, meaning only 'experts', rather than 'national' experts, need be consulted.

206 Brandsma, pg. 453

207 See EC Transparency (practice) sub-chapter.

208 Friends of the Earth Europe, 'Budget blocked until safeguards against their capture by special interests and increased transparency are introduced', [Press release], (27 October 2011), available at http://www.foeeurope.org/press/2011/Oct27_ALTEREU_EP_blocks_expert_groups_budget.html (last accessed on 28 October 2013)

209 See, for example, Corporate Europe Observatory, 'Busting the myths of transparency around the EU-US trade deal', (25 September 2013), available at http://corporateeurope.org/trade/2013/09/busting-myths-transparency-around-eu-us-trade-deal (last accessed on 9 January 2014)

210 The annual activity reports from directorates-general for 2011 and 2012 can be accessed here: http://ec.europa.eu/atwork/synthesis/aar/aar_2011_en.htm http://ec.europa.eu/atwork/synthesis/aar/index_en.htm

211 Discharge documents from 2011 and 2012 can be found on http://europarl.europa.eu

212 See, for example, Responses from the Secretary General of the Commission, Catherine Day, to written questions from the European Parliament within the 2011 Discharge to the Commission, pp. 4-5. See http://www.europarl.europa.eu/document/activities/cont/201301/20130122ATT59570/20130122ATT59570EN.pdf (last accessed on 27 October 2013)

213 See for example, Commissioner Šemeta's letter of 22. February 2013 to the EP CONT Committee on the draft resolution for the 2011 discharge and responding to observations for priority actions, available at http://www.europarl.europa.eu/document/activities/cont/201302/20130225ATT61662/20130225ATT61662EN.pdf

214 See Wille, pp. 81-83, and the dossier from the public hearing of the EP Committee on budgetary control of 17 September 2013, on 'Accountability of the European Commission as administrator responsible
of the management and control of the EU budget over the last 10 years', pp. 36-40, available at
http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cont/dv/hearingdossier_/hearingdossier_en.pdf (last accessed on 27 October 2013)

215 Information received from the Secretariat General of the Commission by email to Mark Perera on 19 February 2014.

216 See the statistics sections of Court of Justice of the European Union, *Annual Report 2012*, (2012) (Luxembourg: Publications Office of the European Union)

217 See Report A7-0185/2012 of the EP Committee on Legal Affairs of 5 June 2012, on the draft regulation of the European Parliament and of the Council amending the Protocol on the Statute of the Court of Justice of the European Union; UK House of Lords European Union Committee, *Workload of the Court of Justice of the European Union: follow-up report*, (29 April 2013), (London: Authority of the House of Lords)

a well-established area of EU law'.[218]

The Commission continues to be the institution against which most complaints are lodged at the European Ombudsman, in part given that it is the main institution issuing decisions with a direct impact on citizens. In 2012, the Ombudsman opened 245 inquiries (52.7% of the total opened) concerning the EC, as compared with 231 in 2011,[219] with the subject of complaints ranging from public access to documents to alleged maladministration in recruitment procedures, or in the conduct of infringement procedures. The number of inquiries pertaining to the EC's role as 'guardian of the treaties' in fact matched the number pertaining to transparency issues, in 2012. Although the Ombudsman has noted several instances where responses from the Commission could be considered best practice, concerns have still been raised with regard to the cooperation demonstrated by the latter institution. Indeed, the Ombudsman delivered a special report to the European Parliament in 2012 to notify them of unsatisfactory follow up by the Commission with respect to recommendations issued – the only such report delivered that year.[220]

In terms of individual accountability, OLAF investigations into EU staff numbered 122 in 2011 and 95 in 2012, though no detailed breakdown is available on the number of EC staff investigated.[221] The 2012 figure includes the investigation of former Commissioner Dalli, which led to his resignation: while OLAF assert that this demonstrates the ability of the institutions to 'deal effectively with allegations of fraud and corruption also at the highest level',[222] controversy still remains on the procedural conduct of the case, and indeed, its underlying facts.[223]

Outside the context of specific investigations, regular meetings take place between OLAF and the EC within a forum called the 'Clearing House Group'. This gathers the EC Secretary General, the Director-General of OLAF, and the Directors General of the Commission's Legal Service, Budget, Human Resources and the Internal Audit Service every two months, and is used to ensure that the Commission is not 'confronted via the media with unknown fraud cases'.[224] Limited information is provided to the Commission in order for preventative measures to be taken in the interests of the Union – including transferring individuals free of the obligation to inform them of the reason. The identities of whistle-blowers are reported to be shared with the Clearing House Group only in the instance that an investigation has been closed and allegations appear to have been made maliciously, inviting potential sanctions. A 2011 European Parliament study raised concerns on the absence of a definition of a 'malicious whistle-blower', in view of this;[225] the latter was subsequently clarified in the Commission's 2012 guidelines on whistle-blowing.[226] Official, public information on the framework and purpose of this forum and on its proceedings – with due respect to the confidentiality of case-related information – appears to be virtually absent: furthermore, the lack of possible scrutiny poses questions on the effectiveness of the role of OLAF as an independent investigator – no such meetings were, at the time of writing, being held with other institutions; and is detrimental to the perception of the integrity of its investigations into the Commission; and the respect of the rights of individuals concerned by investigations.

For further consideration of disciplinary mechanisms for administrative staff – in particular, sanctions enacted and resource constraints – please see the EC integrity (practice) indicator.

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218 S. Carrera, 'Shifting Responsibilities for EU Roma Citizens: The 2010 French affair on Roma evictions and expulsions continued', *CEPS Paper in Liberty and Security in Europe*, No. 55 (June 2013), pg. 14, available at www.ceps.eu/ceps/dld/8119/pdf (last accessed on 9 January 2014). See also H. O'Nions, 'Roma expulsions and discrimination: The elephant in Brussels', European Journal of Migration and Law, Vol. 13 No 4, pp. 361-388

219 European Ombudsman, 'Annual Report 2012', (Luxembourg: European Union, 2013), pg. 25 (Ombudsman AR2012)

220 Ibid, pp. 5, 35

221 The EC Secretary General referred to the OLAF Annual Reports for the number of OLAF cases involving EC staff, during the 2011 discharge procedure, however these figures are not provided by OLAF. See Responses from the Secretary General of the Commission, Catherine Day, to written questions from the European Parliament within the 2011 Discharge to the Commission, q. 34, available at http://www.europarl.europa.eu/document/activities/cont/201301/20130122ATT59570/20130122ATT59570EN.pdf (last accessed on 27 October 2013)

222 European Anti-Fraud Office, *The OLAF report 2012*, (2013) (Luxembourg; Publications Office of the European Union), pg. 19 (OLAF AR 2012)

223 For media reporting on the issue, see http://www.neurope.eu/dossiers/dalligate-cum-barrosogate; N. Nielsen, 'EU anti-fraud chief defends role in Dalligate', *EU Observer*, (23 May 2013), available at http://euobserver.com/institutional/120224 (last accessed on 20 February 2014)

224 http://www.europarl.europa.eu/RegData/etudes/etudes/join/2011/453222/IPOL-JOIN_ET%282011%29453222_EN.pdf, pg. 12 (last accessed on 15 January 2014); see also Communication COM(2004)93 of 10 February 2004 from the Commission on Completing the reform mandate progress report and measures to be implemented in 2004, section 4.2

225 Ibid

226 Communication SEC(2012) 679 final of 6 December 2012, from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing, section. 1.4

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of Commissioners and of European Commission officials?

The integrity of the EC's political leadership (Commissioners) and administration (staff) are protected by differing legal provisions and rules, which cover obligations both during and after service with the institution, and are broad in scope. While comprehensive rules bind staff, (including on the unauthorised external activity, acceptance of gifts, or conflicts of interest), Commissioners' obligations are elaborated predominantly in soft law. A range of sanctions is in place for breaches of these respective obligations; investigative and consultative functions are carried out by internal, nominally independent bodies. For staff, the scope and detail of the provisions in place varies depending upon their category and duties, inviting gaps in coverage regarding the prevention of conflicts of interest and post-employment 'revolving door' cases, for example. Internal whistle-blowing rules are in place.

Provisions in the EU Treaties[227] seek to ensure the integrity and independence of members of the Commission prior to, during and after their term of office. A code of conduct (in place since 2011, and the second major revision since its inception in 1999) elaborates Commissioners' obligations, and includes provisions to prevent conflicts of interest; to restrict outside activity; on post-employment considerations; and on the acceptance of gifts and hospitality (including a public register for gifts valued above 150EUR), *inter alia*.[228] [229] Commissioners must complete public declarations of their professional and financial interests (though without reporting thresholds), and those of their spouse, prior to appointment hearings with the European Parliament;[230] they must update the declarations – which are scrutinised under the authority of the EC President – at least annually, and must inform the latter of any conflict of interest situations where they arise. The President can reallocate responsibilities amongst the College in such cases.[231] However, the code lacks a clear definition of a conflict of interest[232] or of lobbying, and outlines no sanction measures for minor infringements, such as a failure to update a declaration. Nonetheless, the President can request the resignation of a Commissioner,[233] while the Court of Justice (further to a Council or Commission request) can compulsorily retire a Commissioner or deprive them of benefits, in view of a breach of their obligations.[234]

For a period of eighteen months following their term, Commissioners must inform the EC of any planned occupation, and cannot lobby the EC on matters for which they held responsibility[235]. An Ad Hoc Ethical Committee can be used to assess whether the planned occupation is compatible with Commissioners' obligations, and can assist the EC President in the interpretation of the code of conduct.[236] The absence of a clear definition of a conflict of interest for a Commissioner, and the broad scope of the Treaty provision to act with 'integrity and discretion' both in and after service,[237] leaves a large margin for interpretation for the Committee and EC President to assess whether an individual has failed in this obligation. Committee members are appointed by the Commission (for an unpaid, three-year term, renewable once), upon the proposal of the President:[238] while no specific conflict of interest provisions or procedures for selection are laid down,[239] members are selected 'for their competence, experience and professional qualities', and must be independent and hold knowledge of the EC's legal framework and working methods. [240] The deliberations of the Committee are confidential.[241]

The EC is to be supported by an 'open...independent' administration,[242] and the obligations incumbent on its officials, temporary and contract agents, and special advisors, are laid down in binding 'Staff Regulations' (SR) and

227 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 17 (TEU) and
Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts 245, 247 (TFEU)
228 Code of Conduct for Commissioners C(2011) 2904
229 New/amended provisions in the 2011 version of the code include those on the acceptance of gifts/hospitality, on political activity, and on the recruitment of family members. These were among recommendations made by the European Parliament. See European Parliament Directorate General for Internal Policies, The Code of Conduct for Commissioners – improving effectiveness and efficiency, May 2009
230 These are sent to the European Parliament committee responsible for legal affairs for scrutiny. See Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, Annex XVII, art. 1(a) (EP RoPs).
231 Ibid, arts 1.1, 1.3, 1.4, 1.5, 1.6
232 Particularly given that Commissioners need only disclose financial interests/assets which 'might create a conflict of interest'. See Code of Conduct for Commissioners C(2011) 2904, art. 1.3
233 Ibid, art 2.1 and TEU, art 17(6)
234 TFEU, art 247
235 Ibid, art 1.2
236 Ibid, arts 1.2, 2.3. (Committee established via Commission Decision C(2003) 3750 of 21 October 2003)
237 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 245 (TFEU)
238 Commission Decision C(2003)3750 of 21 October 2003, establishing the Ad hoc Ethical Committee, arts 5, 6
239 Letter from Head of EC's unit for Public Service Ethics to the Transparency International EU Office, dated 12 June 2013
240 Commission Decision C(2003)3750 of 21 October 2003, establishing the Ad hoc Ethical Committee, art 4
241 Ibid, art 8.3
242 TFEU, art 298(1)

decisions.[243] These include provisions to prohibit unauthorised external activity (including during sabbatical leave),[244] disclosure of information,[245] or acceptance of gifts/payment (though excluding a mandatory register);[246] to prevent conflicts of interest and oblige staff to inform their hierarchy where these arise, and to inform them of their spouse's employment (not applicable to special advisors);[247] on personal liability;[248] and on post-employment,[249] *inter alia*. In this latter regard, for a two-year period after leaving the service, staff (excluding special advisors) must inform the EC of planned employment: subject to a conflict of interest with their responsibilities in their last three years of service, the EC can forbid the planned employment. This however only pertains to contract staff if they have had access to 'sensitive' information, the definition of which leaves a large margin of interpretation. [250] Legal provisions for staff recruitment are laid out in the SR.[251] A pre-appointment conflict of interest check and for staff returning from sabbatical leave, is in place, as of January 2014: similarly, 'cooling off' provisions will be put in place to prevent senior officials from lobbying the EC for one year after leaving office.[252] However, currently no individual declarations need to be maintained.

Pre-appointment conflict of interest checks are already carried out for special advisors[253] (without provisions on regular monitoring or updating of declarations) and for seconded national experts (without provisions on individual declarations) but without clear definitions of conflicts of interest.[254] The engagement of the latter is governed by rules including provisions on post-secondment obligations.[255] While members of comitology committees and expert groups are not required to complete mandatory interest declarations, they are obliged to inform the chairs of meetings of any conflicts. Where conflicts arise, expert group members can be excluded from discussions, full meetings, or removed entirely from a group; comitology members are subject only to exclusion from relevant discussions.[256]

The 'Financial Regulation' (FR) defines conflicts of interest with regard to financial operations,[257] while the implementing provisions outline acts 'likely to constitute a conflict of interest'.[258] The SR do not provide additional non-financial definitions/examples.

No specific provisions on anti-corruption are featured in the Commissioners' code of conduct, however staff have a duty to report potential fraud or corruption – with provisions ensuring the protection of whistle-blowers:[259] recent internal guidelines elucidate this obligation.[260] The FR further compels staff with financial management/control duties to report any illegal activity, fraud or corruption,[261] and observe a specific code of professional standards.[262]

Disciplinary measures can be brought following (administrative) investigations by the EC's Investigation and Disciplinary Office and/or OLAF, and a mandatory Financial Irregularities Panel,[263] for breaches of staff obligations.[264] The SR lay out the sanctions available to the EC (delivered by the Director General for Human Resources, as so-called 'Appointing Authority' (AA)), which range from a written warning to removal from post

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243 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, principally, arts 11-26a (Staff Regulations);
Commission Decision C(2004) 1597 of 28 April 2004 on outside activities and assignments (Outside activities decision);
Commission Decision C(2007) 6655 of 19 December 2007, laying down rules on special advisers to the Commission (Special advisers rules)

244 Ibid, arts 12b, 15, 17a, 40 and Outside activities decision, Chapter 2

245 Staff Regulations, arts 17, 19

246 Ibid, art 11. Guidelines are elaborated in Communication SEC(2012) 167 of 7 March 2012 from Vice-President Šefčovič to the Commission on Guidelines on Gifts and Hospitality for the staff members

247 Staff Regulations, arts 11a, 13

248 Ibid, art 22

249 Ibid, art 16, and Outside activities decision, Chapter 3

250 Staff Regulations, art 16, and Outside activities decision, art 21(1). Sensitive information is defined as 'information whose unauthorised disclosure might undermine the private or public interests protected by the legislation in force', in Implementing Rules SEC(2009)1643 of 30 November 2009, for the decision 2002/47/EC, ECSC, EURATOM on document management and for the decision 2004/563/EC, EURATOM on electronic and digitised documents

251 Staff Regulations, arts 27-34. The conduct of open competitions is outlined in Annex III.

252 See the revised article 16 at http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-287, (last accessed on 10 September 2013). This includes an obligation for the EC to report annually on the application of the 'cooling off' provision.

253 Special advisers rules, points 5, 6

254 Commission Decision C(2008)6866 of 12 November 2008,laying down rules on the secondment to the Commission of national experts and national experts in professional training, art 6(5)

255 Ibid. Post-secondment obligations are weak however, requiring the secondee only to remain 'loyal' to the EU and act with 'integrity and discretion' in post-secondment duties.

256 Standard Rules of Procedure EC 2011/C 206/06 for Committees [2011] OJ C206/11, art 11 and
Staff Working Document SEC(2010) 1360 OF 10 November 2010, accompanying document to the Communication from the President to the Commission on the Framework for Commission Expert Groups: Horizontal rules and public register, [2010] C(2010) 7649, Annex IV, art 11

257 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art 57 (Financial Regulation)

258 Commission Delegated Regulation (EU) 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union [2012] OJ L362/1, art 32 (Financial Regulation implementing rules)

259 Staff Regulations, arts 22a, 22b. Reporting can be done to the EC hierarchy, to OLAF, to the Presidents of the European Court of Auditors, the Council or the European Parliament, or to the European Ombudsman.

260 Communication SEC(2012) 679 final of 6 December 2012, from Vice-President Šefčovič to the Commission on Guidelines on Whistleblowing

261 Financial Regulation, art 66(8)

262 Ibid, art 66(7); Financial Regulation implementing rules, art 50.

263 Staff Regulations, principally, arts 22, 86 and Annex IX; Financial Regulation, Chapter IV, and art 73(6) Financial Regulation implementing rules, arts 74-76, 119.

264 The Investigation and Disciplinary Office covers breaches of the Staff Regulations; OLAF investigates allegations of illegal activity linked to the EU's financial interests; the Financial Irregularities Panel pertains principally to breaches of financial rules. See, for example, http://ec.europa.eu/anti_fraud/investigations/eu-staff/index_en.htm, (last accessed 5 September 2013)

(including financial liability),[265] though these are not linked specifically to types of misconduct, leaving case-by-case discretion to the AA.[266] Cases involving more serious misconduct can be referred by the AA to a Disciplinary Board which may initiate investigations and deliver an opinion. The AA and Staff Committee each appoint two members to the Board; a further representative is appointed from outside the EC.[267] Members must by 'completely independent' and recuse themselves in cases of conflict of interest, but no specific legal provisions pertain to preventing the latter. The proceedings and deliberations of the Board are secret. [268] Decisions on internal sanctions are taken after judgments in parallel criminal investigations, where held.[269]

All staff bound by the Staff Regulations are also bound by a Code of Good Administrative Behaviour, which principally governs their dealings with the public and compels them to act lawfully, with non-discrimination and equality of treatment, and with impartiality, *inter alia*.[270] Each EC Directorate General is also required to appoint an ethics advisor for staff, though this function does not monitor compliance with the SR.[271] No specific legal provisions on general ethics training for staff are in place.

265 Staff Regulations, art 22 and Annex IX, art 9.1
266 Activity Report of the Investigation and Disciplinary Office of the Commission (IDOC) 2012, pg. 7
267 Staff Regulations, Annex IX, arts 5-8, 12-22
268 Ibid, Annex IX, arts 6, 8
269 Ibid, Annex IX, art 25
270 Rules of procedure of the Commission C(2000) 3614, [2000] OJ L308/26, Annex
271 Communication SEC(2008) 301 of 27 February 2008, from VP Kallas to the Commission on an ethics action for Commission staff

INTEGRITY (PRACTICE)

To what extent is the integrity of Commissioners and European Commission officials ensured in practice?

Assurance of Commissioners' integrity appears predominantly reactive, with a more systematic approach needed, alongside improvements in the possibilities for internal and public scrutiny of interest disclosures, Commissioners' contact with lobbyists, and in the recruitment of Special Advisers. Serious concerns remain over how post-employment obligations are addressed at College level, with wide scope for reform of the Ad-hoc Ethical Committee identified. Similar issues pertain to the administrative level, and while a range of decentralised measures are in place to address integrity-issues in a preventative manner, the complexity and divergence of rules and procedures may be undermining consistent controls and comprehension. Efforts do, however, appear to be being made to address this, including revision of rules on outside activities in 2013. Sanctions are being brought against misconduct; however compliance and enforcement may be compromised by capacity issues. Whistle-blowing channels are being used.

College

No public reporting is done on implementation of the Code of Conduct (CoC) for Commissioners, nor on how often the EC President has reallocated Commissioner responsibility for an issue due to a conflict of interest. The EC indicates that several files were reallocated from the Commissioner in charge of competition policy under the Barroso I college, and internal records are kept. These decisions are not taken in College meetings, hence no mention is made in the minutes.[272] It does not appear, furthermore, that a systematic conflict of interest check is undertaken at each meeting. While declarations of interest (and annual updates thereof) are completed and published online,[273] evidence could not be found to suggest that a comprehensive verification of declarations, particularly of the financial interests of Commissioners, is undertaken; the EC appears to rely on public scrutiny to ensure *veracity*, emphasising that the content of declarations is the responsibility of each Commissioner.[274] Yet, viable external scrutiny is compounded by, *inter alia*, the lack of reporting thresholds for financial disclosures, the fact that declarations are not made using an open, electronic format, allowing comparison over time, and that Commissioners do not need to record contact with lobbyists.

The College and cabinets are supported in the application of ethics rules by dedicated services in the EC administration: this support appears to be principally reactive, however, the Secretariat General (DG SEC GEN) and President are reported to be delivering reminders of rules throughout the year. [275] An ethics module was included in training for the new College (for the first time) in 2009, and cabinets have ethics correspondents, but despite the exposure of Commissioners to influence by external parties – in view of their position – and the Commission identifying the speed of cabinet staff turnover and cultural differences as specific challenges to integrity faced by the EC, no additional measures beyond the status quo are yet foreseen by the DG SEC GEN for the future.[276] This is of particular concern given the on-going 'Dalligate' affair[277] – the key events of which span the introduction of the new CoC, and which relate directly to allegations of bribery and corruption. While, an OLAF investigation was triggered, and the President exercised his legal power to compel a resignation, the affair also highlights the lack of clear and transparent procedures for the exercise of the President's power to compel a Commissioner to resign.[278]

In line with their Code of Conduct, Commissioners have been complying with the obligation to notify the Commission of proposed occupations following service, and opinions of the Ad Hoc Ethical Committee have been sought. The Committee in its opinions, places the burden of responsibility upon the individual former Commissioner to act responsibly, but does indicate that both the Commission and the individual need to 'provide information on any actual or potential conflict with EU interests' to assess compatibility with obligations.[279] Nevertheless, the opinions delivered do not appear to provide evidence of an in-depth evaluation and demonstrate

272 Email from the Secretariat General of the Commission to Mark Perera, of 6 November 2011

273 See http://ec.europa.eu/commission_2010-2014/interests/index_en.htm, accessed on 16 October 2013

274 TI-EU analysis based on research interviews

275 Ibid. Issues that trigger the DG SEC GEN to remind cabinets of ethics obligations, notably on gifts, include seasonal sporting events and related offers of hospitality, publications, and possible honorary activities. DG SEC GEN answers all questions from Commissioners, concerning the Code of conduct, while the President reminds them to update their declarations.

276 TI-EU analysis based on research interviews.. See also, letter of 9 June 2011 from Catherine Day to the ALTER-EU Steering Committee at http://www.alter-eu.org/sites/default/files/documents/barroso2011a502829_signed_reply.pdf

277 This pertains to former Maltese Commissioner for Health and Consumer protection, John Dalli, who stepped down in October 2012 amid allegations of knowledge of attempted bribery by the tobacco industry. This followed an OLAF investigation and subsequent request from EC President Barroso for his resignation. For media reporting on the issue, see http://www.neurope.eu/dossiers/dalligate-cum-barrosogate

278 The long term damage caused to the public image of the EC caused by such affairs was highlighted by the CJEU in 2006, and further highlights the importance of addressing any deficiencies in the ethics regime incumbent upon the College. See Case C-432/04, *Commission of the European Communities vs Édith Cresson* [2006], Opinion of Advocate General Geelhoed, delivered on 23 February 2006, point 122

279 Opinion of the Ad hoc Ethical Committee of 16.12.2004, GESTDEM 2013/2766

an uncritical approach to analysis of information provided by former Commissioners;[280] furthermore, where additional information has been requested from the EC, this has apparently been sourced only from the former Commissioner in question.[281] The purpose of the post-employment obligation could be considered to have been potentially undermined by the wide range of interpretation exercised by the Committee:[282] more significantly, where the Committee issued a negative opinion in the case of former Commissioner Verheugen, this did not in fact prevent the occupation being undertaken.[283] The activity was ultimately authorised by the Commission, contrary to the opinion of the Committee, however, with restrictions to prevent undue influence or lobbying towards his former services for a period of 26 months. In addition, the lack of detailed procedures on how the Committee should exercise its functions, and its lack of proactive transparency, raises questions on its capacity to analyse in a consistent and independent manner, the cases presented to it:[284] clear, objective assessment criteria and a transparent process would facilitate the task of the Committee and ensure consistency in the application of the rules to serve the interests both of the public and the former Commissioners themselves.

Similarly, the independence of the Committee could be undermined by the absence of an elaborated selection procedure, the lack of (public) disclosure of interests by Committee members, or lack of criteria for membership.[285] Indeed, the appointment of a former member of the Committee was subject to grave criticism with regard to the existence of a potential conflict of interest and that the member may have himself been in breach of post-employment obligations incumbent upon EC officials.[286] Following a complaint lodged by several NGOs on the matter, the EU Ombudsman subsequently determined that a potential conflict did exist and as such, the individual should not have been appointed to the Committee.[287] The Commission continuously rejected such assertions.

Special Advisers

The EU Ombudsman emphasised in 2011 that it is the EC's responsibility to establish the absence of conflict of interests amongst special advisers and that significant failures have occurred in the current procedure:[288] despite clear recommendations for improvement being made, the 2007 rules remain unchanged. The effectiveness of pre- and post-employment integrity safeguards for special advisers has not, furthermore, been subject to internal audit scrutiny.[289]

Administration

Measures to raise awareness and prevent breaches of staff obligations are relatively decentralised within the EC. Standard, mandatory ethics training is provided for all EC newcomers and managers, and a central internal ethics website is in place, however, DGs also provide additional ethics training and guidance tailored to the risks in their policy sectors with the input of IDOC.[290] While these respond to the differing degrees of risk across the institution, guidance, in particular, can be heavily focused on compliance with rules, and differing reporting regimes may be adding to 'administrative burden' rather than ensuring integrity via understanding of the purpose of rules.[291] Indeed, it appears that there is no centralised system for staff to notify proactively potential conflicts of interest, nor central overview held by Human Resources.[292] Similarly, the EC has been criticised for not monitoring closely whether staff attend both mandatory and non-mandatory training and whether learning objectives have been achieved.[293]

Ethics correspondents are in place in all DGs to act as a first point of contact for staff, and are coordinated via a network managed by a dedicated Public service ethics unit:[294] they are not subject to specific selection criteria, nor

280 Letter of Director SG/B Hubert Szlaszewski to the Ad hoc Ethical Committee of 07.05.2010, and Opinion of the Ad hoc Ethical Committee of 28.06.2010, GESTDEM 2013/2766, and http://www.theparliament.com/latest-news/article/newsarticle/eu-commission-under-fresh-attack-over-ex-commissioners/ (last accessed on 11 October 2013).

281 See Opinion of the Ad hoc Ethical Committee of 21.04.2010, GESTDEM 2013/2766.

282 Leading for example, to very narrow interpretations of what may constitute a perceived conflict of interest, as in the cases of former Commissioners McCreevy and Kuneva, when anticipating Non-Executive Board positions falling within their former EC portfolios. See Opinions of the Ad hoc Ethical Committee of 19.04.2010 and of 10.05.2010, GESTDEM 2013/2766

283 Opinion of the Ad hoc Ethical Committee of 02.11.2010, GESTDEM 2013/2766, and http://www.european-experience.de/english/About-Us (last accessed on 11 October 2013)

284 The Committee has only met four times since its creation, with minutes only taken on two of these occasions. Most work is done by written procedure. Letter of 12 June 2013 from Head of EC Unit SG/B/4 Public Service Ethics to Mark Perera, GESTDEM 2013/2762

285 '…[T]here are no documents specifying the Ad hoc Ethical Committee's selection process, further to the general rules set out in enclosed Commission Decision C(2003) 3750', in letter of 12 June 2013 from Head of EC Unit SG/B/4 Public Service Ethics to Mark Perera, GESTDEM 2013/2762

286 See, EC Replies of 30 November 2012 to the Questionnaire from the Committee on Budgetary Control of the European Parliament, concerning the resignation of the former Commissioner John Dalli Ref. Ares(2012); http://euobserver.com/institutional/118621; and http://corporateeurope.org/revolvingdoorwatch/case/michel-petite (accessed on 11 October 2013)

287 See Decision of the European Ombudsman of 19 December 2013, closing her inquiry into complaint 297/2013/(RA)FOR against the European Commission, available at http://www.ombudsman.europa.eu/en/cases/decision.faces/en/52934/html.bookmark (last accessed 9 January 2014)

288 Decision of the European Ombudsman of 11 July 2011 closing his inquiry into complaint 476/2010/ANA against the European Commission, in particular paragraphs 109-113. '…the Sworn Statement should not be seen as a substitute for the Commission's assessment of the absence of a conflict of interest….Simply put, it is the Commission's responsibility, not the prospective Special Adviser's, to determine whether there is a conflict of interest that should prevent the latter from being appointed.'

289 TI-EU analysis based on research interviews. A specialised unit in the EC DG for Human Resources and Security assists with the management of officials and contract agents in cabinets, and is subject to IAS audits. Financial expenditure by cabinets is managed and controlled by the EC Office for Administration and Payment of individual entitlements, who are subject to scrutiny by the IAS: most recently, recommendations were made to improve financial circuits and financial management, and the system of ex-ante controls for the payment of mission expenses. See Annual Report COM(2009)419 from the Commission to the Discharge Authority of 5 August 2009, on internal audits carried out in 2008, pg. 10

290 TI-EU analysis based on research interviews.

291 A. Năstase, 'Managing ethics in the European Commission services', Public Management Review, Vol. 15 Issue 1 (2013), 63-81 (p.75)

292 TI-EU analysis based on research interviews.

293 European Court of Auditors, Special Report No 10/2012, The Effectiveness of staff development in the European Commission (2012)

294 Located in DG SEC GEN

receive specific training (aside from briefings on rules), serving a function to clarify existing rules and are contributing to fostering discussion about ethics amongst staff.[295] This is supported by EC-wide and DG-specific awareness-raising events. An internal audit was carried out on the ethics frameworks in six DGs with a 2012 follow-up finding all recommendations had been addressed.[296]

No compulsory recording of contact with lobbyists by EC staff is undertaken,[297] and no evidence could be found of systematic or proactive contact being made with former officials regarding post-employment provisions – though departing staff appear to be reminded of their obligations.[298] Nevertheless, concern continues to be raised by civil society actors on the application of post-employment provisions by the EC,[299] with the EU Ombudsman investigating a complaint on the issue, at the time of writing.[300] Rules on outside activities were revised in December 2013, following recurrent breaches of the former rules – in place since 2004 – (21 individuals were sanctioned in 2011),[301] and the issue being a key area of confusion for staff.[302]

Despite concerns over capacity,[303] the EC's internal investigative office (IDOC) appears to be witnessing an increase in the number of cases it is picking up, with approximately 70 from 2009-2011 to approximately 110 by autumn 2013. Sanctions are exercised on a case-by-case basis – including post-retirement via reductions in pension rights - with the life tenure of officials seen as a major deterrent to misconduct, and downgrading in staff category viewed gravely by staff in view of its professional and financial implications:[304] nevertheless, of 57 disciplinary sanctions imposed from 2010-2012 only three officials were dismissed.[305] In each case, OLAF and/or national authorities were involved. IDOC passes on cases to OLAF – and duly suspends its own inquiries - with the latter having control over which cases it pursues:[306] this does contribute to a delay in conclusion of cases by IDOC (95.5 cases per year on average from 2008-11).[307] Requests from national authorities for the lifting of EC staff immunity have been refused only once, where this was in contravention of the EC's whistle-blowing rules.[308] Information from research interviews suggests that most of the information received by IDOC originates via normal hierarchical channels, rather than from whistle-blowers, *per se*, in line with the Commission's whistle-blowing guidelines; which provide for a safety mechanism for cases where the normal reporting channels might be inadequate.[309] The internal audit department has, since the beginning of 2013, managed an anonymous whistle-blower mailbox: it appears that most information thus far received relates either to staff disputes within decentralised agencies, or journalists' enquiries for documents.[310] EC staff are also making direct recourse to OLAF, and were the source of 165 of the 360 pieces of information received from the public sector by OLAF in 2012.[311]

Company guilty of bribing European Commission official

In 2012, a Belgian Court convicted a subsidiary of the commodities trader *Glencore* of having bribed a European Commission official and fined the company 500k EUR. In exchange for the supply of sensitive information about the agriculture market, *Glencore* lavished the official with a holiday in the south of France, and covered 20k EUR worth of his mobile phone bills in 2002 and 2003. The phone itself was integral to the supply of information to Glencore. The official was sentenced to 40 months imprisonment and fined 55k EUR. Several other companies were also convicted of providing or facilitating bribes to the same official.

Sources: New Europe (http://www.neurope.eu); Reuters (http://in.reuters.com)

295 TI-EU analysis based on research interviews; Năstase pp. 74.76
296 IAS Briefing of 14 October 2013 for Transparency International, Annex 5, pp. 2, 10-11
297 The Commission reports that internal guidance advises that a written record should be ensured where such meetings contain important information or may involve action by the Commission (Practical Guide to Staff Ethics and Conduct page 12). Information provided via email to Mark Perera from the EC Secretariat General on 19 February 2014.
298 TI-EU analysis based on research interviews.
299 See, for example, the cases highlighted by Corporate Europe Observatory at http://corporateeurope.org/revolvingdoorwatch
300 See http://www.ombudsman.europa.eu/en/press/release.faces/en/49301/html.bookmark, accessed on 16 October 2013
301 Activity report of the Investigation and Disciplinary Office of the Commission (IDOC) 2011; the reports from 2008-2012 are available at http://www.asktheeu.org/en/request/investigation_and_disciplinary_o http://www.asktheeu.org/en/request/idoc_report_2011; and http://www.asktheeu.org/en/request/idoc_annual_report_2012
302 Năstase pg. 76; European Commission, Human Resources Report of the European Commission – 2013, (2013), (Luxembourg; Publications Office of the European Union), pg. 72
303 See EC Resources (practice) indicator report
304 TI-EU analysis based on research interviews.
305 See Activity Reports of the Investigation and Disciplinary Office of the Commission (IDOC) 2010, 2011, 2012. During this period, six officials were downgraded or classified in a lower function group and eight former officials had their pension or invalidity allowances reduced. Information provided via email to Mark Perera from the EC Secretariat General on 19 February 2014.
306 TI-EU analysis based on research interviews.
307 Email from the EC Director of the Investigation and Disciplinary Office of 16 October 2013 to Mark Perera
308 In the case where immunity was not lifted, specific arrangements were made with the Court to allow the individual to testify. Sometimes the Secretariat-General stands as a "partie civile" in a case where immunity has been lifted, only to have access to the file to know more about the investigation and be able to express its point of view. TI-EU analysis based on research interviews.
309 TI-EU analysis based on research interviews.
310 TI-EU analysis based on research interviews.
311 European Anti-Fraud Office, *The OLAF report 2012*, (2013) (Luxembourg; Publications Office of the European Union), pg. 14

RESOURCES

To what extent does the European Commission have adequate resources to effectively carry out its duties?

Though internal and external audits have not signalled major concerns with the financial resources available to the EC, which have remained stable in recent years, planned reductions in its staff numbers over the period up to 2017 could challenge its capacity to effectively undertake its work. This is most acute in the area of administrative support, which may impact upon the integrity of internal control mechanisms. Limited resources are already noted in areas related to internal disciplinary investigations, and to the handling of public access to document requests. ICT solutions are being deployed to modernise the administration and mitigate the impact of constrained human resources.

Despite continued growth in its staff numbers up until 2010, the EC has been operating a 'zero-growth' human resources strategy since 2007, and has committed to reducing its workforce by 5% in the 2013-2017 period, equating to a 1% cut each year (approximately 250 posts).[312] These reductions follow from combined political and budgetary pressure resulting, in part, from the economic crisis in Europe.[313] The strategy translated to an EC staff of 32666 in 2013 (28 Member States as from 1 July 2013), as compared to 21742 in 2000 (15 Member States) and 35308 in 2010 (27 Member States).[314] The number of employees relative to the number of member states has therefore decreased by approximately one-fifth since 2000. This decrease is accompanied by a relative decrease in the proportion of staff devoted to administrative functions, at both central and departmental levels, which has seen a slight fall in HR and IT support functions, while financial control and anti-fraud functions have remained relatively stable.[315]

The decentralisation inherent within the EC's annual strategic planning cycle and current financial management system, enables departments (directorates-general) to take charge of their resource allocation (with respect to corporate-level strategies as above), and the financial controls they use.[316] The ECA has not identified serious risks regarding direct (administrative) expenditure by the EC since these systems have been in place,[317] nor has it raised concerns, *per se*, on the resources available to the institution (3.3 billion EUR in 2011, 2012 and 2013),[318] however, both it and the Commission itself have underlined the need for more harmonisation of control mechanisms and (performance) reporting, and for more centralised support for this.[319]

The EC has itself noted the challenge of reconciling, through reallocation and redeployment, decreases in administrative/support staff and the assurance of the quality of its operations:[320] and the Vice President responsible for administration has been vocal on the damage further cuts could do.[321] Nevertheless, the Secretary General indicated to the EP in the 2011 budgetary discharge procedure that the redeployment of posts between and within departments enabled the Commission to deliver on its political priorities,[322] and has expressed confidence that the resource cuts will not pose a risk to integrity.[323] The ECA has, however, raised concerns regarding the ability of the EC to identify the 'existing skills of its staff or the skills which they need', leading to difficulties in aligning 'staff development with the needs of the organisation'.[324]

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312 European Commission, *Human Resources Report of the European Commission – 2013*, (2013), (Luxembourg; Publications Office of the European Union), pg. 9 (EC HR Report 2013)

313 See, for example, Council of the European Union, *Council adopts its position on the EU draft budget 2011* [Press Release 12464/10] (2010), pg. 7, available at https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ecofin/116151.pdf (last accessed on 27 October 2013)

314 These figures further break down as follows. 2013: 23603 permanent officials and temporary agents; 9063 other staff (inc. contract agents, special advisers, SNEs). 2010: 23435 permanent officials and temporary agents; 11873 other staff. 2000: 17720 permanent officials and temporary agents; 4255 other staff. See EC HR Report 2013; European Commission, *Human Resources Report of the European Commission – 2011*, (2011), (Luxembourg; Publications Office of the European Union) (EC HR Report 2011); European Commission, *Human Resources Report of the European Commission – 2012*, (2012), (Luxembourg; Publications Office of the European Union) (EC HR Report 2012); and European Commission 2013 HR Key Figures Card, on http://ec.europa.eu

315 EC HR Report 2011, pp. 50-53; EC HR Report 2012, pp. 13-15; EC HR Report 2013, pp. 1, 10-12

316 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art 57 (Financial Regulation)

317 Communication COM(2012) 281 from the Commission to the European Parliament, the Council and the Court of Auditors, of 6 June 2012, on the synthesis of the Commission's management achievements in 2011, pg. 2 (EC synthesis report 2012); H. Brady, 'The EU's Court of Auditors: Europe's sleeping giant?', *E!Sharp*, May 2013, available at http://esharp.eu/oped/hugo-brady/57-the-eu-s-court-of-auditors-europe-s-sleeping-giant/ (last accessed on 27 October 2013)

318 European Commission, *EU Budget 2011:Financial Report* (2012), (Luxembourg; Publications Office of the European Union), pg. 90
European Commission, *EU Budget 2012: For 500 million Europeans; For growth and employment* (2011), (Luxembourg; Publications Office of the European Union), pg. 2
European Commission, *EU Budget 2013: investing in growth and jobs* (2013), (Luxembourg; Publications Office of the European Union), pg. 10

319 Communication COM(2013) 334 from the Commission to the European Parliament, the Council and the Court of Auditors, of 5 June 2013, on the synthesis of the Commission's management achievements in 2012, pg. 5 (EC synthesis report 2013); EC synthesis report 2012, pp. 2, 3, 12

320 EC HR Report 2011, pg. 8

321 See http://ec.europa.eu/commission_2010-2014/sefcovic/headlines/news/2013/02/2013_02_06_ep_en.htm (last accessed on 27 October 2013)

322 Responses from the Secretary General of the Commission, Catherine Day, to written questions from the European Parliament within the 2011 Discharge to the Commission, pp. 4-5. See http://www.europarl.europa.eu/document/activities/cont/201301/20130122ATT59570/20130122ATT59570EN.pdf (last accessed on 27 October 2013)

323 TI-EU analysis based on research interviews.

324 European Court of Auditors, Special Report No 10/2012, The Effectiveness of staff development in the European Commission (2012), pp. 7, 14

The EC foresees the 'reengineering of an increasing number of HR business processes'[325] as a key element in enabling resources to be allocated efficiently in the face of cuts. Similarly, it has put in place an ICT strategy for the 2012-2015 period, in part to increase the use of technology to improve administrative practices as human resources decrease.[326]

Shortfalls in resource capacity appear to be a continuing concern in a number of integrity-related areas of the EC's operations: from its capacity to scrutinise the quality of entries in the joint Transparency Register;[327] to its ability to respond to questions from the EP,[328] and to public access to documents requests.[329] Similarly, despite 'the promotion of strict ethics vis-à-vis the management of disciplinary proceedings' being a headline activity of the institution's HR department,[330] the EC's directorate responsible for investigating alleged staff misconduct (IDOC),[331] comprises only 15 personnel – less than the average unit size[332] – raising uncertainty on its ability to process cases effectively: despite dealing with approximately 100 cases per year since 2011, on average it has also had almost 100 pending cases per annum, in recent years.[333] ICT has been deployed at the corporate-level to support the management of specifically ethics-related issues; nevertheless, this appears to be focused mainly on providing a reference hub for staff on rules and obligations.[334] Yet, it does demonstrate that improvements in integrity safeguards and resource savings need not be mutually exclusive.

325 EC HR Report 2013, pg. 20
326 Communication SEC(2012) 492 from VP Šefčovič to the Commission of 1 August 2012, on Delivering user-centric digital services
327 C. Leclercq & F. Simon, 'Lobbyist representative: Best facts, not big bucks, win lobbying campaigns', *EurActiv*, 1 October 2013, available at http://www.euractiv.com/pa/lobbyist-representative-best-fac-interview-530787 (last accessed on 27 October 2013)
328 In view of the high and ever increasing number of written questions received from the EP, the EC introduced in 2011 a 20-line limit for replies and developed new functions in an IT system designed to handle responses. These measures were considered to have 'improved the quality and timeliness of the process… and increased the coherence of the answers.' Nevertheless, only 62% of normal questions, and 23% of priority questions were answered on time. See 2011 Annual Activity Report of the Secretariat-General of the EC, 20 March 2012, pp. 24-25. Available at http://ec.europa.eu/atwork/synthesis/aar/doc/sg_aar_2011.pdf.
329 Based on statements made by the former Head of the Transparency Unit, EC DG Secretariat-General, 'Assessing the state of transparency in the European Union', panel discussion at The Third Global Conference on Transparency Research, 25 October 2013, HEC Paris
330 EC HR Report 2013, pg. 2
331 The Investigation and Disciplinary Office (IDOC) located within the Directorate-General for Human Resources and Security.
332 EC HR Report 2013, pg. 5
333 Between 2008-2011 IDOC had an average of 95.5 pending cases; it stopped reporting on this in 2012, as the figure was deemed not to be a meaningful statistic. Email of 16 October 2013 from Director of IDOC to Mark Perera.
334 EC HR Report 2013, pg. 72

PRIORITISATION OF PUBLIC ACCOUNTABILITY AND ANTI-CORRUPTION IN THE EU

To what extent does the European Commission prioritise public accountability and the fight against corruption as a concern in the EU?

The EC has responded to a 2010 call from the European Council for further EU action to combat economic crime and corruption via a number of legislative and policy proposals focused principally on financial crime and which seek to address legal and criminal challenges in combating and prosecuting these offences across the EU. No specific anti-corruption legislation is however planned by the EC: rather, its headline activity in this area is the introduction of a biennial reporting and assessment tool – the EU Anti-Corruption Report. Experience with the first report in 2013-14 raises doubts on the effectiveness of this soft policy instrument and points to a lack of ambition by the EC, particularly with regard to tackling the cross-border aspects of corruption, and to assessing corruption risks within the EU institutions themselves.

Recent years have seen a series of legislative and policy initiatives by the EC in the area of anti-fraud and anti-corruption, principally in response to calls made by the European Council in its 'Stockholm Programme' of 2010, which set the objectives for EU policies in the areas of justice, security and civil liberties.[335]

The most high-profile has been the anti-corruption 'package' it delivered in June 2011,[336] which centred upon the creation of a new EU anti-corruption reporting and assessment mechanism – the EU Anti-Corruption Report[337] – to 'give a fair reflection of the achievements, vulnerabilities and commitments of all Member States... [and]...identify trends and weaknesses that need to be addressed, as well as stimulate peer learning and exchange of best practices'.[338] The EC indicated that the report would be issued every two years from 2013, would comprise a thematic section as well as country analyses with possible recommendations for EU level action, and a section on EU level trends, and would make use of data from existing monitoring mechanisms (to reduce administrative burden on member states and avoid overlapping),[339] as well as develop new indicators in areas where relevant standards were either missing or inadequate for the EU level. Elaboration of the report has been supported by a dedicated expert group including academics and civil society experts,[340] and a network of national research correspondents,[341] in part to reduce sole reliance on information from member states themselves.[342] Indeed, the report is designed partly to address the lack of political will identified by the EC as hampering the fight against corruption in the EU:[343] nevertheless, from the outset, the non-binding nature of the instrument('s recommendations) and the political resistance to a comprehensive report or ranking of states were identified as clear concerns.[344]

In the event, publication of the report was delayed by seven months due in part to this very resistance: nevertheless, the EC was critical of the determination shown by member states in fighting corruption and implementing existing legislation, yet it markedly chose not to 'name and shame' countries, going so far as not to mention any member state by name in its executive summary. Though acknowledging differing levels of corruption across the EU, the EC did identify concerns in all member states – with recurrent issues including public procurement, political party financing, the shortcomings in the self-regulation of conduct amongst political elites, and failings in whistle-blower protection.[345] The Commission failed, however, to tackle directly the cross-border element of corruption within the EU, an area where EU action would be vital: moreover, proposals for further member state action were limited in scope, with the Commission seeking to spur debate rather than propose new legislative action. The focus on member states was not, however, extended to the EU level itself, with a section

335 European Council, 'The Stockholm Programme – an open and secure Europe serving and protecting citizens', [2010] OJ C 115/1, para. 4.4.5 (Stockholm Programme)
336 See http://ec.europa.eu/dgs/home-affairs/what-is-new/news/news/2011/20110606_en.htm
337 Commission decision COM(2011) 3673 of 6 June 2011 establishing an EU Anti-corruption reporting mechanism for periodic assessment ("EU Anti-corruption Report") (ACR decision)
338 Communication COM(2011) 308 of 6 June 2011 from the Commission to the European Parliament, the Council and the EESC on fighting corruption in the EU, esp. pg. 4 (AC communication)
339 R. Stefanuc, 'Corruption, or how to tame the shrew with the European Union stick: the new anti-corruption initiative of the European Commission', ERA Forum, Vol 12 No 3 pp. 427-443 (2011), pg. 436
340 See http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2725
341 Communication COM(2011) 308 of 6 June 2011 from the Commission to the European Parliament, the Council and the EESC on fighting corruption in the EU, esp. pg. 7 (AC communication)
342 V. Pop, 'EU to monitor anti-corruption measures in member states', *EU Observer*, (6 June 2011), available at http://euobserver.com/justice/32444 (last accessed on 5 November 2013)
343 AC communication, pg. 4
344 V. Pop, 'EU to monitor anti-corruption measures in member states', *EU Observer*, (6 June 2011), available at http://euobserver.com/justice/32444 (last accessed on 5 November 2013)
345 The report is available at http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/index_en.htm (last accessed on 5 February 2014)

evaluating anti-corruption within the EU institutional system drafted and then scrapped,[346] reportedly due to the fact that there were no independent evaluations on which the EC could draw.[347] Follow-up of the report by a potential 'experience-sharing programme' had not been initiated at the time of writing. The initial effectiveness of the reporting instrument in the achievement of its stated aims could therefore not be determined at the time of writing.

The 2011 anti-corruption package also included a report by the EC on the modalities for increasing EU participation in GRECO[348] and a second implementation report on a 2003 Council decision on combating corruption in the private sector.[349] It served as one element of the EC's recent action on the protection of the licit economy (announced in the EC Work Programme 2011[350]), which included a new anti-fraud strategy (CAFS),[351] and a number of specific legislative proposals, including on the freezing and confiscation of proceeds of crime in the EU;[352] on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing;[353] and on the fight against fraud to the Union's financial interests (PIF offences) by means of criminal law.[354] (At the time of writing, these proposals were still under consideration by the EU's legislative branches.) The EC also issued an action plan to support the improvement of the gathering of criminal statistics up to 2015, including on corruption,[355] and at the time of writing, was intending to develop proposals for the harmonisation of the offence of money-laundering in criminal law.[356] [357]

Many of these proposals respond to the EC's findings on the poor implementation or enforcement by member states of existing international and EU frameworks to combat cross-border financial crimes and the criminal policy challenges therein.[358] For example, the EC's recourse to a legislative solution for the criminal prosecution of PIF offences was in part a reaction to the fact that the 1995 Convention on the protection of the EU's financial interests was 'implemented fully by only five Member States'. The EC states that the 'protection of EU financial interests against fraud and corruption is a priority' for the institution,[359] and is therefore seeking to address the differences in legal regimes hindering effective cross-border investigations by setting out harmonised criminal law provisions in the field of the protection of EU monies.[360]

In turn, the EC has been addressing specifically the areas of investigation and prosecution: it is considering options to strengthen the role of Eurojust, and in 2011 put forward a modified legislative proposal to strengthen the European Anti-fraud Office (OLAF) after an initial proposal in 2006.[361] Additional OLAF reforms are foreseen within the context of a separate legislative initiative published by the EC in 2013 on the establishment of a European Public Prosecutor's Office (EPPO).[362] These activities have not, however, been met with unanimous support. While the revised OLAF Regulation was adopted in late 2013, some MEPs voiced objections that the EC's proposal did not go far enough to increase procedural accountability;[363] more significantly, the proposal on an EPPO has met

346 See, as background, meeting reports from the Expert Group on corruption of 19 June and 17 September 2013, available at http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2725 (last accessed on 5 November 2013).'

347 N. Nielsen, EU-wide corruption report drops chapter on EU institutions', EU Observer, (31 January 2014), available at http://euobserver.com/justice/122955 (last accessed on 3 February 2014)

348 The Council of Europe Group of States against corruption. See Report COM(2011) 307 of 6 June 2011 from the Commission to the Council on the modalities of European Union participation in the Council of Europe Group of States against Corruption (GRECO)

349 Report COM(2011) 309 of 6 June 2011 from the Commission to the European Parliament and the Council based on Article 9 of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector. The EC evaluated the implementation as unsatisfactory.

350 See Communication COM(2010) 623 of 27 October 2010 from the Commission to the European Parliament, the Council, the EESC and the CoR on the Commission Work Programme 2011

351 Communication COM(2011) 376 of 24 June 2011 from the Commission to the European Parliament, the Council, the EESC, the CoR and the Court of Auditors on the Commission anti-fraud strategy

352 Commission proposal COM(2012) 85 of 12 March 2012, for a directive of the European Parliament and of the Council on the freezing and confiscation of proceeds of crime in the EU

353 Commission proposal COM(2013) 45 of 5 February 2013, for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

354 Commission proposal COM(2012) 363 of 11 July 2012, for a directive of the European Parliament and of the Council on the fight against fraud to the Union's financial interests by means of criminal law

355 Communication COM(2011) 713 of 18 January 2012 from the Commission to the European Parliament and the Council on Measuring Crime in the EU: Statistics Action Plan 2011- 2015, pg. 7. The communication notes that though corruption was included in the corresponding action plan for 2006-2010, no work had been done. The indicators on corruption expected to be developed within the context of the first EU Anti-corruption report are considered as part of the action plan.

356 Under TFEU, art 83(1). See Commission proposal COM(2013) 45 of 5 February 2013, for a directive of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing, pg. 2

357 Corruption was also mentioned as an element within the EC's 2010 action plan on the EU's Internal Security Strategy, principally by way of the EU anti-corruption report mechanism. See Communication COM(2010) 673 of 22 November 2010 from the Commission to the European Parliament and the Council on the EU Internal Security Strategy in Action: Five steps towards a more secure Europe, esp. pp. 5, 18.

358 An element also specifically identified in the AC communication, see AC communication, pg. 4

359 Communication COM(2011) 293 of 26 May 2011 from the Commission to the European Parliament, the Council, the EESC and the CoR on the protection of the financial interests of the European Union by criminal law and by administrative investigations, pg. 3

360 Communication COM(2011) 293 of 26 May 2011 from the Commission to the European Parliament, the Council, the EESC and the CoR on the protection of the financial interests of the European Union by criminal law and by administrative investigations, pp. 3, 4
Amongst its provisions are proposed definitions for corruption and fraudulent behaviour to be criminalised in the Member States; and calls on member states to apply effective sanctions against such activity– via the setting out of minimum criminal sanctions and imprisonment terms for serious offences, *inter alia*. The proposal seeks to encourage the criminalisation of money-laundering of the proceeds from fraud against the EU budget, and the freezing and confiscation of proceeds at national level. At the time of writing the proposal was still under initial consideration by the EP.

361 The revision aims, *inter alia*, to improve OLAF's cooperation with member states and Europol and Eurojust, and also strengthen procedural guarantees on the protection of fundamental rights. See http://www.europarl.europa.eu/oeil/popups/ficheprocedure.do?id=536743#keyEvents for additional information

362 Commission proposal COM(2013) 534 of 17 July 2013 for a Council Regulation on the establishment of the European Public Prosecutor's Office

363 See, for example, T. Vogel, 'Support for OLAF reforms', *European Voice*, (4 July 2013), available at http://www.europeanvoice.com/article/imported/support-for-olaf-

stiff resistance from member states.[364]

The aforementioned CAFS seeks also to strengthen preventative safeguards to fraud against the EU budget, including via specific provisions in the EU's financial programmes for 2014-2020, revision of the existing EU directives on public procurement, and the development of sector specific anti-fraud strategies within EC departments with the involvement of OLAF.[365] This latter, sector-specific work also aims to increase support and engagement between EC directorates-general and member state authorities jointly managing EU funds – not least in response to findings from the European Court of Auditors on irregularities in expenditure at the national level.[366] The EC indeed issued two new calls in 2013 to national and regional authorities to provide technical support to the investigation of fraud via the OLAF-administered Hercule II programme.[367]

Despite these broad initiatives by the EC on financial crime, no headline legislative action explicitly on corruption or corruption offences has been pronounced to date. According to the Commissioner in charge of home affairs, Cecilia Malmström, "Member States have, broadly speaking, set up the necessary legal instruments and institutions responsible for prevention and fight against corruption".[368] Yet, where gaps do exist, for example with regard to advanced whistle-blower laws which exist in only 4 EU countries,[369] the EC appears reluctant to act: in response to calls in 2013 from the EP for the EC to propose EU-wide legislation on whistle-blower protection, the Commissioner announced that, "[f]or the time being, the Commission does not however intend to propose new legislation on the definition of corruption or approximations of statutes of limitations of corruption offences or protection for whistle-blowers".[370] This demonstrates that the EC clearly sees the EU anti-corruption report mechanism as the central tenet of its work in this field, despite the concerns outlined above: the Commissioner signalled the lack of ambition when asserting that the report will, "to some extent, stimulate political commitment to fight corruption more vigorously".[371]

reforms/77744.aspx (last accessed on 5 November 2013)

364 V. Franssen, 'National parliaments issue yellow card against the European Public Prosecutor's Office', on European Law Blog (4 November 2013), available at http://europeanlawblog.eu/?p=2025 (last accessed on 5 November 2013)

365 M. Příborský, 'The new Commission anti-fraud strategy: revamped fight against fraud at EU level', ERA Forum, Vol 12 No 3 pp. 373-386 (2011), pp. 380-382

366 See for example Communication COM(2013) 334 of 5 June 2013 from the Commission to the European Parliament, the Council and the Court of Auditors on the Synthesis of the Commission's management achievements in 2012

367 See HERCULE II Call for proposals for Technical assistance for the fight against EU fraud — 'Investigation support' [2013] OJ C176/22 (21 June 2013), available at http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2013:176:0022:0023:EN:PDF (last accessed on 5 November 2013)

368 C. Malmström, 'Fighting corruption: From intentions to results', Second Regional Workshop on the EU Anti-Corruption Report, Gothenburg, Sweden, on 5 March 2013 (Speech 13/187)

369 See Transparency International, 'Whistleblowing in Europe', [2013], available at http://www.transparency.org/whatwedo/pub/whistleblowing_in_europe_legal_protections_for_whistleblowers_in_the_eu (last accessed on 8 November 2013)

370 See N. Nielsen, 'EU-wide whistleblower protection law rejected', *EU* Observer, (23 October 2013), available at http://euobserver.com/justice/121873 (last accessed on 5 November 2013)

371 See N. Nielsen, '€120 billion lost to corruption in EU each year', *EU Observer*, (6 March 2013), available at http://euobserver.com/justice/119300 (last accessed on 8 November 2013)

COOPERATION WITH OTHER ACTORS AND PUBLIC EDUCATION ACTIVITIES ON ANTI-CORRUPTION

To what extent does the European Commission work with public watchdog agencies, business and civil society on anti-corruption initiatives, and inform and educate the public on its role in fighting corruption?

The recent multi-stakeholder work of the EC on anti-corruption issues has primarily taken place in the context of its preparation of the 1st EU Anti-Corruption Report, with Commissioner-level support visible. While it does engage on anti-corruption issues in international and inter-governmental fora, it does not lead this work. Though not actively undertaking public education activities on anti-corruption, the EC does conduct public opinion surveys on corruption, is supporting a large 5-year inter-disciplinary research project into anti-corruption and provides funding support for external actors to work on relevant activities.

In the preparation of the first EU Anti-Corruption Report, the EC engaged with experts and practitioners both via a network of local research correspondents and a dedicated expert group,[372] but also via regional workshops gathering policy-makers, NGOs, academics, and media and business representatives. The workshops served to promote the report and source input, with high-profile support demonstrated via the address of the Commissioner for home affairs, Cecilia Malmström, to a workshop held in Sweden.[373]

Following the work on the report, the European Commission is further looking into corruption risks in the spending of EU funds managed by member states, reaching out to national authorities but also civil society to address conflicts of interests and other risks involved in disbursing the 80% of EU budget through national actors.[374]

Outside legislative cooperation on relevant issues, the EC takes part in the Europol's Serious and Organised Crime Threat Assessment (SOCTA) expert group, where it contributes to defining the methodology used for this work.[375] This activity feeds into the EU's overall strategic priorities for crime prevention, though corruption is here considered as a cross-cutting 'crime enabler', rather than a specific 'crime area' or priority area for action.

While the EC is not leading international cooperation on anti-corruption and anti-fraud issues, it does sit as a member in the Financial Action Task Force,[376] including participation in expert meetings on corruption,[377] and in the context of its 2011 anti-corruption package, has been assessing the possible increase of EU participation – leading potentially to full membership – in the Council of Europe Group of States against corruption (GRECO).[378] *Ad hoc* engagement is also undertaken in other fora, such as within the OECD's programme on fighting corruption in the public sector.[379] The EC also cooperates with stakeholders such as the IOC and the Council of Europe, on the issue of combating match-fixing in sport, both at European and international levels.[380]

Funding opportunities are provided by the EC to support external anti-corruption activities. Under the auspices of the Directorate-General for Home Affairs, for example, 7m EUR of grant funding was made available in 2012[381] and 2013[382] for projects centred on financial and economic crime, with particular attention also paid to projects supporting civil society and the training of investigative journalists. These grants were also envisaged to support

372 See http://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupDetail&groupID=2725

373 See http://www.csd.bg/artShow.php?id=16291 (accessed on 8 November 2013) and C. Malmström, 'Fighting corruption: From intentions to results', Second Regional Workshop on the EU Anti-Corruption Report/Gothenburg, Sweden, on 5 March 2013 (Speech 13/187)

374 See http://ec.europa.eu/regional_policy/conferences/anti_corruption/index_en.cfm

375 Europol, SOCTA 2013, [2013] pg. 42

376 'The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system.' See http://www.fatf-gafi.org/ (accessed on 8 November 2013)

377 See Financial Action Task Force, 'President's Summary of Outcomes from the Experts' Meeting on Corruption, 12 October 2013', [2013], available at http://www.fatf-gafi.org/media/fatf/documents/statements/Corruption-Expert-meeting-Oct-2013.pdf (accessed on 8 November 2013)

378 See Communication COM(2012) 604 of 19 October 2012 from the Commission to the European Parliament, the Council, and the EESC on the Participation of the European Union in the Council of Europe Group of States against Corruption (GRECO), [2012]

379 For example, EC Vice President Šefčovič took part in a 'high-level policy dialogue' at the OECD Forum on Transparency and Integrity in Lobbying in June 2013, within the context of the Fighting corruption in the public sector' agenda. See M. Šefčovič, 'Opening remarks', OECD Forum on Transparency and Integrity in Lobbying, Paris, France on 27 June 2013 (Speech 13/581)

380 See http://ec.europa.eu/sport/what-we-do/match-fixing_en.htm

381 See Commission Implementing decision C(2012) 4318 of 9 July.2012 on amending Decision C(2011) 6306 of 19 September 2011 on adopting the annual work programme for 2012 for the specific programme on the "Prevention of and Fight against crime" as part of the General Programme "Security and Safeguarding Liberties" serving as a financing decision

382 See Commission Implementing decision C(2012) 6402 of 19 September 2012 on adopting the annual work programme for 2013 for the specific programme on the "Prevention of and Fight against Crime" as part of the General Programme "Security and Safeguarding Liberties" serving as a financing decision

projects providing input into the EU Anti-Corruption Report. Funding was also available to support improvements in cross-border police cooperation (including enhancing information exchange and communication with Europol),[383] judicial cooperation,[384] and to prevent match-fixing through 'the education and information of relevant stakeholders, such as athletes, referees, match officials and sports administrators'.[385]

The largest-scale multi-stakeholder anti-corruption initiative being supported by the EC, outside its formal policy work, is the ANTICORRP[386] research project to which it provides 8m EUR of funding under the Seventh Framework Program. This inter-disciplinary project gathers 21 partner institutions – ranging from universities, to think-tanks and civil society organisations – and 74 researchers, with the aim to 'investigate and explain the factors that promote or hinder the development of effective anticorruption policies and impartial government institutions', with a focus on Europe.[387] The project will run from 2012-2017, and though the EC is not involved operationally, research results are intended to reach both policy-makers and the public through media tools and workshops.[388]

Though the EC is not engaged in any specific public education campaigns related to anti-corruption or anti-fraud, it has released *Eurobarometer* surveys regarding public opinions on corruption in 2005, 2007 and 2009, with the most recent survey commissioned by the Directorate-General for Home Affairs and released in 2012.[389]

383 Ibid
384 Commission Implementing decision
of 20 December 2012 on the adoption of a financing decision for 2013 in the framework of the Programme "Criminal Justice"
385 See http://ec.europa.eu/sport/what-we-do/match-fixing_en.htm
386 The complete title of the project is 'Anticorruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption'. For more information, see http://anticorrp.eu/
387 http://ec.europa.eu/research/social-sciences/projects/487_en.html
388 See http://anticorrp.eu/ (accessed on 8 November 2013)
389 European Commission, 'Corruption', Special Eurobarometer 374 [2012], available at http://ec.europa.eu/public_opinion/archives/ebs/ebs_374_en.pdf (accessed on 8 November 2013)

SAFEGUARDING INTEGRITY IN EU PUBLIC PROCUREMENT TO REDUCE CORRUPTION RISKS

To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?

Wide-ranging, though complex legal provisions are in place to safeguard the integrity and transparency of EC public procurement, differing primarily vis-à-vis contract value. However a number of exceptions invite potential risks for fraud, particularly with regard to possibilities for closed bidding procedures and low-value contracts. While safeguards extend to the evaluation process – though are not laid down for the needs assessment phase – committee decisions are ultimately advisory with the authorising officer making the final award decision. Complaint measures are in place, including judicial recourse possibilities. Serious concerns pertain to the effectiveness of the current mechanisms to exclude companies from tenders and related fraud-deterrence, and the use of discretionary exclusion powers.

Extensive rules governing public procurement conducted by the European Commission (EC) are laid down in the EU Financial Regulation (FR) and its implementing rules,[390] which explicitly state that all contracting must respect the principles of 'transparency, proportionality, equal treatment and non-discrimination'.[391] [392]

Any natural or legal person within the EU, or from a third country with a specific procurement agreement with the EU, can take part in an EC tender process.[393] Authority for contracting is delegated within the institution,[394] and EC departments can make use of both open and limited competitions. There are five main forms of procedure possible:[395] *open* – where invitations to tender are open to all; *restricted* – where, after an open call for interest, candidates fulfilling selection criteria are invited to tender (normally, at least five[396]); and *negotiated* – where the EC invites particular candidates to tender (normally, at least three[397]) and can negotiate the terms of a tender with them. In addition, the EC can undertake *contests* – where a competitive tender is used to 'acquire a plan or design proposed by a selection board',[398] and *competitive dialogues*: the latter are used for 'complex' projects where the EC may not be able to define in advance the precise technical solution it needs and through which it can, under strict conditions, hold discussions with bidders prior to and even after the submission of tenders.[399]

The specific rules in place for each of these procedures are broadly governed by the value of the foreseen contract, according to specific thresholds,[400] and provisions are in place to prevent contracting departments from seeking to split contracts or estimate their value in order to avoid additional threshold-specific obligations.[401] Nevertheless, they retain the right to decide which procedure they use, but cannot use this to distort competition. No specific legal provisions are, however, in place regarding the assessment of needs by EC departments considering procurement, nor for the pre-contracting phase, aside from the requirement that the staff initiating contract procedures and those verifying payments be distinct, and that they have the appropriate professional skills.[402]

With the exception of negotiated procedures (further explanation below), tenders must be put out 'on the broadest possible terms', and contract notices – containing legally-prescribed information – must be advertised in advance to ensure competition.[403] The latter must be published in the *Official Journal of the European Union* (OJ) when

390 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, (Financial Regulation); Commission Delegated Regulation (EU) 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union [2012] OJ L362/1, art 32 (FR implementing rules)

391 FR, art 102

392 The EU also adheres to the World Trade Organization (WTO) Agreement on Government Procurement (GPA) with respect to its member states. The agreement is binding and provides for fair international competition for public contracts, bans discrimination in the awarding of public contracts and lays down procedural rules. See http://www.wto.org/english/tratop_e/gproc_e/gp_gpa_e.htm (last accessed on 19 September 2013).

393 FR, art 119

394 FR, art 65(3)

395 FR, art 104

396 Provided a sufficient number pass the selection criteria; nonetheless, the number of candidates must be sufficient to ensure genuine competition and no new candidates can be invited. See FR implementing rules, art 128

397 See previous footnote. Further exceptions apply to negotiated procedures. See FR implementing rules, art 128

398 Contests are mainly used in the fields of architecture and civil engineering. See FR implementing rules, art 130.

399 Ibid, art 132 and Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [2004], OJ L134/114, art 29 (Procurement directive)

400 5m EUR for public works, and 200k EUR for service or supplies contracts. FR, art 118 and Procurement directive.

401 FR implementing rules, art 168

402 FR, art 66(5), (6), (7), and FR implementing rules, art 50

403 FR implementing rules, art 123. This excludes specific contracts under a framework contract for which an open competition would normally already have been held.

exceeding the aforementioned thresholds,[404] and are available on a central EU website,[405] while contracts under 60k EUR need only be 'advertised by appropriate means'.[406] In practice, contracts between 25-60k EUR in value are advertised on the website of the specific EC department tendering services, while lesser-value contracts are not normally advertised at all: potential bidders are encouraged, however, to make themselves 'visible on the market'.[407] This latter element appears, however, to contradict the EC's own advice to member states regarding the absence of active advertising as insufficient to open the market to competition.[408]

Legislation allows exceptions to open bidding, with the EC able to use a negotiated procedure without publishing a contract notice in advance for contracts below a value of 60k EUR,[409] however it can also be used irrespective of the value of the contract in a broad number of situations.[410] In most of these situations, provided that a 'sufficient number satisfy the selection criteria', no less than three candidates should be invited to tender, and the number should be 'sufficient to ensure genuine competition'. But, this latter provision does not apply in three specific cases:[411] where the value of a contract is below 15k EUR (can be awarded upon a single tender[412]); for legal services contracts[413] (where 'appropriately' advertised); and for contracts 'declared to be secret' by the EC or needing special security measures to be carried out. No financial provisions define this latter exception further.

Negotiated procedures can also be undertaken after a contract notice has been published, again, irrespective of the value of the contract but only in specific situations. Notably, this includes where contract specifications cannot be precisely determined to allow the best tender to be selected under a different procedure, particularly in the case of financial and intellectual services.[414]

Thus, the EC has a broad basis upon which to hold closed bidding procedures, but it must report specifically on the use of the negotiated procedure to the budgetary authority each year, and indicate mitigating measures to be taken should the use of the procedure grow disproportionately to other forms of procurement. No specific proportion is, though, laid down in law. In addition, the EC is obliged to provide the budgetary authority with an annual list of contractors awarded secret contracts (not their content) and include this list in its summary Annual Activity Report.[415]

Adequate time limits for receiving tenders are laid down in law, and – aside from duly justified urgent cases – shortened periods can only be used provided that the relevant EC department publishes in advance a 'Prior information notice' indicating the total estimated value of all contracts to be awarded in a given financial year.[416]

Minimum requirements for tender documents, including award, selection and exclusion criteria, and any requirement to use standard reply forms, are set in legislation. Provisions are also in place regarding the content of technical specifications, including the use of international or European standards where applicable, seeking to safeguard objectivity in, and equal access to, the bidding/selection process.[417]

Contact with candidates during the tendering process is allowed within strict limits, and must be recorded. Such contact must respect equal treatment and transparency, and must not change the basic details of the contract: however, information clarifying the nature of the contract need only be provided (on the same date) to *those candidates requesting it*.[418]

Selection criteria must be objective, 'clear and non-discriminatory', and any information required to prove capacity

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404 5m EUR for public works, and 200k EUR for service or supplies contracts. FR, art 118 and Procurement directive. Other forms of advertising can be used, but must refer to the notice in the *Official Journal* where applicable, which is considered the only 'authentic' notice: FR implementing rules, art 126.

405 Ted (Tenders electronic daily), a supplement to the Official Journal, can be accessed at http://ted.europa.eu

406 FR implementing rules, art 124(1). Court of Justice of the European Union jurisprudence determines that appropriate advertising is that of a degree 'sufficient to enable the market to be opened up to competition and the impartiality of procedures to be reviewed'. See Case C-324/98, *Telaustria Verlags GmbH and Telefonadress GmbH v Telekom Austria AG, joined party: Herold Business Data AG* [2000] ECR I-10745, para. 62

407 *Doing business with the European Commission* (2009), Luxembourg; Publications Office of the European Union, pg. 3

408 'The same [an insufficient degree of advertising to enable the market to be opened up to competition] applies to all forms of 'passive' publicity where a contracting entity abstains from active advertising but replies to requests for information from applicants who found out by their own means about the intended contract award.' See Commission Interpretative Communication on the Community law applicable to contract awards not or not fully subject to the provisions of the Public Procurement Directives [2006] OJ C179/2, para. 2.1.1.

409 FR implementing rules, art 137

410 These include for the repetition of services provided that advance notice is given in an original, competitive tender; for the provision of additional, unforeseen services/works necessary to complete an on-going project (here, the additional contract cannot exceed 50% of the value of the initial contract); for building contracts (after 'prospecting the local market'); for commodity market purchases; or where, for technical/artistic reasons or those connected to the protection of exclusive rights, a 'contract can only be awarded to a particular economic operator'. See ibid, art 134

411 FR implementing rules, art 124

412 Ibid, art 137(2)

413 These relate to legal services contracts according to the Common Procurement Vocabulary nomenclature. See Commission Regulation (EC) No 213/2008 of 28 November 2007 amending Regulation (EC) No 2195/2002 of the European Parliament and of the Council on the Common Procurement Vocabulary (CPV) and Directives 2004/17/EC and 2004/18/EC of the European Parliament and of the Council on public procurement procedures, as regards the revision of the CPV [2008], OJ L74/1, Annex II

414 FR implementing rules, art 135, esp. 135(1(c))

415 FR implementing rules, arts 124(2), 134

416 FR implementing rules, art 123. This excludes information on negotiated procedures without a prior publication of a contract notice.

417 FR art 105 and FR implementing rules arts 138-139

418 FR art 112, and FR implementing rules art 160

should be proportional.[419] However, such proof does not need to be requested for contracts below 60k EUR.[420] The economic and financial capacity of sub-contractors must also be proven.[421]

Being the subject of judgements (to the high standard of *res judicata)* for corruption or fraud against the EU's financial interests, for money-laundering, and/or being bankrupt are among the criteria, laid down in law, excluding candidates from *participation* in procurement procedures. The EC also has wide discretionary power to exclude a candidate 'guilty of grave professional misconduct proven by any means' which it can justify.[422] Evidence, including a declaration of honour, must be provided to demonstrate that none of these criteria apply, and can also be requested for sub-contractors. However declarations are not required for contracts below 15k EUR.[423] Candidates can be excluded on the determination of the EC for a maximum period of five years, extendable to ten for repeated offences, with no minimum period specified.[424]

Exclusion from *awards* can be enacted on the basis of a conflict of interest, due to exclusion from participation or due to misrepresentation or failure to provide required information. The EC can, furthermore, impose administrative or financial penalties on candidates and contractors for breach of their obligations, including where they meet exclusion criteria, and, from 2013, is able to publish information on such penalties – including as a deterrent to further breaches of procurement rules.[425] At the time of writing, only one such penalty had in fact been effected: this was imposed before 2013, and had therefore not been published.[426]

A central exclusion database is maintained by the EC – which despite its deterrence value, is *non-public* – to which all EU institutions, agencies and bodies must submit information on excluded tenderers and which they must take into account when contracting. Member states must also inform the EC of parties convicted of illegal activities against the EU's financial interests for inclusion in the database and may choose to consider the information therein when contracting themselves.[427] Legally however, the EC can choose not to exclude an entity meeting certain exclusionary criteria, including bankruptcy, in monopoly situations and where justified to 'ensure the continuity of service' – though no assessment criteria for the latter are provided.[428] At the time of writing, the database featured 359 entities, with only one entity excluded for grave professional misconduct and only 6 for convictions of fraud, corruption, money-laundering or involvement in a criminal organisation.[429] This raises serious questions on how stringently exclusionary criteria are being applied and on how systematically information is being provided to populate the database: indeed, not all EU Member States have arranged their access to it, and are therefore neither consulting the database, nor providing the EC with information to populate it. At the time of writing, the UK, the Netherlands and Germany were among those member states yet to be connected.[430]

In addition, the EC indicates that previously, exclusion on the basis of 'grave professional misconduct' required the decision of the College, implying a cumbersome and political decision-making procedure:[431] the procedure was in fact initiated only 7 times, between 2009-2012.[432] Although the process has since been streamlined to enable individual Directors-General (as Authorising Officers for financial transactions) to decide upon such exclusions in consultation with the EC Legal Service and Directorate-General for the Budget, it appears that there remain practical difficulties in reaching a satisfactory, internal, definition of 'grave professional misconduct' – which is preventing greater use of this discretionary power.[433] Indeed, it may be preferable that a centralised - technical, rather than political - body be used to decide upon discretionary exclusions, to ensure consistency in how these decisions are taken.

With regard to the tender evaluation process, awards are made either on the basis of lowest price or best value-for-money: for the former, all eligible, submitted prices must be published; for the latter, weighting and other criteria must be included in the contract notice.[434] Provisions are in place for the EC to address situations where it perceives tenders to be abnormally low.[435]

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419 FR implementing rules, arts 146-148. This pertains to financial, economic, professional and technical capacity.
420 Ibid, art 146(6). The possibility not to request such proof is also possible for contracts in the field of external actions under 300k EUR for service and supply contracts, and 5m EUR for works contracts.
421 FR implementing rules, art 147(3)
422 FR, art 106 (1c)
423 FR art 106, and FR implementing rules arts 141-143
424 FR implementing rules, art 142
425 FR art 109. Penalties must be proportional, and the party concerned is allowed an opportunity first to present their observations. Publication of a penalty decision can only be done after all legal remedies have been exhausted, in due consideration of data protection, and remains public until the end of any exclusion period or until all financial penalties have been repaid (if the only sanction).
426 Email from EC DG for Budget to Mark Perera of 18 October 2013
427 Ibid, art 108 and FR implementing rules art 144
428 FR art 106(2). The other cases pertain to grave professional misconduct, or incompliance with social security or tax payments.
429 Email from EC DG for Budget to Mark Perera of 18 October 2013
430 TI-EU analysis based on research interviews.
431 Ibid
432 Email of 19 December 2013, from EC DG for Budget to Mark Perera
433 TI-EU analysis based on research interviews.
434 FR implementing rules, arts 149 and 157(3(b)). Electronic auctions can also be used, and awards made on the basis of either lowest price of best value-for-money: the contract notice must then include information on the mathematical formulae used to determine the latter and to determine rankings during the auction. See ibid, art 150.
435 Ibid, art 151

For all contracts above 60k EUR, the Authorising Officer (AO) must appoint a committee to open all tenders and determine their eligibility according to submission rules, and an evaluation committee to rank tenders and provide an *advisory* award opinion. Committee members must be free of any conflicts of interest and the AO can appoint external experts to the evaluation committee provided they also hold no conflicts of interest. Responsibility for verifying this lies, however, with the AO.[436] While signed records from the evaluation must be kept, it is ultimately the AO who makes the award decision and s/he need not state in the award decision whether or why they have deviated from the committee's opinion. However, minimum information to be included in the award decision, including on rejected tenders, is laid down in law.[437]

Specific provisions ensure transparency in the awarding process: unsuccessful tenderers must be notified of rejection at each stage and of the final award, and can request reasoning.[438] An award notice must be published in the OJ for all contracts with a value above legally laid down thresholds[439] within 48 calendar days of signature, and in sufficient time before signature in the case of a negotiated procedure without prior publication of a contract notice. Publication of information on contract awards above 15k EUR need only be done after the end of the financial year.[440]

With regard to oversight of EC procurement, normal financial and audit rules apply and OLAF retains investigative powers, including to conduct on-the-spot checks in member states;[441] in addition, the EC can suspend or cancel a procurement procedure in the case of substantial errors, irregularities or fraud and, after a contract has been awarded, can suspend, or terminate it, and/or withhold or recover payments, where there is proof of the same.[442] Participants in tender procedures also have the right to submit complaints to the contracting EC department, to the European Ombudsman, or to the Court of Justice of the European Union, where they consider a process to have been irregular.[443]

436 FR art 111(4), (5) and FR implementing rules, art 157 Each committee has to be 'made up of at least three persons representing at least two organisational entities of the institution concerned, with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. Where the contract is of an inter-institutional nature, the committees must reflect this proportionally. Committees can comprise the same members. The AO can decide to remove the responsibility for assessment against selection and exclusion criteria from the evaluation committee, though ensuring that these criteria are ultimately assessed in a manner free of conflicts of interest.

437 FR implementing rules, art 159 and FR art 113(1)

438 FR implementing rules, art 161

439 5m EUR for public works, and 200k EUR for service or supplies contracts. See FR implementing rules 123 and 170(1) and FR art 103(1). An award notice is not compulsory for a specific contract based on a framework contract, however, information on the value and contractors of these contracts must be published on the contracting authorities website no later than 30 June following the end of the financial year, if the concluded contract or aggregate volume of the specific contracts exceeds the said thresholds.

440 Information on the recipients as well as nature of contracts above the value of 15k EUR directly managed by the EC, must be published on a website, no later than 30 June of the next financial year. See FR art 35(2) and FR implementing rules art 21. For contracts above 60k EUR where an individual award notice was not done and 124(4) for contracts between 15-60k EUR, information must respectively be sent to the Publications Office, or published on the internet, no later than 30 June of the next financial year. See FR implementing rules, arts 124(3) and (4).

441 See FR, including art 119(2), and Accountability (Law) report for further details.

442 FR art 116

443 See FR implementing rules art 161, TFEU arts 20(2(d)), 228, 263 and Accountability (Law) report for further details. The General Court has jurisdiction over cases regarding EC procurement; complaints have to be submitted within two months of the contract award. See *Doing business with the European Commission* (2009), Luxembourg; Publications Office of the European Union, pg. 14. Under FR art 118(2) and FR implementing rules art 171, contracts covered by the Procurement directive 2004/18/EC (above 200k EUR for service/supply contracts, and above 5m EUR for works contracts), unsuccessful or aggrieved tenderers' also have the opportunity to submit comments or requests about a procedure for a standstill period of 14 days between the award and signature of the contract.

COURT OF JUSTICE OF THE EUROPEAN UNION

Strengths	Weaknesses
• Specific Code of Conduct for members of judges' private offices in place • Pro-active publication of decisions on all cases • Strengthened vetting procedure for new members through independent committees • Strong position vis-à-vis EU institutions and member states	• Resource constraints in judicial and integrity-related functions • Reliance on self-regulation regarding members' integrity • Lack of internal whistle-blowing provisions • Lack of transparency in judicial decision-making and in the vetting of candidates • No powers to rule on corruption cases

Recommendations

- The EU budget authorities should provide sufficient resources to the Court, and EU member states should strengthen the Court's independence regarding its internal organisation to manage resource constraints
- The Court should ensure external involvement in the regulation of its members' conduct
- The Court should strengthen the transparency of judicial decision making and broadcast already public hearings to allow access by a wider public
- EU Member States should provide powers to the Court to adjudicate on corruption-related cases within EU institutions, for instance by setting up a specialised EU court or by enlarging the powers of the Civil Service Tribunal

About the Court of Justice of the European Union

The Court of Justice of the European Union (CJEU) was established in Luxembourg by the Treaty of Paris in 1951. It rules on actions brought to it by an EU member state, other EU institutions, natural persons or individuals; it interprets EU law and the validity of acts of EU institutions; and fulfils a number of additional functions assigned to it by the EU Treaties.

The CJEU as an institution consists of three separate courts: the Court of Justice, the General Court and the Civil Service Tribune. The Court of Justice is the highest instance of the CJEU, and decides on actions for annulment of decisions of EU institutions and appeals from the General Court, amongst other issues. It is composed of 28 judges (equal to the number of member states) and 8 Advocates General. It is headed by a President, who since 2012 is supported by a Vice-President. Decisions can be taken by the full Court or in chambers of 3, 5 or 15. The General Court, which deals with most EU court cases, for instance those brought to court by individuals or companies directly affected by a decision of EU institutions, currently comprises 28 judges, but this number can be enlarged. The Tribunal was established in 2005 as a 'specialised court' to deal with a rising number of cases brought by EU staff.

Members of the Court are appointed for renewable terms of 6 years by common accord of EU member states and are vetted by two committees (one for the Tribunal) composed of former members and persons of similar qualification.

Each of the CJEU's three courts maintains a registry that handles respective case files, but all share a common administrative body headed by the Registrar of the Court of Justice. In 2013, the CJEU had an annual budget of approximately 355m EUR and about 2000 staff members.

INDEPENDENCE (LAW)

To what extent is the Court of Justice of the European Union independent and free from subordination to external actors by law?

The Court of Justice of the European Union enjoys a fair level of independence as a Treaty-based EU institution. It can adjudicate without interference from other institutions and bodies. Judges' independence is protected by the secrecy of their deliberations. However, their terms are relatively short, which could undermine independence due to the need to ensure re-nomination by national authorities. Operationally, the Court's independence is limited in law as its budget, salaries, its statute and rules of procedure, as well as increases of the number of members of the General Court, are decided by other EU institutions.

The scope of the powers of the Court of Justice of the European Union and its core operations and procedures are laid down in the EU Treaties1 changes to which require high procedural demands to be met.[2] Details of the Court's operations are defined in further parts of the Court's Statute which can be changed by the Council and European Parliament by ordinary legislative procedure, either on a proposal of the Court or of the European Commission. Changes to the rules of procedure need approval by the Council.[3]

Judges are appointed by 'common accord' of all EU governments following the non-binding opinion of a committee of seven former judges or persons with similar qualification, one of which is proposed by the European Parliament: the independence of candidates is a pre-requisite for their selection.[4] Provisions prohibiting Court Judges and Advocates General from holding any political or administrative positions while in office, and from undertaking any unauthorised external activity, are featured in a section of the Court's Statute that cannot easily be changed.[5] This section also provides for their immunity, which can only be lifted by a decision of the Court. While in office, a judge can only be dismissed following a unanimous opinion of all Judges and Advocates General of the Court of Justice.[6] The terms of judges and advocates general are limited to six years, and re-appointment is possible.[7] Since deliberations of the Court are secret8 and decisions are taken in chambers of at least three judges,9 the law makes it difficult to influence unduly or not to re-nominate judges based on the substance of their decisions.

The independence of the staff of the Court is governed by the EU's staff regulations (see respective overview in the European Commission section). The Code of Conduct for staff of the cabinets of Court members (so-called 'référendaires') highlights the need for their independence due to the special function they exercise.[10] This code also specifies that only the President of the relevant Court to which the référendaire is attached can authorise outside activities.[11]

1 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art 19 (TEU); Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts 251-281 (TFEU).
2 TEU art. 48
3 TFEU, arts. 253-4
4 TEU art. 19, TFEU art. 253-255, 257
5 Protocol (No 3) on the statute of the Court of Justice of the European Union [2012] OJ C326/210, arts 3-4 (CJEU Statute). TFEU art. 281 exempts Title I of the Protocol including the Statute from changes by ordinary legislative procedure.
6 CJEU Statute, art. 6
7 TFEU, art. 253
8 CJEU Statute, art. 2
9 CJEU Statute, art. 17
10 Décision du 17 février 2009 portant adoption de règles de bonne conduite des référendaires.
11 Règles de bonne conduite des référendaires, art. 3.

INDEPENDENCE (PRACTICE)

To what extent does the EU judiciary operate without interference from the government or other actors?

The independence of the Court of Justice of the European Union is rarely questioned and there are no indications that the safeguards in place for its judicial independence are not working. The decisions of the Court have also not led to any serious allegations of a lack of independence and never has a judge been removed on such grounds. Limits to the Court's independence with regard to its own resources and main governing rules, have had negative effects on its judicial activities.

There is no evidence of undue encroachment by other EU institutions on the Court's judicial independence, and calls for removal of judges from other EU institutions[12] are rare. Of the 10 requests for the lifting of the immunity of members of the Court between 2004 and 2013, only one included a request from a third party and not from the member concerned. [13] In this one case, the Court refused to withdraw immunity beyond the request of the member her-/himself because it could not estimate whether this would impact negatively on the interests of the European Union.[14]

Since the entry into force of the Lisbon Treaty and the introduction of the vetting of judges, professional qualifications and independence have been part of the assessment criteria for new judges;[15] this has also reduced the risk of purely political appointments by member state governments. The salaries of judges and advocates general, although determined by the Council, are among the highest within the EU institutions.[16]

There are no indications that the secrecy of deliberations of judges has been undermined, which reduces the potential scope for undue outside pressure on individual judges based on their past decisions.[17] The decisions of the Court have also not been found to (dis)favour particular actors or institutions or to shy away from interpreting the Court's role 'to create judge-made law',[18] both indicating a strong level of judicial independence.

Several factors have highlighted the limits of the Court's independence with regard to its internal organisation and ability to react to changing circumstances, such as increased case-load. These include on-going resource constraints in recent years (see the sub-chapter on Resources); the delays in the adoption of a reformed Statute and rules of procedure for the CJEU's courts – as requested by the Court itself – due to disagreement in particular in the Council;[19] as well as questions over the speed of re-nomination procedures by member states. The impact of this limited autonomy is demonstrated, for example, in the fact that the ability of Civil Service Tribunal to work is heavily dependent upon the timing of EU governments' nominations of new candidates.[20]

No particular evidence[21] points to the lack of independence of Court staff.

12 E.g. R. Watson, 'MEP tries to remove Belgian judge from European Court', *European Voice* (11 September 1997), available at http://www.europeanvoice.com/CWS/Index.aspx?PageID=150&articleID=34274 (last accessed on 28 January 2014)
13 Based on partially released minutes of Court of Justice general meetings received through the access to Document request registered as 0005/2013D at the CJEU.
14 Procès verbal (PV) de la Réunion Général de la Court du 7 février 2006, partially released through access to document request 0005/2013D.
15 Art. 255 Committee 2nd Activity Report, Council Doc. 5091/13.
16 I.e. the salary of the President of the Court is 138% of highest EU civil servant grade salary, 125% for the Vice-President and 112.5% for judges (Art. 2 , Regulation 422/67/EEC (last amended 4 October 2012)).
17 The effective secrecy requires academics to deduct potential core preferences of judges through statistical methods (cf. Malecki, Michael (2013): Do ECJ judges all speak with the same voice? Evidence of divergent preferences from the judgments of chambers; Journal of European Public Policy 19(1); 59-75.)
18 A. Hinarejos, 'Social Legitimacy and the Court of Justice of the EU: Some Reflections on the Role of the Advocate General', University of Cambridge Faculty of Law Research Paper (2012), Available at SSRN: http://ssrn.com/abstract=2146138.
19 N. Hirst, 'Slow justice', *European Voice* (29 November 2013), available at http://www.europeanvoice.com/CWS/Index.aspx?PageID=215&articleID=78869 (last accessed on 28 January 2014)
20 Letter from M. S. Van Raepenbusch, President of the European Civil Service Tribunal to Mr L.A. Linkevičius, President of the Council of the European Union , Council doc. 16903/13 of 26 Nov 2013.
21 Such as recent OLAF cases.

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EU judiciary?

While the Court of Justice of the European Union is subject to the general requirements of openness for EU institutions laid down in the EU Treaties, the Treaties foresee the public's right of access only to Court documents relating to its administrative work. The deliberations of judges and their individual opinions have to remain secret, but final decisions have to be published. The law does not foresee transparent appointment and vetting procedures for judges, nor does it require publication of declarations of interests of judges, advocates general, or the Court's staff.

In principle, the EU Treaties foresee that the institutions shall conduct their work as openly as possible,[22] but limit the provisions on access to EU documents to the administrative tasks of the Court of Justice of the European Union (CJEU).[23] The Statutes of the Court clarify further that, while hearings of the Court must be public,[24] judges' deliberation 'shall be and shall remain secret'.[25] The initiation of proceedings has to be published in the EU's *Official Journal*[26] (OJ) and judgements must be read in open court[27] with at least the operational parts of judgements published in the OJ.[28] Instructions to the Registrars of the three Courts further specify the types of decisions and documents that need to be published.[29]

Since December 2012, the Court has specific procedural rules in place resulting from its obligations to allow access to documents relating to its administrative tasks,[30] which oblige the use of a form provided by the Court[31] and foresee a limit of one month for reacting to requests for documents, extendable by another month.[32] For applications contesting an initial decision on a request (confirmatory applications), the same time limits apply.[33] Requests are to be dealt with by the administration of the Court, with the Registrars of the Court(s) being responsible for confirmatory applications as well as for deciding upon implementing measures for the rules.[34] Recourse to the Ombudsman or formal court proceedings further to a confirmatory application are possible.[35]

There are no provisions in place that require the transparency of the selection procedure for judges and advocates general. The rules of procedure of the judicial selection commissions (the *Article 255 Committee* and the *Tribunal committee*) stipulate that the commissions do not have to make their opinions public:[36] the Article 255 Committee rules explicitly foresee hearings of candidates 'in private' and committee deliberations behind closed doors ('in camera').[37] The publication in the OJ of decisions to appoint judges and advocates general is required.[38] Furthermore, the Court's rules of procedure also require publication in the OJ of, *inter alia*, vacancy advertisements for the position of Registrar as well as the name of the person elected;[39] of the names of the President, Vice President and the First Advocate General, as well as the composition and Presidents of the Court's chambers.

The Code of Conduct for members of the Court does not foresee the publication of declarations of interest (for members or their spouses/families), nor of outside activities.[40] For the Court's staff, the EU Staff Regulations apply (see the section on the European Commission for further details).[41] The EU Financial Regulation applies to the Court's budget and its accounts, and in principle, legally ensure the financial transparency of the institution.[42]

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22 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art. 15(1) (TEU)
23 TEU, art. 15.3
24 Protocol (No 3) on the statute of the Court of Justice of the European Union [2012] OJ C326/210, art. 31 (CJEU Statute)
25 CJEU Statute, art. 35
26 Rules of Procedure of the Court of Justice [2012], OJ L265/1, art. 21(4) (RoPs)
27 CJEU Statute, art. 37
28 RoPs, art. 92
29 Instructions to the Registrar of the Court of Justice (art. 25), Instructions to the Registrar of the General Court (art. 18, last amended OJ L68/20), Instructions to the Registrar of the Civil Service Tribunal (art. 17, OJ L260/1, 27.9.2012)
30 Decision of the Court of Justice of the European Union of 11 December 2012 concerning public access to documents held by the Court of Justice of the European Union in the exercise of its administrative functions OJ C 38/2, 9.2.2013. (Court Decision)
31 Court Decision, art. 4(1)
32 Court Decision, art. 5(2), 5(4)
33 Court Decision, art. 6
34 Court Decision, arts. 8, 13
35 Court Decision, arts. 7(2), 7(3)
36 Council Decision of 25 February 2010 relating to the operating rules of the panel provided for in Article 255 of the Treaty on the Functioning of the European Union (OJ L50/18 27.2.2010); Council Decision of 18 January 2005 concerning the operating rules of the committee provided for in article 3(3) of Annex I to the Protocol on the Statute of the Court of Justice (OJ L21/13 25.1.2005).
37 Council Decision (Art. 255 Committee), Annex. arts. 5, 7
38 Cf. RoPs, art. 3.
39 RoPs, arts 18(2), 18(8)
40 Cf. CJEU Statute, arts. 4, 5
41 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

TRANSPARENCY (PRACTICE)

To what extent does the public have access to judicial information and activities in practice?

The composition and decisions of the Court of Justice of the European Union are made available to the public through the institution's website and through the *Official Journal*. Administrative documents can be accessed through formal requests, and though the level of requests is low, these are generally handled positively. However, the Court's deliberations, case documents relating to judicial proceedings submitted by public actors, vetting procedures for new judges, and declarations of interest remain hidden from the public.

The Court of Justice of the European Union publishes its annual activity report, its budget and annual financial report, including statistics on judicial activities. The website of the Court of Justice allows access to judgements on the day they are issued, and links to sections on recent judgements are available on the front page. It provides background information on members, on the composition of chambers and presents a general organisational chart and documents governing its procedures.[43] Searching and understanding judgements for non-experts in EU-law is challenging, but press releases[44] on most cases allow the wider public to understand important judgements. New appointments of judges and advocates general are also announced through press releases. The annual reports provide an overview of developments in relevant case-law throughout the past year.

Requesting access to administrative documents is possible in practice, however only through a predefined form available on the Court's website. Simple requests made for this study have been handled within the legal time limits, with a more complex request for information on all such requests handled in 2011 and 2012[45] receiving a response after approximately two months. Another request regarding documents setting out the lifting of immunity of members of the Court was heavily redacted making use of the exception on data protection.[46]

In general, formal requests for administrative documents are rare (5 in 2011-12, with access granted in all 5 cases), and only since February 2013 has there been a formal registration system for those requests.[47] Access to submissions in Court proceedings by public actors (e.g. from EU institutions or member states) is not provided while a case is on-going, and remain limited even after a judgment is delivered, except in special cases:[48] this effectively removes large parts of the documents held by the Court from public view. A challenge, in practice, is the lack of definition of what constitutes an 'administrative document', which leaves some discretion to the institution when documents are requested.

The opinions provided to the Council following the non-binding vetting of future judges by the 'Article 255 Panel' remain secret (the same applies for the Tribunal Panel), despite the absence of a legal necessity for this secrecy being laid down in the Treaties or Statutes.[49] Since 2010, two annual reports of the Article 255 Panel have been published, indicating only the number of negative opinions (reporting 5 out of 43 until the end of 2012), but not the persons concerned.[50] Monitoring the activities of individual judges (or of their cabinets) is not possible as the deliberations of chambers and the votes of judges (positive or negative) are not published in practice. Only advocates generals' opinions are made available to the public.

There are no declarations of interests or assets of members or staff of the Court available to the public, nor are records available of their contacts with third parties or of gifts received. Nevertheless, the Court's website includes easily accessible invitations to tender for Court contracts, an overview of contractors and framework contracts, as well as open vacancies

An overall analysis of the Court's openness and transparency in practice yields the conclusion that much more can be done to increase the possibilities for the wider public to understand all stages of the decision-making of the Court, in particular by allowing wider access to case files and by streaming Court hearings to the public.[51]

Community and the European Atomic Energy Community, principally, arts. 11-26a

42 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, (Financial Regulation); Commission Delegated Regulation (EU) 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union [2012] OJ L362/1, art 32 (FR implementing rules)

43 Observations regarding the website and online availability as of Oct/Nov 2013.

44 http://curia.europa.eu/jcms/jcms/Jo2_16799.

45 See http://www.asktheeu.org/en/request/access_to_documents_requests_in_5.

46 Request for access to documents 0005/2013 of the CJEU.

47 Emails received by the CJEU on 12 July, 1 Aug, 20 Sep and 4 Oct 2013.

48 Cf. http://www.ombudsman.europa.eu/cases/decision.faces/en/51392/html.bookmark.

49 It should be noted that lack of transparency is not decided by the CJEU but by the independent committee itself.

50 Council docs. 6509/11 & 5091/13; note

51 For a comprehensive analysis see A. Alemanno & O. Stefan, 'Openness at the Court of Justice of the European Union: Toppling a Taboo', Forthcoming in 51 Common Market Law Review 1 (2014).

ACCOUNTABILITY (LAW)

To what extent are there mechanisms in place to ensure that the EU judiciary has to report and be answerable for its actions?

The Court of Justice of the European Union is accountable in financial and administrative matters but almost no accountability mechanisms exist for judicial matters. Judges and advocates general cannot be suspended or removed unless the Court itself decides so. No formal complaint mechanisms exist for judicial matters. The legal requirement of secrecy of deliberations additionally limits individual judges' accountability to the public.

The legal accountability mechanisms for the Court of Justice of the EU are limited and indicate its position as the highest EU institution. The main accountability relations exist towards EU member states' governments who nominate the judges and advocates general of the three courts following a non-binding vetting procedure by special committees composed of former EU judges and persons of similar qualification.[52] There are no obligations for members of the Court to appear before the European Parliament.

Judgements of the Court must 'state the reasons on which they are based',[53] yet individual opinions are not public (see Transparency (law) sub-chapter). Judgements can, in the first instance, be appealed.[54]

Complaints concerning the CJEU can only be submitted to the European Ombudsman with regard to administrative matters of the Court:[55] There is no formal complaint mechanism regarding members of the Court. By a Court decision,[56] OLAF has the right to investigate fraud and corruption within the Court, supported by the right to receive information and to be supported by staff and members of the Court. This right does not, however, apply to information relating to open or closed judicial proceedings.[57]

When sitting as a full court, the institution can lift the immunity of its members; the latter can only be tried in criminal proceedings before national courts competent to rule on judges of their respective highest domestic courts.[58] The Court of Justice of the EU can unanimously deprive its judges of their office, about which the Presidents of the Commission, Parliament and Council have only to be informed.[59]

The Court is subject to the standard EU rules regarding its financial management, and is duly subject to external audits by the European Court of Auditors and discharge of its annual financial accounts by the Parliament on the basis of a Council recommendation.

52 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts. 253-255 (for the two main courts) (TFEU); Protocol (No 3) on the statute of the Court of Justice of the European Union [2012] OJ C326/210, Annex I, arts. 3.3, 3.4 (). (CJEU Statute)
53 CJEU Statute, art. 36.
54 CJEU Statute, art. 56 (appeal of General Court decision before Court of Justice); Annex I, art. 9 Statute (appeal of Tribunal Decision before General Court).
55 TFEU art. 228.1.
56 Décision de la Court de Justice du 12 juillet 2011 relative aux conditions et modalités des enquêtes internes en matière de lutte contre la fraude, la corruption et toute activité illégale préjudiciable aux intérêts de l'Union européenne.
57 Ibid. art. 3.
58 CJEU Statute, art. 3.
59 CJEU Statute, art. 6.

ACCOUNTABILITY (PRACTICE)

To what extent do members of the EU judiciary have to report and be answerable for their actions in practice?

The Court of Justice of the European Union is held accountable in financial matters through regular audit and discharge procedures and it can be held accountable in administrative matters. Judges and advocates are vetted before nomination and negative opinions are adhered to. However, individual judges do not give reasoning for their individual positions as decisions are taken collectively by chambers. Immunity is lifted mostly upon request of the member concerned and a judge has never been dismissed or deprived of their benefits.

The Court of Justice of the EU is following its obligations with regard to audit and financial reporting to the European Court of Auditors, the Parliament and Council.[60] The President of the Court of Justice has also participated in several committee hearings of the European Parliament on the reform of the Court's Statute.[61]

According to the Court, there has been one on-going investigation by the EU's Anti-Fraud Office (OLAF) in early 2014.[62] However, since November 2011, 7 cases of alleged maladministration have been opened by the European Ombudsman against the Court, which have looked into issues related to recruitment, tendering and access to documents procedures.[63] The Ombudsman even investigated a case in which the Court questioned the Ombudsman's competence (as it does not extend to judicial activities of the Court), which nevertheless led to a friendly solution in favour of the complainant.[64]

The opinions or votes of individual judges are not published in practice (except for the opinions of advocates general of the Court of Justice) but the overall reasoning behind judgments is published on the Court's website. In 2012, 139 out of 632 new cases at the Court of Justice (the highest instance) and 11 out of 617 new cases at the General Court (those coming from the Civil Service Tribunal) were appeals,[65] showing that decisions at lower instances can be reviewed in practice. The Court of Justice even decided that the length of proceedings of the General Court can constitute a breach of EU fundamental rights,[66] underlining accountability within the EU-level court system itself.

The vetting procedure of candidates for new members of the Court, while non-binding, has still seen all recommendations of the Article 255 committee followed in practice by the Council or the member state concerned, since the body was put in place in 2010. Overall, 7 out of 59 candidates (27 of them new) had received a negative opinion up to May 2013. There have been no negative opinions issued on the 32 sitting members that have been candidates for re-nomination.[67] According to the Committee, an 'assurance of independence and accountability' is a criterion used during its vetting work.[68] Yet, due to its lack of transparency, scrutiny of the vetting procedure remains impossible.

From 2004 to 2013, the immunity of judges has been lifted 10 times, in all cases on the request of the member concerned and in only one case supplemented by a request from a third party.[69] Never has a Member of the Court been deprived of his office, rights or benefits under the current Article 6 of the Statute or predecessors of this rule.[70]

60 No contrary indication in the 2011 discharge resolution of the European Parliament, P7_TA(2013)0127, 17 April 2013.
61 Minutes of the EP Legal Affairs Committee of 24-25 March 2013 (JURI_PV(2013)0424) and of 21-21 June 2011 (JURI_PV(2011)0620_01).
62 Cf answer to Question 9, Questionnaire to the CJEU in the 2012 discharge procedure: http://www.europarl.europa.eu/document/activities/cont/201401/20140107ATT76864/20140107ATT76864EN.pdf (last accessed on 4 March 2014).
63 Advanced EU Ombudsman case search, by institution: http://www.ombudsman.europa.eu/cases/advancedsearch.faces (last accessed on 26 November 2013).
64 See paras. 60-66 of http://www.ombudsman.europa.eu/cases/decision.faces/en/50918/html.bookmark.
65 CJEU Annual Report 2012, pp. 90, 182
66 N. Hirst, 'Slow General Court breached human rights', *European Voice*, (26 November 2013), available at http://www.europeanvoice.com/CWS/Index.aspx?PageID=130&articleID=78841, (last accessed on 29 January 2014)
67 Speech of Jean-Marc Sauvé, President of the Article 255 Committee at JURI Committee, 30 May 2013, http://www.conseil-etat.fr/media/document/DISCOURS%20ET%20INTERVENTIONS/2013-05-30_audition-au-parlement-europeen.pdf.
68 2nd Activity report of the panel provided for by Article 255 of the Treaty on the Functioning of the European Union, Council doc. 5091/13 of 22 January 2013, http://register.consilium.europa.eu/pdf/en/13/st05/st05091.en13.pdf.
69 Based on partially released minutes of Court of Justice general meetings received through the access to Document request registered as 0005/2013D at the CJEU.
70 Access to document request 0005/2013D.

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of members of the EU judiciary?

The Court of Justice of the European Union is addressing a variety of risks that could impact the impartiality and professional behaviour of its members and staff. The need for Members of the Court to behave with integrity is laid down in the EU Treaties and further clarified in a Code of Conduct, including a three-year ban on representing others before the EU Court after leaving office. Provisions ensuring effective verification of conflicts of interests while in office or after leaving office are, however, scarce.

The Statute of the Court underlines that judges have 'the duty to behave with integrity'.[71] It includes provisions requiring Judges and Advocates General to take an oath declaring their impartiality and their intent to 'preserve the secrecy of deliberations of the Court'.[72] These provisions also forbid judges to hold any political or administrative office or to engage in any other occupation, gainful or not, unless the Council has granted an exception. It is further underlined that these provisions apply even after judges have left office and need to be considered when accepting 'certain appointments or benefits'.[73] If the other members of the Court are unanimously of the opinion that a member does not fulfil these conditions, they can deprive her/him of his office or of benefits (including pension rights). All these fundamental provisions are included in the first part of the Statute, which, unlike the rest of the Statute, can only be amended through Treaty change.[74]

The procedural provisions of the Statute prevent judges and advocates general from taking part in cases where they have been previously involved ('conflict of interest').[75] More details are specified in a Code of Conduct (CoC) for Members,[76] including the need to submit a declaration of financial interest to the Court's President when taking up their office. The CoC is relatively narrow in scope compared to similar codes in other EU institutions, and does not oblige members to declare the interests/professional activities of their spouses. It includes a prohibition to 'accept gifts of any kind which might call into question' members' independence,[77] without specifying reporting obligations. There are no rules requiring that declarations of interests or gifts have to be made public. The CoC does, however, prevent former Court members from being involved in cases with which they dealt while in office, and prohibits them, for a three-year period after leaving office, from representing clients or any other parties before the courts of the Court of Justice of the EU.[78] The application of the CoC is under the responsibility of the President of the Court of Justice together with the three most longest serving judges who form a 'Consultative Committee'; the latter contains no external members and does not have clear procedural guidelines regarding its functioning.[79]

The staff of the Court are subject to the EU's Staff Regulations (see the 'Integrity (Law)' section of the European Commission chapter), but there is a special Code of Conduct for legal secretaries ('référendaires') to Judges whose role is similar to cabinet members in the Commission.[80] Staff have an obligation to whistle-blow and their protection in this regard is guaranteed in the Staff Regulations, with related provisions also included in the agreement between the Court and the EU's anti-fraud office, OLAF, which governs reporting on fraud and corruption by Members and staff of the Court.[81]

The integrity of public procurement processes is generally regulated by the EU's financial regulation (see related section on the European Commission), and standard forms for calls for tenders and declarations of honour contain anti-corruption clauses.[82]

71 Protocol (No 3) on the statute of the Court of Justice of the European Union [2012] OJ C326/210, art 4 (CJEU Statute)
72 CJEU Statute, art. 1
73 CJEU Statute, art. 4
74 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 281
75 CJEU Statute, art. 18
76 Court of Justice Code of Conduct [2007], OJ C223/1, 22.09.2007 (CoC)
77 CoC, art. 2
78 CoC, art. 6
79 CoC, art. 7
80 Décision du 17 février 2009 portant adoption de règles de bonne conduite des référendaires.
81 Décision de la Cour de Justice du 12 juillet 2011 relative aux conditions et modalités des enquêtes internes en matière de lutte contre la fraude, la corruption et toute activité illégale préjudiciable aux intérêts de l'Union européenne, art. 1(3)
82 Vade-mecum de la passation des marches publics à la Court de justice de l'Union européenne; July 2013, Annexes 3, 5

INTEGRITY (PRACTICE)

To what extent is the integrity of members of the EU judiciary ensured in practice?

The impartiality and professional behaviour of the Court's members is vetted before taking office, and there have never been serious sanctions against a member based on the provisions of the Statute. Internal guidelines on the ethical obligations are made available to the staff, and approval procedures on outside activities seem to be applied. New training sessions on ethics for new staff members are being tested.

The committee vetting new members of the Court clearly reports that it assesses the independence and impartiality of candidates,[83] although there is no indication that conflicts of interests are taken into consideration before a new member joins the Court. At the time of writing, questions regarding post-employment obligations and conflicts of interest checks for members of the Court had not yet received a reply from the Court, which raises questions about the effectiveness of the integrity mechanisms directed towards members. However, several sitting members of the Court of Justice have moved from the Court into national governments, EU institutions or private business, and subsequently back into the Court;[84] similarly, several former members now work in EU-related law firms after having left their positions at the Court.[85] Nonetheless, the Court has never taken a decision under Article 6 of the Statute to deprive a member of their office, or certain rights or benefits on the basis that s/he 'no longer fulfils the requisite conditions or meets the obligations arising from' the office.[86]

The staff of the Court are informed of their rights and obligations, including on whistle-blowing rules, through a 'vademecum' that is available on the Court's intranet,[87] and référendaires are provided with a copy of the code of conduct specifically related to their status. In addition, the Court has introduced and tested new ethics and integrity related trainings for its staff in 2013,[88] however, further research is needed to assess the scope and effectiveness of these internal mechanisms. There is no register for gifts and hospitality received by staff. With regard to the external activities of staff, eight requests for authorisation have been refused since 2010, including on the basis that the activities would have been too time consuming or of a commercial nature. The post-employment obligations of staff appear to be verified, but no negative decision has been given since 2010 and only once have restrictions been imposed.[89]

On financial integrity, the Court of Auditors noted in the past that its audit 'did not identify any significant weakness in respect of the topics audited for the Court of Justice'.[90] However, resource constraints may impact the ability of the Court to ensure integrity in practice (see the section on Resources).

83 2nd Activity report of the panel provided for by Article 255 of the Treaty on the Functioning of the European Union, Council doc. 5091/13 of 22 January 2013, p. 11, http://register.consilium.europa.eu/pdf/en/13/st05/st05091.en13.pdf.
84 According to the public CVs (http://curia.europa.eu/jcms/jcms/Jo2_7026; last accessed 28 Jan 2014): José Luís da Cruz Vilaça and Melchior Wathelet
85 E.g.: http://klucka.org/en/aboutus.html (last accessed 28 Jan 2014).
86 Email received from the Head of Unit Press and Information of the CJEU on 16 Jan 2014.
87 Public access to the vademecum was granted to TI-EU in March 2014, following a request, but only through physical consultation of the document on the Court's premises in Luxembourg, meaning that the document could not be consulted at the time of writing. The scope of internal whistle-blowing provisions could therefore not be assessed.
88 Email received from the Legal Advisor for Administrative Affairs on 16 January 2014.
89 Email received from the Legal Advisor for Administrative Affairs on 16 January 2014.
90 Annual Report of the European Court of Auditors on the Implementation of the EU Budget (2011): http://eca.europa.eu/portal/pls/portal/docs/1/18320745.PDF.

RESOURCES

To what extent are there laws seeking to ensure appropriate salaries and working conditions of the EU judiciary?

The resources, working conditions and salaries of the Court of Justice of the European Union are defined by the Commission, Parliament and in particular the Council. In principle, legal provisions foresee high salaries and general working conditions for members of the Court. The institution's budget has grown in recent years, with staff numbers rising marginally. Nevertheless, serious concerns have been raised on the capacity of the Court to deal with a rising number of cases and the time taken to process them. Despite efforts to address the situation, constraints, such as the relatively short terms of members and an inadequately staffed internal administration, continue to have a negative impact on the institution's ability to fulfil its role and to safeguard integrity.

The budget of the Court of Justice of the European (CJEU, "the Court") is part of the overall EU budget determined in the respective legislative procedure, based on estimates provided by the institution to the European Commission.[91] There are no provisions that define the Court's share of the EU budget *a priori*. The budget contains a special section for publications in the *Official Journal*. The CJEU's overall expenditure has slowly grown from 2010 (329.3m EUR) to 2013 (354.9m EUR), as have staff figures (2010: 1927; 2013: 1995).[92] With an increased caseload across the three courts, the overall number of pending cases has risen from 2284 in 2010 to 2358 in 2012.[93]

The EP and national governments have raised concerns over the efficient and timely handling of cases due to the workload and resources available to the Court, calling amongst others for increases in the size of the judiciary.[94] Changes in the Court's Statutes, rules of procedure and the introduction of temporary judges for the Civil Service Tribunal have been necessary to accommodate those challenges[95], but delays in those changes due to a lack of legal independence (see respective section) have had a considerable impact on the Court's ability to adapt to the increased case-load.

Provisions for the working conditions and salaries of staff of the Court are defined in the EU's Staff Regulations, which include provisions regarding pensions, special allowances (e.g. for parental leave) and support for professional training. Salaries and allowances (e.g. for travel) of judges, advocates general, the president and vice-president as well as of the Registrar of the Court are determined by the Council[96] as percentages of the salary of the highest EU staff category[97]. In principle, salaries are adapted annually, with inflation being one element[98]. Salaries of members of the court (without allowances) start at above 220k EUR per year, which is comparable to similar positions in national supreme courts.[99]

Members' tenure is six years with the possibility for re-appointment. This constitutes a potential risk for the human resources, given that there is a regular loss of substantive and procedural knowledge within the Court, which implicitly also includes the legal secretaries (temporary agents hired upon the proposal of each judge) in the cabinets of judges.[100]

With 51.2% of staff in 2012 working on translation and interpretation, and with 80% of all trainings relating to language teaching, the weight of multilingual adjudication is clearly visible. In comparison, there are 16 staff members assigned to the Budget and Accounting Directorate, i.e. less than 1% of the overall CJEU staff. In order to save resources, the number of pages to be translated has been cut from 2011 to 2012 by 8.8% to 891 436.[101]

The resource constraints in the Court's administration, particularly in areas pertaining to internal control functions, have been officially highlighted by the institution, with 'the size of teams in place (especially when compared to

91 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 314 (TFEU)
92 EU Budget 2011, EU Budget 2013 (incl. staff establishment plans).
93 Own calculation based on the Annual Activity Report for the Financial Year 2012 (Article 66(9) of the Financial Regulation) of the Court, March 2013, pp. 6-10.
94 See Report A7-0185/2012 of the EP Committee on Legal Affairs of 5 June 2012, on the draft regulation of the European Parliament and of the Council amending the Protocol on the Statute of the Court of Justice of the European Union; UK House of Lords European Union Committee, *Workload of the Court of Justice of the European Union: follow-up report*, (29 April 2013), (London: Authority of the House of Lords)
95 See EP Library briefing 'Amendment of the Statute of the Court of Justice' (June 2012), available at http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2012/120301/LDM_BRI(2012)120301_REV1_EN.pdf
96 TFEU, art. 243
97 Council Regulation 422/1967 (last amended in 2012) foresees 101%-138% of the 3rd step of EU Grade A16.
98 EU Staff Regulations, art. 3 and Annex XI
99 E.g. UK supreme court judges: http://www.justice.gov.uk/downloads/publications/corporate-reports/MoJ/2012/judicial-salaries-2012-13.pdf
100 Response from the Council of Bars and Law Societies of Europe to the follow up inquiry [by the House of Lords[into the Workload of the Court of Justice of the EU (27 Feb 2013); available at: http://www.ccbe.eu/fileadmin/user_upload/NTCdocument/EN_27022013_CCBE_res1_1363252610.pdf.
101 Ibid, pp. 12, 44, 77.

those of other institutions)' in accounting and financial management being limited.[102] The service of the Court's Chief Legal Advisor - responsible for dealing with staff issues, oversight of procurement procedures above a value of 60k EUR, and with complaints from the Ombudsman, *inter alia*, while also serving as the Data Protection Officer – noted that the "workload borne by the service leaves too little time available for the performance of every task".[103] These observations 'are inherent factors of exposure to risks' in the internal control system of the Court and can have an impact on ensuring integrity of public procurement processes.[104]

102 Annual activity report for the financial year 2012 (Article 66(9) of the Financial Regulation), Directorate General of Personnel and Finance of the CJEU, pg.89.
103 Ibid, pg. 59
104 Ibid, pg. 87.

OVERSIGHT OF OTHER INSTITUTIONS AND OVERALL SUPPORT TO INTEGRITY SYSTEM

To what extent does the EU judiciary provide effective oversight over EU institutions and supports the overall integrity system?

The EU judiciary has proven its ability to provide oversight over all major EU institutions. It can review laws and administrative decisions with direct effect on citizens or businesses, it can decide in disputes between institutions and it has handled integrity-related cases involving EU institutions, their officials and their members. In the absence of EU criminal law, the Court does not however judge on corruption-related cases, which are subject to national jurisdictions. This has led to inconsistent approaches when following-up on alleged EU corruption cases and can lead to impunity for corruption in EU institutions where national judicial authorities do not want to follow a case.

In the absence of EU-level criminal law, the role of the Court of Justice of the European Union in the integrity system of the EU is effectively restricted to its constitutional oversight role over the actions of other EU institutions and bodies.[105] Without EU-level criminal law, corruption-related cases involving members of EU institutions – such as the cases of the MEPs involved in the 2011 'cash-for-amendments' scandal,[106] or the 'Dalligate' case in 2012[107] – as well as EU staff have to be dealt with by national judicial systems with different national criminal laws and procedures. In the case of the 'cash-for-amendments' scandal, this led to legal proceedings of different lengths and outcomes for MEPs involved from Austria, Romania and Slovenia. This shows the potential risk of inconsistency in the handling of corruption cases at EU level, which could lead to impunity where national judicial systems are not able or willing to handle EU corruption cases.

Despite the CJEU lacking competences in criminal law, the Treaties foresee that it should, amongst other duties, not only rule on the legality of legislative acts but also decide, at the request of member states or EU institutions, whether the action of another institution has infringed upon the Treaties, or demonstrates a misuse of powers or violation of institutional prerogatives.[108] This effectively defines the Court's arbitration role in inter-institutional disputes. In addition, dismissals of the Ombudsman[109] or of Members of the Court of Auditors[110] have to be decided upon by the Court, underlining an additional role in protecting key figures in oversight bodies from undue dismissal.

Through its rulings, the Court has defined the balance of powers at European level by strengthening parliamentary prerogatives over time on one side while also protecting the limits of these powers vis-à-vis other institutions such as the Council.[111] Furthermore, it has defined concepts such as the limits of MEPs' immunity in order to prevent impunity[112] or the right of minority groups within the European Parliament in relation to majority groups.[113]

In particular since the entry into force of EU Regulation 1049/2001, the Court has also contributed to defining the scope and limits of the public's right of access to documents and information held by EU institutions and bodies. And while judgements have not always favoured more access to documents, for example to protect privacy or international relations, recent cases such as Access Info Europe v Council (2013) have shown that the Court seems eager to protect the public's right to hold decision-makers to account with regard to legislative decision-making, even when a majority of EU member states opposes more

Court supports EU transparency

In October 2013, the Court of Justice ruled against a Council decision not to disclose a document containing member states positions in a particular legislative process to the NGO Access Info Europe. The original request for access to documents had been made almost five years earlier, and the Council had been joined in the proceedings against Access Info Europe by major EU member states such as Spain and the UK. Following the judgment, the document was made public in November 2013.

105 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art. 19, (TEU)
106 See, for example, media reporting on the case of an Austrian MEP involved in the scandal, e.g. 'Strasser gets his day in court (again)' *European Voice*, (5 December 2013), available at https://www.europeanvoice.com/article/imported/strasser-gets-his-day-in-court-again-/78972.aspx (last accessed on 30 January 2014).
107 The national investigations in this case were covered predominantly in the Maltese press. See, for example, J. C. Cilia, 'Attorney General refuses to comment about Dalli case', *Malta Today*, (2 October 2013) available at http://www.maltatoday.com.mt/en/newsdetails/news/dalligate/Attorney-General-refuses-to-comment-about-Dalli-case-20131002, (last accessed on 30 January 2014).
108 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 263 (TFEU)
109 TFEU, art. 228(2)
110 TFEU, art. 286(6)
111 K. Lenaerts, 'The principle of democracy in the case law of the European Court of Justice', International and Comparative Law Quarterly, Vol. 62 No. 2 (2013), pp. 271-315 doi:10.1017/S0020589313000080; p. 312.
112 Ibid., pp. 290-293.
113 Ibid., pg. 289

transparency.[114] The Court is also competent to annul the award of tenders if the public procurement procedure executed by an EU institution does not comply with the EU Financial Regulation, and such decisions against EU institutions have been taken in recent years.[115]

Since the establishment of the Civil Service Tribunal, the CJEU has also contributed to defining or clarifying integrity-related concepts with regards to the staff of EU institutions, concluding that the Staff Regulations are 'intended to guarantee the independence, integrity and impartiality of officials', therefore acknowledging a wide scope of the understanding of conflicts of interests and the need to address outside activities even for new recruits who want to continue activities they began before becoming EU staff.[116] The Court has also defined its own understanding of whistle-blowing rules with regard to EU staff, putting forward four criteria before considering whether a whistle-blower has acted according to the legal provisions:

> "First, the irregularities disclosed must, where they actually occurred, be of an obviously serious nature. Second, the accusations made must be based on correct facts, or, at the very least, have a 'sufficient factual basis'. […] Third, the official must use appropriate means to make the disclosure and, in particular, must disclose the matter to the authority or body responsible, namely, 'his immediate superior or his Director-General or, if he considers it useful, the Secretary-General, or the persons in equivalent positions, or [OLAF] direct'. Fourthly and finally, disclosure motivated by a personal grievance or animosity or by the prospect of personal advantage, including financial gain, cannot be considered to be a disclosure made reasonably and honestly."[117]

Overall, the role of the Court of Justice of the European Union within the wider EU-level integrity system can be regarded as a safeguard against undue encroachment of powers and as an instance that is mandated to both clarify and develop further the legal aspects of independence, transparency, integrity and accountability: a role which it has taken on actively.

114 See Access Info Europe's statement after the ruling of the CJEU available at http://www.access-info.org/en/european-union/501-court-case-ecj-2013 (last accessed on 30 January 2014).
115 See, for example, Judgment of the General Court of 20 October 2011 in Case T-57/09, *Alfastar Benelux v Council* [2011] OJ C355/26.
116 Court of Justice of the European Union, 'Annual Report 2012', (2013) (Luxembourg; Publications Office of the European Union), pp. 209-10 (CJEU AR2012)
117 CJEU AR2012, pg. 211.

EUROPEAN COURT OF AUDITORS

Strengths	Weaknesses
• Comprehensive infrastructure of basic integrity rules • Good level of transparency regarding the outputs of audit work • Oversight of the ECA by other institutions appears to work well • Extensive access to information on EU financial management for audit purposes	• Shortcomings in consistent enforcement of internal integrity rules • Absence of internal whistle-blowing provisions • Loopholes in mechanisms to safeguard integrity and protect against national bias of prospective and sitting Members • Complexity of annual ECA report and tardiness of delivering Special Reports

Recommendations

- The European Court of Auditors should introduce internal whistle-blowing rules and ensure whistle-blower protection
- The European Court of Auditors should establish an independent ethics body to monitor and enforce compliance of Members with integrity-related rules, with binding sanction powers
- EU Member States and EU legislators should establish clear assessment criteria and procedures, including integrity checks, for the (re-)appointment of ECA Members, and consider giving the European Parliament equal footing with the Council in the appointment procedure
- EU Member States should replace the one ECA Member per Member State rule, reducing the size of the Court, and the European Court of Auditors should explicitly redeploy resources to strengthen audit capacity

About the European Court of Auditors

The European Court of Auditors (ECA) was created by the 1975 Budget Treaty, and began working in 1977 in Luxembourg. It was designed to replace the European Communities Audit Office and the Auditor of the European Coal and Steel Community – with reform deemed necessary as the EU moved from a financial system based upon national contributions, to being funded fully through its own resources. The ECA formally became an EU institution under the 1993 Maastricht Treaty, with its role in combatting fraud highlighted under the 1999 Amsterdam Treaty.

As the EU's external auditor, the ECA verifies both the soundness of the Union's financial accounts, and the legality and regularity of the transactions underlying it. Each year, it delivers a report and declaration of assurance on the entire EU budget, along with specific reports on EU bodies and policy areas. The Court has broad inspection powers but no judicial functions.

The ECA is headed by a college of 28 members, one per member state, appointed by the Council, with a president elected from amongst the members: ten presidents have held office since 1977. The Court employs just fewer than 900 personnel, with each Court member supported by a cabinet of up to 5 staff. Although collegiate in nature, the ECA has been organised into sector-specific chambers of up to 6 members since 2010, to facilitate audit operations and the adoption of reports. Five chambers are currently in place: three dealing with internal EU policies; one with external actions; and one with horizontal coordination issues, including audit evaluation and assurance. Audit staff are directly assigned to each chamber.

Non-audit administrative functions, such as HR management and translation services, fall under the responsibility of a Secretary General, appointed by the Court.

Source: http://www.eca.europa.eu

INDEPENDENCE (LAW)

To what extent is there formal operational independence of the European Court of Auditors?

The independence of the Members of the European Court of Auditors is explicitly protected by the EU Treaties; however no explicit rules exist regarding how this is assessed and verified, and no detailed eligibility criteria exist for Court membership. Internal rules do, though, embed independence into the Court's work, and decisions are made on a collegial basis. The ECA enjoys broad autonomy over its internal functioning and organisation, within the limits set by the Treaties over its tasks and audit scope, and enjoys extensive rights of access in its audit work.

The EU Treaties specifically provide for the Members of the European Court of Auditors (ECA) to exercise their duties with complete independence and 'in the Union's general interest', and call for the independence of nominees to the Court to 'be beyond doubt'.[1] A Code of Conduct for Members and Ethical Guidelines for all ECA personnel further emphasise the centrality of independence to the Court's functioning.[2] Treaty provisions confer upon ECA Members the immunity privileges enjoyed by judges at the CJEU.[3]

With regard to its internal functioning, the basic tasks[4] of the ECA and basis for its audit work are laid down in the EU Treaties and EU Financial Regulation, alongside the possibility for it to establish internal chambers.[5] The ECA is free to decide upon its internal organisational structure, on the rules governing the conduct of its audits,[6] and upon its rules of procedure, however, the latter require the approval of the Council.[7] The ECA's budget and staffing levels are determined by the Council and European Parliament, based upon estimates drawn up by the Court itself.[8] The ECA retains the right to appoint its own staff and the Members of the Court elect the Secretary General by secret ballot.[9]

The Council decides upon the conditions of employment, including the salaries, pensions and any other payments made to the President and Members of the ECA.[10] The Council, following consultation of the European Parliament, also formally appoints – and renews the terms of – ECA Members.[11] There is no procedure explicitly laid down in EU law to assess and verify the independence of nominees, nor detailed (professional) eligibility criteria for membership of the Court.[12] While the rules of procedure of the EP do foresee a hearing for each nominee,[13] no verification of independence is specifically mentioned. The President of the Court is elected by the ECA's Members;[14] however, beyond this the ECA plays no formal role in the appointment or renewal procedures of its Members.

The ECA still retains a large degree of operational independence over its broader work planning and the execution of its audits,[15] and is able to issue observations (via special reports) to any auditee, as it sees fit.[16] Other institutions are able to request that the Court 'deliver observations...on specific questions and deliver opinions', however these requests are not binding.[17] The ECA has a right of access to information it considers necessary for the execution of its work held by other EU institutions and EU 'bodies administering revenue or expenditure on the Union's behalf and recipients'; can hear officials from these entities responsible for financial activity;[18] and can

1 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts. 285, 286(1) (TFEU).
2 See, Code of Conduct for the Members of the Court, of 8 February 2012, art. 1 (ECA CoC) and Decision No 66-2011 of 26 October 2011 laying down Ethical Guidelines for the European Court of Auditors, para. 3 (ECA Ethical Guidelines)
3 TFEU, art. 286(8)
4 E.g. audit of the revenue and expenditure linked to the EU budget; delivery of an annual report on the EU budget, and a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions – the latter including any 'specific assessments for each major area of Union activity' – and any observations on specific questions. See TFEU, arts. 285, 287
5 TFEU, arts. 286, 287; Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, esp. Title X (Financial Regulation)
6 Rules of Procedure of 11 March 2010 of the Court of Auditors of the European Union, [2010], OJ L103/1, arts. 16, 30 (ECA RoPs)
7 TFEU, art. 287(4)
8 Financial Regulation, Title III
9 ECA RoPs, art. 13
10 TFEU, art. 286(7)
11 TFEU, art. 286(2)
12 The EU Treaties do say, however, that ECA Members 'shall be chosen from among persons who belong or have belonged in their respective States to external audit bodies or who are especially qualified for this office'. See TFEU, art. 286(1)
13 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 108, (EP RoPs)
14 TFEU, art. 286(2)
15 Specific audit details with regard, for example, to timelines, auditing principles and the specific content of audits, are decisions made solely by the Court (i.e. adhering to IFAC and INTOSAI International Auditing Standards and Codes of Ethics, in so far as these are applicable in the EU context. See Court Audit Policies and Standards (2011), available at http://eca.europa.eu/portal/pls/portal/docs/1/15018739.PDF
16 Financial Regulation, art. 163
17 TFEU, art. 287(4)
18 Financial Regulation, arts. 159(2), 161

similarly carry out on-the-spot audits.[19] Where it needs to conduct the latter in a member state, this must be done in cooperation with a national authority, 'while maintaining...independence'.[20] To facilitate its audit visits, the ECA is obliged to forward to relevant Commission departments and national authorities every month its schedule of audit visits for the next four months, potentially inhibiting its scope of autonomy.[21] The independence of the ECA vis-à-vis national governments was reinforced by a 2011 CJEU ruling.[22]

The ECA retains the right to determine the Reporting Member responsible for a given audit, with the President taking into account individual declarations of interest before assigning work.[23] Standing as a potential factor undermining independence from national influence, however, is the provision in the Court's internal rules obliging Reporting Members to share information on audits concerning a given member state with the ECA Member from that state.[24] Given that Members are not formally meant to be representing their country when part of the Court, it is questionable why such a provision need be in place, given that it could invite potential attempts to influence the content of audit reports in the interests of a member state. Nevertheless, in part to safeguard against undue interference in the execution of audits by the auditees themselves (or any other parties), the Court's decisions are made collectively, whether by a Chamber of several members or by the entire Court.[25]

While in office, ECA Members are prohibited from seeking or taking instructions from any 'government or any other body', and must not undertake 'any action incompatible with their duties': furthermore, they cannot engage in 'any other occupation', whether paid or not, and are duly obliged to provide a 'solemn undertaking' that they will abide by these obligations.[26] This is however, weakened by internal provisions and verification procedures (see sub-chapter on 'Integrity (law)'. Further integrity rules, (again, see sub-chapter on 'Integrity (law)') including the obligation not to accept gifts of a value greater than 150EUR,[27] are in place to ensure independence.

Should a Member 'no longer fulfil the requisite conditions or meet the obligations arising from their office', it is the ECA alone that can initiate a procedure to retire compulsorily the individual, or deprive them of their pension rights, via submission of a formal request to the CJEU, which then has the power to implement any sanction.[28]

19 TFEU, art. 287(3)
20 Ibid
21 Decision No 26-2010 of 11 March 2010, laying down the rules for implementing the rules of procedure of the Court of Auditors, art. 76 (ECA IR RoPs)
22 This stated that any national refusal to provide information to the ECA constitutes a failure by the state to fulfil its obligations under the EU Treaties, where an audit falls under the competence of the ECA. See Judgement of the Court (Grand Chamber) of 15 November 2011 — Case C-539/09 [2011], European Commission v Federal Republic of Germany, OJ C 25/5
23 ECA RoPs, art. 31, and ECA CoC, art. 2(5)
24 ECA IR RoPs, art. 2
25 ECA RoPs, art. 1
26 TFEU, arts. 286(3) and (4)
27 ECA CoC, art. 3(1)
28 TFEU, art. 286(6), and Rules of Procedure of 11 March 2010 of the Court of Auditors of the European Union, [2010], OJ L103/1, art. 4 (ECA RoPs)

INDEPENDENCE (PRACTICE)

To what extent is the European Court of Auditors free from external interference in the performance of its work in practice?

External review of the European Court of Auditors has found it to be operating independently, which is in part borne out by the degree of criticism it gives to EU institutions and member states in its reports. Nonetheless, questions remain regarding the pressure exerted by the European Commission during audits, and on the legal inability of the Court to act autonomously against member states ignoring its audit powers. The actual degree of Court Members' independence from national and political bias also draws concern, with weaknesses in safeguards evident in the nomination and re-nomination procedures. Specific instances of attempted undue interference in audit activities are, however, reported to be low.

An International Peer Review, completed in 2008, found that the European Court of Auditors conducts its activities 'with independence and objectivity'.[29] This independence is in part demonstrably reflected in the fact that the Court has not refrained from criticising EU institutions and member states through its audit reports,[30] and in public statements by its representatives: on the occasion of the launch of its Annual Report in 2013, for example, the President of the Court called for the creation of incentives for member states to "better respect the rules".[31] More significantly, since 1995, the Court has continually refused to issue a positive statement of assurance on the regularity of the EU's accounts.[32]

Yet the influence of the European Commission on the Court's audit assessments has raised some concern: its interaction with the Court during the drafting of the 2012 ECA annual report was described as "bordering on manipulation" by a member of the European Parliament Committee on Budgetary Control.[33] A respondent from the Court indeed indicates that contradictory procedures conducted with the EC can give rise to a softening of the tone – rather than content - of criticism levelled at the institution in audit findings, with policy considerations potentially coming into play. Nevertheless, this is not perceived as *undue* interference, with the procedure seen as being 'very tough', and audit evidence being ultimately central to final reporting.[34] Indeed, the Court has not escaped post-audit criticism from the Commission itself: in 2013, a Commissioner publicly questioned the methodology used by the ECA to estimate error rates in its annual assessment.[35]

The ECA has, however, experienced visible threats to the free execution of its audit activities through the non-cooperation of a member state: in 2006, Germany refused to grant the Court access to documents in the course of the drafting of a Special Report on administrative cooperation in the field of value added tax, as the state considered these beyond the remit of the Court's scope. A subsequent CJEU ruling stated that any national refusal to provide information to the ECA constitutes a failure by the state to fulfil its obligations under the EU Treaties,[36] thereby reinforcing the authority of the ECA's audit powers. However, the Court of Auditors remains unable to take action itself against a member state in such cases, and is dependent upon the EC to initiate infringement proceedings. In the aforementioned case, a ruling was provided only five years after the initial act of non-cooperation, and well after publication of the Special Report.

With regard to the independence of Court members, no systematic assessment against objective criteria is undertaken by the Council, or by individual member states, prior to appointment. Though the European Parliament does conduct hearings with nominees for the Court, and requires them to provide written answers to a questionnaire which addresses issues of independence and conflicts of interest, *inter alia*, as well as professional competences,[37] the Council has proven ready to disregard negative EP opinions on individual nominees,[38]

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29 European Court of Auditors, 'International peer review of the European Court of Auditors', 2008, Executive Summary

30 The European Parliament described the appraisal of measures undertaken by the Commission and member states as 'damning' in a 2011 Special Report on elements of fisheries policy. See, European Parliament Committee on Budgetary Control Report of 21 March 2013 on the Court of Auditors' special reports in the context of the 2011 Commission discharge (2013/2015 (DEC)), (A7-0096/2013). See also, for example, A. Nelsen, 'Auditors slam effectiveness of EU's €1.9 billion aid to Congo', EurActiv, (2 October 2013), available at http://www.euractiv.com/development-policy/auditors-slams-effectiveness-eu-news-530807 (accessed on 29 November 2013)

31 European Parliament, '"EU financial management needs to be improved," warns president of Court of Auditors', [Press release], (6 November 2013), available at http://www.europarl.europa.eu/news/en/news-room/content/20131105STO23802/html/EU-financial-management-needs-to-be-improved-president-of-Court-of-Auditors (accessed on 29 November 2013)

32 In view of the fact that the rate of errors in audited expenditure has exceeded 2% every year. See, for example, Open Europe, 'Deja vu anyone? EU auditors refuse to sign off EU spending for 18th year running'. Open Europe Blog, (6 November 2012), available at http://openeuropeblog.blogspot.de/2012/11/deja-vu-anyone-eu-auditors-refuse-to.html (accessed on 29 November 2013)

33 See T. Vogel, 'EU's auditors find rising error rate', European Voice, (5 November 2013), available at http://www.europeanvoice.com/article/2013/november/eu-s-auditors-find-rising-error-rate/78618.aspx (accessed on 29 November 2013)

34 Interviews with Principal Auditor from an ECA Chamber, and with member of private office, 18 November 2013

35 See T. Vogel, 'Commissioner hits out at ECA's calculation methods'. European Voice, (7 November 2013), available at http://www.europeanvoice.com/article/imported/commissioner-hits-out-at-eca-s-calculation-methods/78638.aspx (accessed on 29 November 2013)

36 Where the audit falls under the competence of the ECA. See Judgment of the Court (Grand Chamber) of 15 November 2011 — Case C-539/09 [2011], European Commission v Federal Republic of Germany, OJ C 25/5

37 See, for example, the European Parliament Committee on Budgetary Control Report of 29 May 2013 on the nomination of Neven Mates as a Member of the Court of

demonstrating the political – rather than technical – nature of the procedure,[39] and potentially undermining the independence of the Court in practice: particularly given the role of member states in the management of EU budget funds.

While direct political interference from member states in ECA audit activities is reportedly uncommon however,[40] commentators have criticised the fact that member states often nominate former politicians to the Court, suggesting that domestic political concerns and party loyalty may be significant factors in the selection of candidates, rather than their direct professional experience or competences as an auditor.[41] This may be further compounded by the fact that member states refrain from blocking the nominees from other member states in an apparent 'pact of mutual non-interference'.[42] Evidence could not be found to suggest that re-appointment procedures systematically include technical assessment of a member's performance as a European auditor, meaning political considerations could potentially remain predominant in this regard also. Again, this may potentially undermine the vigilant and independent exercise by a Court member of their audit duties.

A report from the European Parliament, issued in early 2014, went some way to address such concerns. It calls for revision of the appointment procedure for ECA Members, including a proposal for clear selection criteria for candidates, which comprises a provision on 'recognised high standards of integrity and morality'. The EP did not, however, suggest criteria against which the latter could be assessed. The report also proposed that the European Parliament be included on an equal footing with the Council to appoint ECA Members, and removal of the one ECA Member per member state rule, to weaken dependency on questions of nationality in the appointment procedure, and increase the importance of professional experience.[43]

Restrictions on the exercise of external activities while serving as a Member of the ECA are being maintained in practice: the frequency of requests for authorisation of potential activities is reported to be low, with no disputes over refusals having occurred at the time of writing, according to the chair of the committee responsible for evaluating requests. To date, the committee has mainly deemed activities incompatible with Court duties due to constraints on a Court Member's working time, rather than on the basis of a threat to the independent exercise of the Member's mandate. Informal reminders are also being provided by the committee chair to Court members to ensure, in particular, that they remain aware of the need to maintain independence from political influence while in office, and avoid, for example, holding any non-remunerated internal positions in political parties, despite such activities potentially being permissible under existing rules.[44]

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(C7-0106/2013 – 2013/0804(NLE)). Individuals are here also asked to indicate whether they would withdraw their candidacy in the event of a negative EP opinion on their appointment – tacitly acknowledging that the opinion is not binding on the Council.

38 See A. Rettman, 'EU countries ignore MEPs on court appointment'. EU Observer, (11 July 2013), available at http://euobserver.com/institutional/120826 (accessed on 8 December 2013)

39 H. Brady, 'The EU's Court of Auditors: Europe's sleeping giant?', E! Sharp, (May 2013), available at http://esharp.eu/oped/hugo-brady/57-the-eu-s-court-of-auditors-europe-s-sleeping-giant/ (accessed on 27 November 2013) (Brady 2013)

40 Interviews with representatives from the European Court of Auditors, 18 November 2013

41 Brady 2013; T. King, 'The wrong man', European Voice, (30 January 2014), available at http://www.europeanvoice.com/CWS/Index.aspx?PageID=214&articleID=79479 (last accessed on 10 March 2014) (King 2014)

42 King 2014

43 European Parliament resolution of 4 February 2014 on the future role of the Court of Auditors. The procedure on the appointment of Court of Auditors' Members: European Parliament consultation (2012/2064(INI)), paras. 39, 42-45.

44 Interview with Member of the ECA, 18 November 2013

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the European Court of Auditors?

The European Court of Auditors is required by law to publish its main products and to make its findings available to the public. There are special rules regarding access to documents applying to the ECA, which prevent access to observations made during audit procedures. Meetings of the Court are not public, and can be extraordinarily held without the presence even of Court staff. Requirements are in place regarding the publication of interest declarations of Court Members.

While the Treaties do not specifically limit access to ECA or audit documents, the EU's access to document rules require that documents shall not be published if publication would undermine the protection of audits, unless there is an overriding public interest.[45] More specifically, EU financial rules foresee that initial observations submitted to EU institutions in the context of the ECA's annual report as well as of its Special Reports 'shall remain confidential'.[46] Court and Chamber meetings are not public, 'unless the Court decides otherwise':[47] moreover, the President or respective Chamber Dean can decide to hold discussions on 'confidential' matters in closed meetings (without the presence of interpreters or Court staff. No scope for the interpretation of confidentiality is provided in the rules of procedure or its implementing provisions.[48]

In addition, the Court of Auditors has special rules on access to its documents[49]. The exceptions for access largely follow the general EU access to information rules and include: public security; defence; international relations; privacy; and the financial and monetary interests of the Union or of Member States. Audit observations are also covered by these exceptions, and if the ECA decides, preparatory documents for audits; and any documents undermining commercial interests including copyright; undermining court proceedings and inspections or investigations; or undermining the Court's decision making, unless an overriding public interest can be demonstrated.[50] The deadline for replies is 15 days, which can be prolonged by another 15 days. The same applies to appeals ("reconsiderations").[51]

The ECA has to prepare a variety of documents:[52] in particular a statement of assurance as to the reliability of the EU's accounts and the legality and regularity of the underlying transactions; and an annual report, for which the Treaties foresee publication in the *Official Journal of the European Union* (OJ).[53] More rules on proactive transparency foresee that the Rules of Procedure and its implementing rules need to be published.[54] Legislative opinions of the ECA, in particular on EU financial rules and on measures necessary to fight fraud against the EU's financial interests also need to be published,[55] while other opinions may be published in the OJ in consultation with the institution that requested them.[56]

ECA Members and staff are not required by law to record and disclose any contact or input from third parties in the conduct of their activities. Nor are there legal provisions obliging the ECA to publish a list of gifts, hospitality or in-kind services received by its Members and staff. ECA's Members must, however, disclose their financial interests and assets, including those of their partners, which have to be made available to the public on the website.[57] The general rules for EU public procurement apply for the publication of tenders and contracts.[58]

45 Regulation 1049/2001, art. 4(2)(which technically does not apply to the ECA)
46 EU Financial Regulation, arts. 162(1), 163(1)
47 Rules of Procedure of 11 March 2010 of the Court of Auditors of the European Union, [2010], OJ L103/1, art. 22 (ECA RoPs)
48 Decision No 26-2010 of 11 March 2010, laying down the rules for implementing the rules of procedure of the ECA, art. 49 (ECA IR RoPs):
49 Decision No 12-2005 of the Court of Auditors of the European Communities of 10 March 2005 regarding public access to Court documents, As amended by Decision No 14-2009, adopted by the Court at its meeting of 5 February 2009 (Decision 12-2005)
50 Decision 12-2005, art. 4
51 Decision 12-2005, arts. 5-8
52 TFEU, arts. 287, 322 and 325; Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, arts 162(1), 163(1) and 165 (Financial Regulation); ECA IR RoPs, art. 68: Opinions on upcoming regulations related to budgetary issues; opinions at the request of the EU Institutions; observations on regulatory issues; annual reports in respect of the general budget and the EDF; the Statement of Assurance on the reliability of the EU accounts and on the legality and regularity of the underlying transactions; specific annual reports on different subjects; other special reports.
53 TFEU art. 287(1), 287(4)
54 ECA RoPs arts. 34, 37.
55 Decision 26-2010, implementing ECA's RoP, art. 70(3)-(4).
56 EU Financial Regulation, art. 163.4.
57 CoC, art. 2.
58 See the European Commission indicator report on procurement for further information.

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decisions of the European Court of Auditors?

The composition and decisions of the European Court of Auditors are made available through a central website in a generally timely fashion. Documents not published on the website can be accessed through formal requests, but the Court appears to lack capacity and procedures to deal with them adequately, and no systematic registration of or reporting on requests is undertaken. Declarations of interest of members are published, and information on gifts and hospitalities can be requested by the public.

All major documents produced by the Court of Auditors, its own annual report, the annual report on the implementation of the EU budget, special reports as well as opinions on legislative procedures are published on its website. The website has been redesigned recently and is available in all EU languages. There is however no proper register of documents, only a basic document search covering its main products.[59]

All external requests for information, media requests as well as formal requests for documents are handled by a single person.[60] While simple requests (e.g. for administrative rules) have been handled with short delays, the more complex meta-request encountered some difficulties[61], hinting to deficiencies in the access to documents procedures. Questions remain on the handling of confirmatory applications.[62] Overall, there have been very few yet a number of more complex formal requests for documents were made between July 2012 and September 2013. As requests are not formally registered, there are no official annual statistics. A major limit, in law and in practice, is the exclusion of access to audit documents and information that are not part of final (i.e. public) reports. .[63]

Declarations of interests of members (not of senior staff), including activities of partners/spouses, are published alongside each member's CV on the page displaying the different ECA chambers[64]. The list of gifts reported to the Secretary General can be requested by the public[65]. There are special pages for vacancies[66] and for the publication of on-going tenders and contract awards[67].

59 http://www.eca.europa.eu/en/Pages/PublicationSearch.aspx.
60 Feedback received from the responsible official following a request for documents.
61 http://www.asktheeu.org/en/request/access_to_documents_requests_in_6#outgoing-1570.
62 Confirmatory applications in our own request and a second one (Email of 25 July 2013, 6:46, http://www.asktheeu.org/en/request/651/response/2792/attach/4/Access000.pdf), explicit requests for confirmatory applications do not seem to be handled with by passing them on to the President of the Court.
63 Cf. Emails of 18 July 2013 & 19 Dec 2012, disclosed through the meta-request: http://www.asktheeu.org/en/request/651/response/2792/attach/3/Access.pdf.
64 Available here: http://www.eca.europa.eu/en/Pages/OrganisationChart.aspx.
65 ECA Code of Conduct, art. 3.1
66 http://www.eca.europa.eu/en/Pages/JobOpporuniteis.aspx.
67 http://www.eca.europa.eu/en/Pages/PublicProcurement.aspx.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the European Court of Auditors has to report and be answerable for its actions?

There are a number of legal obligations upon the European Court of Auditors with regard to the delivery of its audit outputs, primarily to the Council and Parliament. Auditees have the opportunity to respond to ECA findings before they are finalised, and their input must be included in final reports. ECA decisions can be challenged but not judicially reviewed as they are not legally binding. Complaints of maladministration can be lodged with the European Ombudsman, and OLAF has powers to investigate ECA Members and staff. The annual accounts of the ECA are subject to approval by the European Parliament; but no explicit provisions pertain to external audit of the Court. Only upon request by the ECA itself can its Members be dismissed by the CJEU.

The EU Treaties lay out the basic tasks and scope of the audit work to be carried out by the European Court of Auditors (ECA) which includes delivery of an annual report on the EU budget, along with 'a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions', and of special reports on specific issues.[68]

The ECA has to provide all institutions concerned by the annual report with its draft observations by 30 June each year, allowing them a possibility to respond by 15 October.[69] The final annual report – including any replies from auditees – must then be forwarded to the budgetary authority (European Parliament and Council) and the other EU institutions, and duly published in the *Official Journal* (*OJ*).[70] The statement of assurance, meanwhile, must be provided to the budgetary authority and also published in the *OJ*.[71] The ECA is also obliged to provide the budgetary authority with all its special reports (including replies from auditees), though these need not be published.[72] The Court's internal rules regulate the provision of the annual report on the EU budget to national parliaments, and of institution-specific annual reports to particular interlocutors at each audited entity.[73] While primary EU law does not impose any specific obligations upon representatives of the ECA to present in person the Court's work to other institutions, it needs to support Parliament and Council in the exercise of their financial oversight functions.[74]

All ECA audits provide for a contradictory procedure with the audited entity, to allow them to respond to preliminary observations. Any responses and subsequent changes made to a draft audit report must be presented to the Court (or to the competent internal Chamber undertaking the audit), along with indication of all the individuals who have contributed to it.[75] The ECA or competent Chamber retains the right to decide on which responses are included in its final reports, to provide further comments on these responses, and can delete passages – including any associated responses – prior to finalising reports.[76] Internal rules also allow for draft audit reports/opinions to be exceptionally further discussed and adopted by the full Court, rather than solely by the Chamber responsible for a given audit, upon the request of at least five Members.[77]

Anyone can challenge reports, opinions or observations of the ECA by way of a letter of objection. The ECA is obliged to examine any such letters, and consider follow-up action.[78] Similarly, complaints for maladministration can be lodged with the European Ombudsman.[79] Nevertheless, as the ECA does not possess any judicial competences, its recommendations and opinions are not legally binding upon auditees and its audits are not subject to judicial review at the CJEU.

The European Court of Auditors (ECA) is obliged by the EU Financial Regulation to submit an annual activity report and a copy of its accounts to the budgetary authority. Its own financial management is subject to scrutiny during a discharge procedure, wherein it must provide any requested information to the European Parliament and respond to specific questions.[80] Though no provisions in the EU Financial Regulation explicitly compel the Court to

68 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts. 285, 287 (TFEU).
69 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art. 162(1). Title X (Financial Regulation)
70 TFEU, art. 287(4); Financial Regulation, art. 162(4).
71 TFEU, art. 287(1)
72 Financial Regulation, art. 163(1)
73 See Decision No 26-2010 of 11 March 2010, laying down the rules for implementing the rules of procedure of the Court of Auditors, arts. 68-74 (ECA IR RoPs)
74 TFEU, art. 287(4)
75 ECA IR RoPs, arts. 61, 57(1a)
76 ECA IR RoPs, art. 63
77 Rules of Procedure of 11 March 2010 of the Court of Auditors of the European Union, [2010], OJ L103/1, art. 11(2) (ECA RoPs), and ECA IR RoPs, art. 59(2)
78 ECA IR RoPs, art. 75
79 TFEU, art. 228(1)
80 Financial Regulation, arts. 66(9), 164-166

subject its accounts to independent external audit, it is obliged to appoint its own independent internal auditor: ECA procedural rules provide for an internal audit committee that reports annually to the Court and oversees the work of the internal auditor and the internal control framework. These rules oblige the four-person committee to comprise one external member, alongside three sitting Court Members.[81]

A hearing in front of the European Parliament for candidates to the ECA is foreseen, however, no objective assessment criteria are laid down, nor is the opinion of the EP binding upon the Council.[82]. Similarly, no objective criteria are laid down in law upon which to base any decisions on the re-appointment of Members: such decisions remain the competence of the Council, subject to (re-)nomination by the Member State concerned.[83] Sitting ECA Members can be compulsorily retired, or have their rights to a pension/other benefits withdrawn by a ruling of the Court of Justice of the European Union, where they are deemed to 'no longer fulfil the requisite conditions or meet the obligations arising from their office':[84] This can only be done upon the basis of a request from the ECA itself, after the Member concerned is given an opportunity to be heard.[85]

Although Treaty provisions confer upon ECA Members the immunity privileges enjoyed by judges at the CJEU,86 the ECA remains subject to OLAF's investigative powers in the case of any suspicion of fraud, corruption of illegal activity by any of its staff or Members. As such, the latter are obliged to cooperate fully with OLAF, with the possibility remaining for Members' immunity to be waived.[87] The ECA is furthermore compelled to provide to OLAF without delay, any information pointing to possible fraud, corruption or any other illegal activity it uncovers in the course of its audit work.[88]

81 ECA IR RoPs, chapter IV
82 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 108, (EP RoPs)
83 TFEU, art. 286(2)
84 TFEU, art. 286(6)
85 ECA RoPs, art. 4
86 TFEU, art. 286(8)
87 Decision No 98-2004 of 16 December 2004 of the Court of Auditors concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Communities' financial interests, arts. 2, 3, 6. Also, Code of Conduct for the Members of the Court, of 8 February 2012, art. 7(4); and Decision No 99-2004 of 16 December 2004 concerning the rules concerning arrangements for cooperation by the Members of the Court in internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Communities' financial interests, esp. art. 2
88 Decision No 97-2004 of 16 December 2004 of the Court of Auditors laying down arrangements for cooperation with the European Anti-Fraud Office in respect of access by the latter to audit information, art. 2

ACCOUNTABILITY (PRACTICE)

To what extent does the European Court of Auditors have to report and be answerable for its actions in practice?

The accountability of the European Court of Auditors for its operational and financial activities appears to be functioning well. It is subject to scrutiny by the EU budgetary authority, and undergoes independent audits. Independent reviews of its audit practices are also carried out and the ECA follows up on findings from these mechanisms. Auditees have the opportunity to respond to ECA findings and these are published. Questions remain on the effectiveness of accountability measures regarding ECA Members – particularly with regard to reappointment. OLAF has carried out investigations into senior ECA figures in the past, though no Members have to date been sanctioned by the CJEU or removed from their posts.

As foreseen in legislation, the European Court of Auditors is providing annual reports on its own activities to the budgetary authority as part of the discharge procedure. Its own accounts are being evaluated through independent, external audits.[89] In practice, the EP Committee on Budgetary Control does appear to be scrutinising both the quality and effectiveness of the Court's work, and its use of resources. Specific attention has been given to the follow-up of ECA recommendations to its auditees, and to the reporting of possible cases of fraud and corruption to OLAF.[90] The ECA is fulfilling its obligations to provide additional information as requested, and the EP indicates good cooperation in this regard.[91] Similarly, the EP appears satisfied with the annual presentation of the ECA's work programme, which includes description of its priority audit tasks and resource allocation.[92]

In recent years, no major concerns on financial irregularity have been identified by the ECA's external auditors, whose reports are published in the *Official Journal*:[93] the Court's own internal audits are taken into account therein, and access to any information held by the ECA is reportedly being granted.[94]

The Court was subject to an International Peer Review in 2008, on its own initiative and further to the initiation in 2006 of activities to improve its audit practices;[95] a second review had just been completed at the time of writing but the results were not yet publicly available. Evidence that the ECA has responded to concerns raised in the 2008 review and by the discharge authority are demonstrated in the changes made to its internal organisation in 2010, and efforts to improve the accessibility and quality of its outputs.[96]

Given that the ECA as no judicial functions, recourse to the CJEU with regard to audit findings is not foreseen. However, the right for auditees to review preliminary audit findings and to provide replies to draft reports/opinions is being exercised: moreover, these replies are duly published by the ECA in its products.[97] There has been some criticism levelled at how influential the European Commission, as an auditee, has been on the outcome of this process.[98] Respondents at the Court, however, point to the so-called

Whistleblower alleges fraud at the ECA

In 2002, an internal whistleblower made a series of allegations of widespread fraud within the European Court of Auditors, and pointed to systematic inaction by the Court and by MEPs regarding suspected wrongdoing. Among the investigations which followed was an OLAF inquiry into a former Greek Member of the Court for the alleged falsification of expense claims and nepotism. The inquiry led to proceedings at a judicial court in Luxembourg against the former Member, which did not lead to any sanctions. The former Member later sued OLAF and the ECA for damages at the CJEU, without success.

Sources: United Against Corruption (http://www.againstcorruption.org); European Voice (http://www.europeanvoice.com)

89 The ECA's annual accounts are audited by PricewaterhouseCoopers SARL. See for example, Financial statements of the European Court of Auditors for the financial year 2011 [2012], OJ C315/1

90 European Parliament resolution of 17 April 2013 with observations forming an integral part of the Decision on the discharge for implementation of the European Union general budget for the financial year 2011, Section V – Court of Auditors (COM(2012)0436 – C7-0228/2012 – 2012/2171(DEC)), paras. 16, 17, 19 (EP discharge resolution 2011). See also, European Parliament resolution of 10 May 2012 with observations forming an integral part of the decision on discharge in respect of the implementation of the European Union general budget for the financial year 2010, Section V – Court of Auditors (COM(2011)0473 – C7-0260/2011 – 2011/2205(DEC)), para. 18 (EP discharge resolution 2010)

91 EP discharge resolution 2011, para. 18; EP discharge resolution 2010, para. 11

92 Draft motion of 25 September 2013 from the Committee on Budgetary Control for a European Parliament resolution on the future role of the Court of Auditors. The procedure on the appointment of Court of Auditors' Members: European Parliament consultation (2012/2064(INI)), para. 17 (EP draft ECA motion)

93 See, for example, Financial statements of the European Court of Auditors for the financial year 2011 [2012], OJ C315/1

94 Interview with the ECA internal auditor, 18 November 2013

95 See European Court of Auditors, 'International peer review of the European Court of Auditors', 2008. The peer review was undertaken by senior representatives from supreme audit institutions from Austria, Canada, Norway and Portugal.

96 G. Karakatsanis & B. Laffan, 'Financial Control', in The Institutions of the European Union 3rd ed, ed. by J. Peterson & M. Shackleton, (Oxford: OUP, 2012), pp. 246-247, 249. Also, EP discharge resolution 2011, paras. 18, 23; EP draft ECA motion, para. 14.

97 See http://www.eca.europa.eu/en/Pages/AuditReportsOpinions.aspx (accessed on 9 December 2013)

98 See T. Vogel, 'EU's auditors find rising error rate', European Voice, (5 November 2013), available at http://www.europeanvoice.com/article/2013/november/eu-s-auditors-find-rising-error-rate/78618.aspx (accessed on 29 November 2013)

‘contradictory procedure’ as being a useful, functioning mechanism to remove inaccuracies and support the eventual impact of recommendations.[99]

With regard to the accountability of ECA Members, during the procedure for their appointment and re-appointment, the European Parliament holds *in camera* hearings with individuals.[100] Where the Council and EP disagreed over the appointment of an individual in 2013,[101] the EP appears to be seeking to exercise, as far as possible, greater scrutiny of the concerned Member while in office, subjecting him to a Committee hearing early in his mandate.[102] Crucially, however, there is no formal, systematic scrutiny of an individual's performance against objective criteria in the *re-appointment* procedure: candidates provide the EP only with a 'summary of their experiences' as a Court Member and hold an exchange of views with the Committee on Budgetary Control,[103] while neither the Council nor member states execute a common evaluation. Political concerns duly appear to trump assessment of a Member's activity.[104]

The European Ombudsman has issued a small number of decisions (11) pertaining to complaints made against the ECA, since 1998. Most recently, the Ombudsman found in favour of the Court regarding a complaint over the alleged inadequate response by OLAF to a disclosure of information pertaining to suspected fraud.[105]

OLAF investigations have been held into the conduct of ECA Members and senior officials in the past, including into allegations of corruption,[106] but no Members have to date been formally stripped of their role or benefits by the CJEU for failing to meet the obligations of their office, though this is dependent upon a request from the ECA. There has indeed been some criticism of the effectiveness of this self-regulatory approach to Members' accountability, most significantly in 2013, when the ECA did not issue such a request to the CJEU, following allegations of harassment being made against a Court Member.[107] [108] The Court has been asked by the European Parliament to include information on the results and consequences of closed OLAF cases where they pertain to the ECA or its staff, from 2014 onwards.[109]

99 Interviews with Principal Auditor from an ECA Chamber, and with a member of a private office, 18 November 2013.

100 The hearings are held with the Committee on Budgetary Control.

101 See A. Rettman, ‘EU countries ignore MEPs on court appointment’, EU Observer, (11 July 2013), available at http://euobserver.com/institutional/120826 (accessed on 8 December 2013)

102 The hearing was organised by the Committee on Budgetary Control with the Member in question, where he was subjected to strong criticism regarding the circumstances of his appointment: “You are bad for the Court [of Auditors] and you are bad for Croatia”. See 'Don't get mad, organise a hearing', European Voice, (7 November 2013), available at http://www.europeanvoice.com/article/imported/don-t-get-mad-organise-a-hearing/78665.aspx (accessed on 29 November 2013)

103 See COCOBU Info, ISSUE 19/2011, available at http://www.europarl.europa.eu/document/activities/cont/201111/20111129ATT32666/20111129ATT32666EN.pdf (accessed on 9 December 2013)

104 Please see the section on ECA Independence (practice) for further details on this.

105 See Decision of the European Ombudsman of 21 March 2012, closing his inquiry into complaint 1069/2011/RT against the Court of Auditors, available at http://www.ombudsman.europa.eu/cases/decision.faces/en/11353/html.bookmark (accessed on 9 December 2013)

106 See, for example, D. Cronin, 'OLAF puts ex-auditor in dock over alleged corruption', European Voice, (17 October 2002), available at http://www.europeanvoice.com/article/imported/olaf-puts-ex-auditor-in-dock-over-alleged-corruption/45796.aspx, (accessed on 29 November 2013). Also, V. Pop, 'EU auditor used public funds to hamper anti-fraud inquiry', EU Observer, 27 April 2012, available at http://euobserver.com/justice/116058, and G. Simpson, 'European Court of Auditors defends secretary general', EU Observer, 27 April 2012, available at http://euobserver.com/opinion/116072 (both accessed on 21 November 2013)

107 J. Quatremer, 'Union européenne : silence et harcèlement à la Cour des comptes', Libération, 28 January 2013, available at http://www.liberation.fr/monde/2013/01/28/union-europeenne-silence-et-harcelement-a-la-cour-des-comptes_877410, (accessed on 21 November 2013) Interview with Chair and Member of ECA Staff Committee, 18 November 2013. Please see the section on ECA Integrity (practice) for further details on this.

108 The Court was commended for taking steps to prevent harassment in the wake of the allegations, ‘including preventative measures…and assistance and protection given to complainants that will help avoid situations escalating and will contribute to maintain the best possible working environment for its staff and its Members in the future’. See European Parliament resolution of 4 February 2014 on the future role of the Court of Auditors. The procedure on the appointment of Court of Auditors’ Members: European Parliament consultation (2012/2064(INI)), para. 21

109 Ibid, para. 20.

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of the European Court of Auditors?

A comprehensive infrastructure of internal integrity rules is in place at the European Court of Auditors, elaborating on Treaty-based integrity safeguards pertaining to Members of the Court, and supplementing EU civil service obligations for its staff. These include a broad range of safeguards against conflicts of interest, and rely largely on proactive compliance by individuals. Loopholes remain regarding pre-appointment checks on Members' integrity; on safeguards against their external activities; and on internal whistle-blower provisions. Furthermore, no independent actors are involved in monitoring compliance or initiating sanctions against Court Members, with a self-regulation system preferred.

The EU Treaties lay down a number of provisions to safeguard the integrity and independence of Members of the European Court of Auditors while in office, including prohibitions on 'seeking or taking instructions from any government or any body'; on undertaking 'any action incompatible with their duties'; and on pursuing any additional occupations, whether remunerated or otherwise. Though no objective assessment criteria are laid down to assess the integrity of nominees to the Court, a pre-appointment hearing in front of the European Parliament is foreseen, prior to formal appointment by the Council.110 Incoming Members are compelled to give a 'solemn undertaking' upon appointment that they will respect their obligations and, furthermore, that after leaving the Court they will 'behave with integrity and discretion as regards the acceptance...of certain appointments or benefits'.[111] The EU Treaties further indicate that Members can be compulsorily retired, or stripped of their pension rights, for failing to observe these obligations, via a ruling of the CJEU, further to a formal request from the ECA.

Alongside safeguards in the ECA's internal procedural rules, a Code of Conduct (CoC) is in place specifically for Members of the Court, to elaborate upon their Treaty obligations. The CoC includes provisions on the avoidance of conflicts of interest, on the acceptance of gifts,[112] and on eligible outside activities; prohibitions on the unauthorised disclosure of information to third parties, and on the employment of spouses/partners/family members to private offices; and confers post-employment obligations upon Members.[113] The CoC also requires ECA Members to complete a declaration of financial interests and outside activities, and declare the professional occupation of their spouse/partner, upon entering *and on leaving* the service: the declaration is public and must be updated when major changes occur. The declarations are examined by the President and consulted prior to the allocation of audit files; and specific procedures are in place for the examination of the President's declaration.[114]

Some internal integrity rules fall behind the EU Treaties: despite primary law prohibiting ECA Members for engaging in *any* such activities, the CoC foresees the possibility for certain eligible activities[115] – aside from the holding of a political office[116] – and specifies criteria on which to assess the compatibility of such activities with a Member's role.[117] Verification of compatibility, however, is done only by a committee of three sitting ECA Members, who are 'preferably not...engaged in any outside activities'. Opinions of the Committee are not binding upon Members, though non-adherence can trigger dismissal proceedings.[118] No independent entity is foreseen to advise Court Members on ethics, with the same Committee charged to advise on interpretation of the CoC.[119]

With regard to post-employment obligations, former Members need to inform the ECA President of any potential future occupation in the three years following their term of office. The ECA retains the right to prohibit the former Member from undertaking the said occupation, should it consider it a conflict of interest and can initiate a procedure to remove pension rights should the former Member not comply with the decision.[120] No criteria on which assessment should be based are laid down in the Court's procedural rules, though 'a conflict of interest is, in principle, not to be expected' should the individual intend to 'engage in a public office'.[121] No independent actors

110 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, rule 108, (EP RoPs)
111 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts. 286(1), (3), (4) (TFEU).
112 ECA Members are prohibited from accepting gifts of a value above 150EUR; where such gifts are received, these need to be handed over to the Secretary General and recorded in a dedicated register. See Code of Conduct for the Members of the Court, of 8 February 2012, art. 3(1) (ECA CoC)
113 ECA CoC, arts. 1-4, 6, 8
114 ECA CoC, art. 2
115 For example, the holding of 'honorary, unremunerated offices in foundations or similar organisations in a political, cultural, artistic or charitable sphere or in educational establishments'
116 See ECA CoC, art. 4(1)-(3)
117 The criteria are (a) the activity does not undermine the Court's impartiality; (b) there is no conflict of interest; (c) the activity does not take up an excessive amount of time; (d) it will not bring any pecuniary gain. See Decision No 26-2010 of 11 March 2010, laying down the rules for implementing the rules of procedure of the Court of Auditors, art. 5(2) (ECA IR RoPs)
118 ECA IR RoPs, arts. 5-6
119 ECA CoC, art. 9
120 ECA CoC, art. 8; Decision No 26-2010 of 11 March 2010, laying down the rules for implementing the rules of procedure of the Court of Auditors, arts. 6(6)-(7) (ECA IR RoPs)
121 ECA CoC, art. 8(2)

are involved in assessing these cases, nor on associated sanctions: Court Members alone decide upon these matters, inviting a clear conflict of interest.

In view of the nature of the ECA's work, specific Ethical Guidelines for Members and staff have also been put in place in compliance with the INTOSAI Code of Ethics.[122] These comprehensive guidelines embed integrity, independence, objectivity, and good administration into the work of the Court, and call on ECA personnel to familiarise themselves and comply with relevant ethical rules. Though not legally binding, they encourage the avoidance of conflicts of interest, and of undue proximity to audited entities; the reporting of misconduct or unethical behaviour; efficient work and professionalism – including ensuring that the ECA serves as a role model of financial management; and that all personnel apply the ECA's Audit Policy and Standards.[123] Safeguards are duly built in to the procedures governing the execution of ECA audits, to ensure integrity: for example, while auditees are able to respond to preliminary ECA audit findings, these responses, and any subsequent changes made to draft audit reports, are submitted to the Court/competent Chamber, along with a 'list of the persons who contributed to the work'.[124]

The Ethical Guidelines supplement the general obligations incumbent upon ECA staff.[125] In addition, there is an 'annual confirmation procedure' by which the Secretary General reminds ECA personnel of the Court's ethical requirements and calls on them to report any 'threat that could put at risk' their compliance therewith.[126] A mobility scheme is in place,[127] in part to ensure staff do not remain in sensitive posts for an undue length of time, nor 'audit the same area for too long'.[128] However, despite the obligation on staff – and on Members[129] – to report misconduct, or any suspected fraudulent, corrupt or illegal behaviour,[130] no specific internal whistle-blowing provisions are in place.

Furthermore, while the ECA's ethics framework places a clear focus on individual responsibility for adherence to internal rules, there are no provisions are in place for an entity – independent or otherwise – to advise staff on ethics issues.

122 For further details on this, see http://www.intosai.org/issai-executive-summaries/view/article/issai-30-code-of-ethics.html (last accessed on 27 December 2013)
123 Decision No 66-2011 of 26 October 2011 laying down Ethical Guidelines for the European Court of Auditors (ECA Ethical Guidelines)
124 ECA IR RoPs, arts. 57(1a), 61
125 Which include provisions to prohibit unauthorised external activity, disclosure of information, or acceptance of gifts/payment; and on post-employment, inter alia. See 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, principally, arts 11-26a (Staff Regulations)
126 Decision No 36-2011 of 7 July 2011 setting out a procedure for providing reasonable assurance that the Court complies with the relevant ethical requirements
127 Decision of the Court of Auditors No 14-2010 of 2 March 2010 on rules governing the mobility of staff
128 ECA Ethical Guidelines, para. 3.5
129 Code of Conduct for the Members of the Court, of 8 February 2012, art. 7(4); and Decision No 99-2004 of 16 December 2004 concerning the rules concerning arrangements for cooperation by the Members of the Court in internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Communities' financial interests, esp. art. 2
130 Staff Regulations, art. 22a

INTEGRITY (PRACTICE)

To what extent is the integrity of the European Court of Auditors ensured in practice?

Mechanisms to safeguard the integrity of ECA Members are being used, though criticism has been levelled at the effectiveness of sanction mechanisms. Corresponding safeguards for staff are being exercised, including mandatory training to strengthen common awareness of integrity obligations. However, problems remain regarding the consistent application of rules across the Court. Serious concerns pertain to the level of protection of whistle-blowers and channels available for reporting misconduct. OLAF investigations are however taking place, despite some concerns having been expressed by the Court in the past pertaining to how strictly OLAF complies with procedures governing on-site searches.

ECA members complete declarations of interest which are verified by the President prior to the allocation of audit portfolios:[131] a summarised version of each declaration is published on the ECA website,[132] and the Court has declared an intention to publish a register of Member's financial interests.[133] Notifications are being made by Members to the committee responsible for evaluating their potential outside activities; the frequency, however, is reported to be low. No disputes with regard to recommendations had occurred at the time of writing, according to the committee chair: he considered the risk of conflicts of interest to be low in this regard, with most incompatible activities related to constraints on a Court Member's working time.[134] Nevertheless, in practice, the wide scope of possible interpretation of the criteria on which evaluation needed to be made was a noted challenge for the committee: thus demonstrating a potential vulnerability in the consistency of application of this integrity safeguard.

The assessment of the compatibility of former Members' future professional activity is reported to be functioning well, with no refusals issued by the Court at the time of writing.[135] No specific external criticism has been raised in this particular regard. Nevertheless, concern has been raised regarding the effectiveness of the self-regulation approach of the Court to alleged misconduct by Members: for example, with regard to the lack of sanctions brought against a member of the Court in 2013 for alleged harassment of staff.[136]

In general, the ECA does place great emphasis on the individual responsibility of Court Members and staff to ensure the implementation and enforcement of integrity mechanisms at the ECA;[137] yet, this invites a degree of vulnerability regarding consistent and effective application. For example, ECA respondents interviewed by TI-EU reported low Court-wide awareness and use of the annual confirmation procedure aimed at identifying risks to compliance with ethics rules, however, the procedure is taking place.[138] [139] Independent reviewers also highlighted threats to the common application of audit standards resulting from the internal structure of the Court and the consequent development of silos.[140]

Training is though in place to inform personnel of their common obligations[141] and to provide practical guidance on how to deal with Court-specific integrity questions: a one-day ethics course is provided to new staff, and a half-day mandatory course is in place for all staff, with 11 sessions having been delivered at the time of writing. The course is focused, according to a trainer, not only on ensuring compliance with rules but on fostering integrity.[142] At the time of writing, no ethics training tailored specifically to Court members, managers or other sensitive functions was foreseen.

No audits on specifically ethics-related matters had been held at the Court at the time of writing;[143] however, all internal audits reportedly include verification of sufficient controls to prevent conflicts of interest.[144] In this latter

131 Interview with the ECA Secretary General, 18 November 2013
132 See http://www.eca.europa.eu
133 European Court of Auditors, 'Strategy 2013-17', para. 20, available at http://www.eca.europa.eu/Lists/ECADocuments/STRATEGY2013-2017/STRATEGY2013-2017_EN.PDF (accessed on 21 November 2013)
134 Interview with Member of the ECA, 18 November 2013
135 Interview with ECA Secretary General, 18 November 2013
136 J. Quatremer, 'Union européenne : silence et harcèlement à la Cour des comptes', Libération', 28 January 2013, available at http://www.liberation.fr/monde/2013/01/28/union-europeenne-silence-et-harcelement-a-la-cour-des-comptes_877410, (accessed on 21 November 2013). Interview with Chair and Member of ECA Staff Committee, 18 November 2013.
137 'Own judgement [sic], common sense, seek for advice!!', from E. Ruiz Garcia, 'Ethical matters at the European Court of Auditors', 1st meeting of the EUROSAI Task Force on Audit and Ethics, Lisbon, Portugal, on 7 May 2012 (Presentation)
138 This is an annual email communication sent by the Secretary General to remind Court Members and staff of their ethical obligations. See ECA Decision No. 36-2011 of 7 June 2011 setting out a procedure for providing reasonable assurance that the Court complies with the relevant ethical requirements
139 The Secretary General, for example, did not recall receiving a single notification of a threat to compliance in this context. Interview with ECA Secretary General, 18 November 2013. Also, interview with Chair and Member of ECA Staff Committee, 18 November 2013
140 European Court of Auditors, 'International peer review of the European Court of Auditors', 2008, para. 23
141 Under the Court's Ethical Guidelines and EU Staff Regulations, inter alia.
142 Interview with Principle Auditor from an ECA Chamber, 18 November 2013
143 The ECA is involved in work with national level supreme audit institutions on this issue, and organised a seminar under the auspices of the EUROSAI Task Force on

regard, staff complete specific declarations on the absence of conflicts of interest only when participating in recruitment or procurement procedures.

Serious concerns pertain to the level of whistle-blowing protection within the ECA: no internal guidelines are in place specifically to address the issue, nor dedicated whistle-blowing channels,[145] despite high profile cases of individuals reporting misconduct at the Court, most recently in 2012, and pointing to a lack of institutional protection from prejudicial effects.[146] Interviews at the Court indicated a lack of institutional support for internal whistle-blowing in line with international standards.[147]

A small number of OLAF investigations have though been initiated where misconduct has been suspected within the ECA – with one on-going at the time of writing[148] – and Court representatives report that cooperation with the Office functions well, with information provided systematically to the latter.[149] However, in 2011, the President of the ECA raised concerns with the European Commissioner responsible for OLAF regarding the conduct of an OLAF investigation into the award of a contract for security services at the ECA. This investigation was initiated following information provided by the ECA Secretary General to OLAF. Specifically, the concerns related to the inspection by OLAF of computers used by individuals unconcerned by the investigation, without prior notification being given to the Court.[150] OLAF was also separately criticised by the Court for failing to provide adequate information to individuals when requesting hearings with them.[151] [152] For its part, OLAF perceives such correspondence directed to the Commissioner as inappropriate with regard to the operation of an on-going investigation.[153]

Auditing Ethics on 17-18 September 2013. For more information see European Court of Auditors, Journal, October 2013, pp15-18, available at http://www.eca.europa.eu/Lists/ECADocuments/JOURNAL13_10/Journal-Octobre2013-WEB.pdf (accessed on 21 November 2013)

144 Interview with ECA internal auditor, 18 November 2013

145 Interview with the ECA internal auditor, 18 November 2013

146 "Nous sommes les fous qui avons osé attaquer un membre de la Cour." See J. Quatremer, 'Union européenne : silence et harcèlement à la Cour des comptes', Libération', 28 January 2013, available at http://www.liberation.fr/monde/2013/01/28/union-europeenne-silence-et-harcelement-a-la-cour-des-comptes_877410, (accessed on 21 November 2013)
In 2003, a member of the ECA staff who made high-profile allegations of corruption and nepotism at the ECA was allegedly sacked for reporting these concerns. See M. Ritchie, 'Accountant sacked over allegations of EU corruption', The Herald, 18 July 2003, available at http://www.heraldscotland.com/sport/spl/aberdeen/accountant-sacked-over-allegations-of-eu-corruption-1.113248 (accessed on 21 November 2013)

147 Interview with the ECA internal auditor and with Chair and Member of the Staff Committee, 18 November 2013

148 Replies to written questions from the EP Committee on budgetary control to the European Court of Auditors with regard to the 2012 discharge procedure (2013) pg. 4, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cont/dv/replieseca_/replieseca_en.pdf (ECA discharge responses 2012)

149 Interviews with ECA Secretary General, and with Internal Auditor, 18 November 2013

150 Letter from President of the European Court of Auditors to Commissioner Semeta, of 29 November 2011

151 See G. Simpson, 'European Court of Auditors defends secretary general', EU Observer, 27 April 2012, available at http://euobserver.com/opinion/116072 (both accessed on 21 November 2013)

152 Though he was not found to have acted improperly, the case lead to legal action being brought by the Secretary General against OLAF, stemming from accusations that OLAF failed to provide him with adequate information during the investigation. See V. Pop, 'EU auditor used public funds to hamper anti-fraud inquiry', EU Observer, 27 April 2012, available at http://euobserver.com/justice/116058, and G. Simpson, 'European Court of Auditors defends secretary general', EU Observer, 27 April 2012, available at http://euobserver.com/opinion/116072 (both accessed on 21 November 2013)

153 Interview with OLAF Director General, 5 December 2013

RESOURCES

To what extent does the European Court of Auditors have adequate resources to achieve its goals in practice?

Though there appear to be no concerns regarding the general sufficiency of resources at the European Court of Auditors, the institution is subject to a 5% cut in its staff up to 2017. Questions have been raised regarding the adequacy of resources devoted specifically to audit tasks and the size of the Court's management and governance structure, with the European Parliament calling in 2014 for revision of the one member per Member State rule, and review of members' remuneration levels. Efforts are already being made to improve the cost-effectiveness of the Court's activities, with increases in productivity noted since 2009. Recent investment to modernise IT tools and infrastructure are expected to reap further benefits.

The budget of the European Court of Auditors (ECA) stood at 142.8m EUR in 2013, representing a slight increase of 0.2% year on year from 2012, but a decrease from previous years (187.6m EUR in 2009; 147.9m EUR in 2010).[154] At the end of 2012, the ECA comprised 887 staff members - demonstrating relative stability in this regard (880 in 2009; 889 in 2010).[155] Nevertheless, in common with all EU institutions, the ECA is subject to a cut in its staffing levels by 5% over the 2013-2017 period.[156]

In part to mitigate the effects on these cuts on its core mission, but also to address concerns over the timeliness of audit reporting, the Court has been aiming to reduce staff allocation to administrative departments and boost those in audit. This has seen staff in administration fall from 171 to 139 between 2009-2012, while audit has grown from 525 to 573 over the same period.[157] Yet, this latter figure does not equate exactly to those performing purely audit functions, and includes, for example, administrative support staff within audit-focused departments. Indeed, the EP called for an increase in officials 'specialised in, and performing exclusively audit tasks' in 2012,[158] and highlighted, in 2013, a high, though falling vacancy rate in audit posts.[159]

Internal audits to date have not, though, demonstrated that this reallocation of staff has been detrimental to the Court's work,[160] (e.g. in translation, which has seen a cut from 163 to 143 staff in the 2009-2012 period)[161] while no qualifications have been made on the use of resources in external audits of the ECA, since 2008.[162] The number of reports produced by the Court continues to increase – in particular, special reports and specific annual reports on EU agencies/bodies.[163] Furthermore, respondents at the ECA highlight that the institution pays close and constant attention to where best staff functions should be situated to ensure increased effectiveness and focus on 'core business'.[164]

Yet, concerns do remain on the adequacy of resources for audit tasks: self-imposed targets to reduce the delivery time of statements of preliminary audit findings are yet to be met,[165] and the Court itself has highlighted the limits on its capacity to undertake further specific assessments on policy areas, and on conflicts of interest and transparency at all EU agencies, without additional resources.[166]

Although the Chamber system introduced in 2010 has enabled the ECA to adopt reports and opinions by 5-6 members rather than the entire Court, the fact that the ECA comprises a member from every EU Member State, each complimented by a private office of up to 4 staff (in total these offices numbered 123 staff in 2012), has been seen as an obstacle to the efficient management of the institution and the effective execution of its mission.[167] Reforms have been proposed by a former ECA President,[168] and the European Parliament called in 2014 for

154 European Court of Auditors, *Annual Activity Report 2012*, (2013), (Luxembourg: Publications Office of the European Union), pg. 51 (ECA AAR 2012); European Court of Auditors, *Annual Activity Report 2009*, (2010), (Luxembourg: Publications Office of the European Union), pg. 49 (ECA AAR 2009). The 2009 budget also included appropriations for the development of a new ECA building.
155 This pertains to officials and temporary agents, and not Court Members, contract staff of seconded national experts. ECA AAR 2012, pp. 44-45; ECA AAR 2009, pg. 40
156 European Council 7/8 February 2013 Conclusions (Multiannual Financial Framework), EUCO 37/13, para. 99
157 ECA AAR 2012, pg. 45
158 European Parliament resolution of 10 May 2012 with observations forming an integral part of the decision on discharge in respect of the implementation of the European Union general budget for the financial year 2010, Section V – Court of Auditors (COM(2011)0473 – C7-0260/2011 – 2011/2205(DEC)), para. 16
159 European Parliament resolution of 17 April 2013 with observations forming an integral part of the Decision on the discharge for implementation of the European Union general budget for the financial year 2011, Section V – Court of Auditors (COM(2012)0436 – C7-0228/2012 – 2012/2171(DEC)), para. 8
160 Interview with ECA Internal Auditor, 18 November 2013
161 ECA AAR 2012, pg. 45
162 ECA AAR 2012, pg. 42
163 Ibid, pg. 9
164 Interview with ECA Secretary General, 18 November 2013
165 Response from the European Court of Auditors to the points in the Parliament and Council's 2011 discharge that relate to the ECA and its audit responsibilities, pg. 9, available at http://www.europarl.europa.eu/document/activities/cont/201307/20130716ATT69845/20130716ATT69845EN.pdf (last accessed on 26 November 2013) (ECA 2011 discharge response); ECA AAR 2012, pg. 41
166 ECA 2011 discharge response, pp. 3, 8
167 J. O. Karlsson & L. Tobisson, "Much talk, little action' at European Court of Auditors', *European Voice*, (7 June 2007), available at http://www.europeanvoice.com/article/imported/much-talk-little-action-at-european-court-of-auditors/57633.aspx (last accessed on 27 November 2013)
168 Ibid

replacement of the rule guaranteeing one member per Member State, consideration of shared private offices and staff, and a review of the remuneration levels of ECA members, to bring them into line with national and international practices for comparative positions.[169] These proposed changes also seek to address criticism of the adequacy of the professional qualifications of Court members to the institution's audit role, as a result of the predominantly political appointment procedure established by the Treaties.[170]

The need for more cost-effective audit practices are acknowledged in the ECA Strategy for 2013-2017, and efforts to achieve this include consideration of using 'the work of other auditors or control bodies in order to produce independent audit results'.[171] Recent IT developments – notably release of new, specialised audit support software[172] – and the completion in 2012 of a new building allowing for all staff to be situated on a single site, are expected to support greater efficiency and effectiveness in the Court's work.[173] Investment in IT also continues to increase: from a budget of 6.3m EUR to 7.2m EUR over the 2009-2013 period.[174]

169 European Parliament resolution of 4 February 2014 on the future role of the Court of Auditors. The procedure on the appointment of Court of Auditors' Members: European Parliament consultation (2012/2064(INI)), paras. 32, 39-41. The ECA had, at the time of writing, already taken measures to share staff of private offices amongst members, for example, by pooling secretarial staff and drivers.

170 H. Brady, 'The EU's Court of Auditors: Europe's sleeping giant?', *E! Sharp*, (May 2013), available at http://esharp.eu/oped/hugo-brady/57-the-eu-s-court-of-auditors-europe-s-sleeping-giant/ (last accessed on 27 November 2013); T. King, 'The wrong man', *European Voice*, (30 January 2014), available at http://www.europeanvoice.com/CWS/Index.aspx?PageID=214&articleID=79479 (last accessed on 10 March 2014)

171 European Court of Auditors, Strategy 2013-2017, paras. 6, 11, 21, available at http://www.eca.europa.eu/Lists/ECADocuments/STRATEGY2013-2017/STRATEGY2013-2017_EN.PDF (last accessed on 26 November 2013)

172 See ECA AAR 2012, pg. 47

173 European Court of Auditors, Journal, June 2013, pp. 2-10, available at http://eca.europa.eu/portal/pls/portal/docs/1/22484778.PDF (last accessed on 26 November 2013)

174 ECA AAR 2012, pg. 51; ECA AAR 2009, pg. 49

EFFECTIVE FINANCIAL AUDITS OF EXPENDITURE BY EU INSTITUTIONS

To what extent does the audit institution provide effective audits of public expenditure managed directly by EU institutions?

The European Court of Auditors has comprehensive powers to oversee all financial operations underlying the execution of the EU budget, and reports the results of its work – both financial and performance auditing – to the European Parliament. The production of ECA reporting is increasing and its quality is considered to be good. However, while annual reports are delivered in line with obligations, their complexity has been criticised. Concerns remain on the timeliness of producing Special Reports and on the effective follow-up of audit recommendations, particularly where featured in the former, despite recent progress.

The EU Treaties lay down the central role of the European Court of Auditors as the EU's external auditor, with a mandate to examine the reliability of the EU's accounts and the legality and regularity of the underlying transactions, and provide assurance thereon.[175] The ECA also has to report on the soundness of financial management of EU funds,[176] and is able to produce observations on specific issues in this regard, at its own discretion or in response to requests from other EU institutions.[177]

The European Court of Auditors duly has a legal right of access to any information related to 'the financial management of...operations financed or co-financed by the Union', whether held by EU or national authorities administering EU funds, or by recipients, and can request to hear individuals involved in relevant financial procedures.[178] [179] It produces an annual report comprising assessment of the entire EU budget every year,[180] including the required statement of assurance on the aforementioned elements:[181] the report principally contains the results of financial and compliance audit work, also highlighting (systemic) observations, including on irregularities identified through audit activities. Specific chapters on each EU institution and other bodies are featured therein,[182] however, distinct annual reports are produced on EU agencies and decentralised bodies each year.

In the course of its work, the ECA also undertakes performance audits, aiming to assess the soundness of the EU's financial management against principles of 'economy, efficiency and effectiveness'.[183] Attention is therefore also paid to the effectiveness of the internal control frameworks in place within audited bodies.[184]

The level of output of the Court has increased greatly in recent years, with 87 reports and opinions produced in 2012, compared with 48 in 2008.[185] (Indeed, 120 reports were produced between 1997-2004.[186]) While the ECA is delivering on its required reporting in the context of the annual EU budgetary discharge procedure, the complexity of its annual report on the EU budget – 'running to some 240 pages each year'[187] - has been subject to criticism. The ECA has made efforts to improve clarity (e.g. through summary reports, communications tools, and videos, *inter alia*[188]) and to 'focus more on special reports'[189] – which goes some way to explaining the increase in output.

An International Peer Review in 2008 found the ECA's reports to be 'based on sufficient and appropriate audit evidence, as required by international auditing standards', with stakeholders having a 'high level of confidence' in the reports and generally considering them to be 'fair, factual, and objective'.[190] The ECA's own measurement of the perception of the quality of its work finds external experts to deem its reports 'satisfactory', with auditees

175 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts. 285, 287 (TFEU)
176 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art. 162(2) (Financial Regulation)
177 TFEU, art. 287(2); Financial Regulation, art. 163(1)
178 Financial Regulation, arts. 159-161
179 Furthermore, the CJEU has ruled that any refusal by a member state to provide information to the ECA constitutes a failure by the state to fulfil its obligations under the EU Treaties, where an audit falls under the competence of the ECA. See Judgement of the Court (Grand Chamber) of 15 November 2011 — Case C-539/09 [2011], European Commission v Federal Republic of Germany, OJ C 25/5
180 And a corresponding separate annual report on the European Development Funds.
181 In accordance with provisions in the EU Treaties and secondary legislation. See TFEU, art. 287; Financial Regulation, art. 162
182 See http://www.eca.europa.eu/en/Pages/AR_2012.aspx for information on the Annual Report 2012 of the ECA, (last accessed on 9 December 2013)
183 See European Court of Auditors, 'Performance Audit Manual', [2013], pg. 7, available at http://eca.europa.eu/portal/pls/portal/docs/1/21934816.PDF (last accessed on 9 December 2013)
184 Interview with Principal Auditor of ECA Chamber, 18 November 2013
185 European Court of Auditors, Annual Activity Report 2012, (2013), (Luxembourg: Publications Office of the European Union), pg. 9 (ECA AAR 2012);
186 G. Karakatsanis & B. Laffan, 'Financial Control', in The Institutions of the European Union 3rd ed, ed. by J. Peterson & M. Shackleton, (Oxford: OUP, 2012), pg. 249. (Karakatsanis & Laffan, 2012)
187 Karakatsanis & Laffan, 2012, pg. 429
188 See http://www.eca.europa.eu/en/Pages/AR_2012.aspx for information on the Annual Report 2012 of the ECA, (last accessed on 9 December 2013)
189 Karakatsanis & Laffan, 2012, pg. 429
190 European Court of Auditors, 'International peer review of the European Court of Auditors', 2008, Executive summary.

finding audits to be 'good'.[191] However, criticism has been levelled at the Court, particularly by the European Parliament,[192] for the accurate planning and timeliness of its special reports – taking 'an average of 2.5 years' to each be produced.[193] These criticisms extend to the ECA's effective and timely follow-up of audit recommendations, but progress has been acknowledged.[194].

191 ECA AAR 2012, pg. 38.

192 European Parliament resolution of 17 April 2013 with observations forming an integral part of the Decision on the discharge for implementation of the European Union general budget for the financial year 2011, Section V – Court of Auditors (COM(2012)0436 – C7-0228/2012 – 2012/2171(DEC)), para. 5 (EP discharge resolution 2011); European Parliament resolution of 10 May 2012 with observations forming an integral part of the decision on discharge in respect of the implementation of the European Union general budget for the financial year 2010, Section V – Court of Auditors (COM(2011)0473 – C7-0260/2011 – 2011/2205(DEC)), para. 19 (EP discharge resolution 2010)

193 H. Brady, 'The EU's Court of Auditors: Europe's sleeping giant?', E! Sharp, (May 2013), available at http://esharp.eu/oped/hugo-brady/57-the-eu-s-court-of-auditors-europe-s-sleeping-giant/ (last accessed on 27 November 2013)

194 EP discharge resolution 2010, para. 13. See ECA AAR 2012, pg. 39. EP discharge resolution 2011, para. 20. To consult the Special Report, please see http://eca.europa.eu/portal/pls/portal/docs/1/19246746.PDF (last accessed on 9 December 2013)

DETECTING AND SANCTIONING MISBEHAVIOUR BY PUBLIC OFFICE HOLDERS

Does the audit institution detect and investigate misbehaviour of public office holders?

The ECA does not have the mandate to investigate specifically misbehaviour by holders of EU public office, nor sanction them, but can report on specific systemic issues upon request of another EU institution. In its normal audit activities, the ECA can detect instances of fraud/corruption – though does so infrequently – and also receives unsolicited allegations of such activity. In such cases, information is passed on to OLAF. The ECA does not carry out ethics-related audits, though is considering the issue.

The core of the mission of the European Court of Auditors is to examine the reliability of the EU's accounts; the legality and regularity of the underlying transactions; the soundness of financial management; and report on any irregularities thereby identified.[195] As such, it undertakes three types of audit: financial, compliance and performance, none of which are specifically designed to investigate misbehaviour/misconduct by public officeholders at EU or member state level in the administration of EU funds. The ECA, rather, audits *the system*: therefore while it may uncover (suspected) instances of fraud, corruption, or illegal activity in the course of its activities, identifying these cases is 'not a primary objective' of its audits.[196]

The ECA does not, therefore, have a mandate to investigate misconduct, whether related or not to financial management, nor apply any sanctions. However, where requested by another institution, the ECA could, under EU Treaty provisions,[197] provide observations on specific questions related to the systems in place to safeguard the conduct of officeholders/officials, as was the case in 2012 when it produced a Special Report on the management of conflicts of interest in selected EU agencies at the behest of the European Parliament.[198] [199]

The ECA does cite specific examples of irregularities (fraudulent or otherwise) in its reports and other audit outputs, and does consider the effectiveness of internal control mechanisms in the safeguarding of sound financial management, but does not go so far as to recommend sanctions for individuals involved in any fraudulent activity/misconduct.

Nevertheless, the ECA has the power to *detect* fraudulent or corrupt behaviour, given its legal right of access to any information related to 'the financial management of...operations financed or co-financed by the Union'. It can request to hear individuals involved in relevant financial procedures.[200] Furthermore, the CJEU has ruled that any refusal by a member state to provide information to the ECA constitutes a failure to fulfil its obligations under the EU Treaties.[201][202]

Where it does uncover any evidence of suspected fraud or corruption, the ECA is obliged to transfer this to OLAF, and provide the latter with access to any information requested.[203] Respondents at the ECA indicate that, in practice, this is done systematically;[204] however, such instances are 'rarely' detected.[205] In 2011, the ECA provided OLAF with seven cases of suspected fraud, two of which led to OLAF enquiries.[206] In 2012, eight cases were referred to OLAF, with 6 enquiries subsequently opened by the latter.[207] The ECA also provides OLAF with any unsolicited information it receives, where its own assessment deems the denunciation to constitute 'indication of

195 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 287 (TFEU)
196 Response to the points in the Parliament and Council's 2011 discharge that relate to the ECA and its audit responsibilities [2013], section III(c), available at http://www.europarl.europa.eu/document/activities/cont/201307/20130716ATT69845/20130716ATT69845EN.pdf (ECA discharge responses 2011)
197 TFEU, art. 287(2)
198 Resolution of the European Parliament of 10 May 2011 on the 2009 discharge: performance, financial management and control of EU agencies, OJ L250/269, para. 21. The report is available at http://eca.europa.eu/portal/pls/portal/docs/1/17190743.PDF (accessed on 9 December 2013).
199 The ECA can also, within the scope of its mandate, 'transmit...observations which are, in its opinion, such that they should appear in a special report: see, Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art. 163(1) (Financial Regulation)
200 Financial Regulation, arts. 159-161
201 Where the audit falls under the competence of the ECA. See Judgement of the Court (Grand Chamber) of 15 November 2011 — Case C-539/09 [2011], European Commission v Federal Republic of Germany, OJ C 25/5
202 These powers are primarily aimed at identifying irregularities, irrespective of their nature. It is important to note that the identification of irregularities does not necessarily suggest the presence of fraudulent or corrupt behaviour, and may reflect errors or incorrect understanding of rules.
203 Decision No 97-2004 of the Court of Auditors, of 16 December 2004, laying down arrangements for cooperation with the European Anti-Fraud Office in respect of access by the latter to audit information, arts. 2, 6 (ECA Decision 97-2004)
204 Interview with ECA Internal Auditor, and with Principal Auditor of ECA Chamber, 18 November 2013
205 Interview with ECA Internal Auditor, 18 November 2013
206 European Parliament resolution of 17 April 2013 with observations forming an integral part of the Decision on the discharge for implementation of the European Union general budget for the financial year 2011, Section V – Court of Auditors (COM(2012)0436 – C7-0228/2012 – 2012/2171(DEC)), para. 16 (EP discharge resolution 2011)
207 Replies to written questions from the EP Committee on budgetary control to the European Court of Auditors with regard to the 2012 discharge procedure (2013) pg. 14, available at http://www.europarl.europa.eu/meetdocs/2009_2014/documents/cont/dv/replieseca_/replieseca_en.pdf (ECA discharge responses 2012)

fraud, corruption or other illegal activity'.[208] In 2011, it provided OLAF with seventeen such cases,[209] and in 2012, eight.[210] It is unclear how many of these cases related to public office holders.

The European Parliament has noted positively the 'continued close cooperation' between ECA and OLAF,[211] however, in response to a question it posed to the ECA on whether the low number of fraud cases uncovered provided an accurate reflection of the level of corruption pertaining to EU funds, the Court replied that the Commission was 'best placed to judge'.[212] The determination of any sanctions against officeholders found guilty of alleged misconduct would be handled according to the institutional-specific provisions in place, but would not involve the ECA, unless pertaining to a Member of the Court.[213]

The ECA had not undertaken any ethics-related audits at the time of writing,[214] aside from the aforementioned Special Report on the management of conflicts of interest,[215] but it is discussing the topic with national level supreme audit institutions.[216] At present, no specific ECA audits of this kind are foreseen, with a Court respondent highlighting the difficulties in designing satisfactory methodology in this regard: however, efforts are being made to consider mainstreaming ethics-related questions in existing audit types.[217]

208 ECA Decision 97-2004, art. 6
209 EP discharge resolution 2011, para. 17
210 ECA discharge responses 2012, pg. 14
211 EP discharge resolution 2011, para. 17
212 ECA discharge responses 2011, section III(c)
213 Please refer to the relevant sections on accountability for other institutions for further information. The 'slow drip-feed of ECA reports' to the European Parliament is considered to be a crucial, though indirect, element in the ultimate resignation of the Santer Commission in 1999. See G. Karakatsanis & B. Laffan, 'Financial Control', in The Institutions of the European Union 3rd ed, ed. by J. Peterson & M. Shackleton, (Oxford: OUP, 2012), pp. 253-54, 258-59.
214 Interview with Principal Auditor of ECA Chamber, 18 November 2013
215 See http://eca.europa.eu/portal/pls/portal/docs/1/17190743.PDF
216 The ECA is involved in work with national level supreme audit institutions on this issue, and organised a seminar under the auspices of the EUROSAI Task Force on Auditing Ethics on 17-18 September 2013. For more information see European Court of Auditors, Journal, October 2013, pp15-18, available at http://www.eca.europa.eu/Lists/ECADocuments/JOURNAL13_10/Journal-Octobre2013-WEB.pdf
217 Interview with Principal Auditor of ECA Chamber, 18 November 2013

EUROPEAN ANTI-FRAUD OFFICE (OLAF)

Strengths	Weaknesses
• New staff ethics rules to be introduced in 2014 • Integrity of investigative procedures enhanced following reform of guidelines on investigations • Legal mandate puts broad range of investigative measures at its disposal • Provides active support to fraud-prevention activities, including the Commission's department-specific Anti-Fraud Strategies • Resistance to political pressure from EP over investigative work	• Resource constraints impacting investigative work • Absence of provisions to address unique situation of OLAF-internal whistle-blowers, and provide them with first-instance, external reporting channels • OLAF's internal supervisory body prevented from exercising effective oversight and lacking budgetary autonomy • Current practices of cooperation with other institutions endanger procedural independence and the protection of EU whistle-blowers • Lack of complete independence from the European Commission

Recommendations

- OLAF should introduce comprehensive internal whistle-blowing procedures
- OLAF, and the EU legislators where necessary, should provide OLAF's internal supervisory body with control over its resources and full access to case files
- OLAF should reform how it shares information on open and closed cases with EU institutions to protect the integrity of investigations
- EU Member States and EU legislators should establish OLAF's complete organisational independence

About OLAF

The European Anti-fraud Office (OLAF) was formally established in 1999 as an internal, but independent, entity within the European Commission. It replaced the Task Force for Coordination of Fraud Prevention (UCLAF), which was previously placed under the direct supervision of the European Commission.

OLAF is mandated to combat fraud and corruption affecting the financial interests of the EU and to investigate serious misconduct or illegal activity by members or staff of the EU institutions. It does this through conducting internal investigations into the EU administration, external investigations at the national level, and by supporting or coordinating corresponding anti-fraud activities by national authorities. Misused funds recuperated by OLAF are fed back in to the general EU budget. The Office is also charged with the coordination and advancement of EU-level fraud prevention policy on behalf of the Commission. OLAF investigations are administrative, and it has no judicial or sanctioning powers.

OLAF has a staff body of 435 employees, divided between policy and investigative work, and an annual budget of around 57m EUR. It is headed by a Director General and falls under the portfolio of the Commissioner responsible for taxation, customs, audit and anti-fraud. The Office disposes of its own internal watchdog in the form of a nominally independent 'Supervisory Committee' which is charged with guaranteeing OLAF's independence by monitoring its investigative work. The Committee is composed of member state experts in OLAF's field of expertise and they are appointed following an open selection procedure.

OLAF underwent internal reorganisation at the start of 2012, largely pre-empting a review of its legal basis which was finalised in 2013. The latter sought to clarify OLAF's role and internal procedures and also addressed criticism of the office's handling of a highly-publicised investigation into former Commissioner John Dalli.

INDEPENDENCE (LAW)

To what extent is OLAF independent by law?

Legislation grants OLAF a high level of independence regarding its investigative powers, with mechanisms laid down to protect its autonomy. These include an independent Supervisory Committee (SC) mandated to monitor OLAF's independence and safeguard procedural rules, although still falling under the direct administration of OLAF. Similarly, and despite nominal independence, OLAF falls within the Commission administration, with the latter retaining powers over the appointment and sanction of the OLAF Director General. Although safeguards are provided for, this framework does potentially compromise OLAF's full operational autonomy.

The Decision establishing OLAF entrusts it with the powers previously conferred on the Commission to conduct internal and external administrative investigations into allegations of fraud, corruption and any other illegal activity adversely affecting the EU's financial interests; to cooperate with and coordinate member states on the topic of the fight against fraud; to develop the concept behind the anti-fraud work of the EU; to prepare regulatory and legislative initiatives of the Commission on this topic; and to represent the Commission on matters of anti-fraud.[1]

OLAF is legally classified as an 'Office' of the EU',[2] and falls administratively under the European Commission, under the portfolio of the Commissioner responsible for Taxation and the Customs Union.[3] However, explicit legal provisions mandate OLAF to conduct its investigative activities with complete independence – free of instruction from the Commission, member states or any other body.[4] The OLAF Director-General is thereby granted the right to open investigations on his own initiative, with other institutions prohibited from carrying out parallel investigations without his/her consent.[5] Annual discussions that take place between the Commission, EP and Council regarding the work of OLAF must, furthermore, in no way interfere with the independence of the latter's investigative functions[6] yet the Commission retains the right to choose the 'appropriate' level of delegation of Appointing Authority powers to ensure OLAF's independence.[7]

The independence and correct execution of OLAF's investigative function is expressly reinforced in law by an independent Supervisory Committee (SC),[8] whom the OLAF Director General is instructed to inform immediately should there be a measure taken by the Commission that he feels may call his/her independence into question: action can potentially be brought in front of the CJEU in this regard.[9] OLAF is legally required to provide a secretariat to the SC and ensure its independent functioning.[10]

The Committee must adopt a report, at least once a year, assessing in particular, the Office's independence.[11] It is composed of five independent members, selected on the basis of their professional experience[12] and appointed by common accord of the Commission, EP and Council,[13] for five-year, non-renewable terms.[14] Members of the SC may be relieved of their duties by common accord of the EC, EP and Council in cases of misconduct or breach of obligations.[15] The Committee is instructed, by its own Rules of Procedure (RoPs) not to take nor seek any instruction from any other body, including OLAF, nor to engage in any matter which might affect their independence,[16] and also retains the power to amend autonomously these rules.[17] While the SC must be supported by an independent secretariat under its authority, the resources for this are decided and delivered by OLAF.[18] There are no specific guidelines on permissible external activities of the Supervisory Committee outside

1 Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 [2013] OJ L248/1, art 1 (2013 OLAF Regulation);
Commission decision 1999/352 of 28 April 1999 establishing the European Anti-fraud Office (OLAF) [1999] OJ L136/20, art 2 (1999 OLAF decision); and Commission Decision of 27 September 2013 amending Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office, OJ L 257/19, art. 1(2) (2013 OLAF decision)
2 2013 OLAF Decision, art. 1
3 Mandate for Commissioner of DG TAXUD, http://ec.europa.eu/commission_2010- 2014/semeta/about/mandate/index_en.htm, (last accessed on 20 January 2013)
4 2013 OLAF Decision, art. 3
5 2013 OLAF Regulation, paragraph 17
6 2013 OLAF Regulation, paragraph 41
7 Ibid, paragraph 48
8 2013 OLAF Regulation, art 15; 2013 OLAF decision, and the European Anti-Fraud Office (OLAF) Rules of Procedure of the OLAF Supervisory Committee [24.11.2011] OJ L 308/114, art. 11(7)
9 2013 OLAF Regulation art. 17(3)
10 2013 OLAF Regulation, paragraph 40
11 Ibid, art. 15(9)
12 Ibid, art. 15(2)
13 Ibid
14 Ibid, art. 15(3)
15 Ibid, art. 15(2)
16 The European Anti-Fraud Office (OLAF) Rules of Procedure of the OLAF Supervisory Committee [24.11.2011] OJ L 308/114, art 4(1) (OLAF SC RoPs)
17 Ibid, art. 15(8)
18 SC RoPs, art. 11

their general conflict of interest obligations[19] and it is presumed that the immunity rights pertaining to EU civil servants do not apply to the Committee as an independent body.

The OLAF Director-General is him/herself appointed following an open call, for a non-renewable period of seven years.[20] The appointment is made by the EC alone, after consultation with the EP and Council – and subject to a favourable opinion by the OLAF Supervisory Committee limited to the 'selection procedure applied'.[21] [22] The Commission has the power to bring disciplinary sanctions against the Director General but cannot do so before 'consultation' with the Supervisory Committee,[23] and must provide a reasoned decision for any measures taken. The EP and Council need only be informed of any decision, in such cases.[24]

There are no specific guidelines restricting the Director General from engaging in external activities aside from those pertaining to all EU civil servants under the EU Staff Regulations,[25] nor is he required to make any specific declaration of interests or assets. In turn, he enjoys the same immunity rights conferred on EU staff.[26]

OLAF staff are instructed to carry out their investigations 'in full independence', avoiding conflicts of interest;[27] according to the implementing guidelines on investigative procedures, the Director General of OLAF must be immediately informed if a conflict of interest arises at any point during a case.[28] There are no clear criteria outlined further to this. The Office retains independence in the discharge of its functions (albeit with the monitoring of the Supervisory Committee).[29] OLAF staff are bound by the Staff Regulations[30] and benefit from applicable immunity provisions.[31]

19 SC RoPs, art. 4(2)
20 2013 OLAF Regulation, art. 17
21 Ibid, art. 17(2)
22 Prior to the revision of the OLAF regulation in 2013, a favourable Supervisory Committee (SC) opinion was required on the list of candidates itself. See the European Anti-Fraud Office (OLAF) Rules of Procedure of the OLAF Supervisory Committee [24.11.2011] OJ L 308/114, art 16(1) (OLAF SC RoPs)
23 2013 OLAF Regulation, art. 17(9)
24 2013 OLAF Decision, art. 5(3)
25 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)
26 Protocol (No. 7) to the Treaties on the Privileges and Immunities of the European Union, OJ C 326/266, art. 10
27 2013 OLAF Regulation, paragraph 20
28 Guidelines of Investigation Procedures for OLAF staff of 1st October 2013, http://ec.europa.eu/anti_fraud/documents/gip/gip_18092013_en.pdf, (last accessed 31/10/2013)
29 2013 OLAF Regulation, paragraph 20
30 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)
31 Protocol (No. 7) to the Treaties on the Privileges and Immunities of the European Union, OJ C 326/266, art. 10

INDEPENDENCE (PRACTICE)

To what extent is OLAF independent in practice?

Despite one publicly known instance of attempted obstruction and vocal criticism against OLAF, no serious cases of interference in its investigative work have occurred to date. The practice of forwarding reports on all closed cases to concerned institutions, as well of 'Clearing House' meetings with the Commission, do leave room for influence to be exerted on the Office and potentially undermine whistle-blower protection. The Supervisory Committee is exercising its mandate, but concerns have been raised on its ability to do so effectively, in view of limited cooperation by OLAF. Efforts are being made to improve this but are so far limited to regulating the transfer of information.

No serious instances of interference by other EU actors in the investigative work of OLAF have been reported, and OLAF indicates that no legal action has ever been initiated in response to interference.[32] However, in one instance illustrative of such an attempt, the European Parliament sought to block OLAF's inspections of the offices of four MEPs in 2011, during an investigation into the 'cash-for-amendments' scandal, by asserting[33] that as the case did not involve EU funds, a criminal investigation – rather than an OLAF-led administrative enquiry – should rather be held.[34] OLAF underlined its competence to investigate,[35] and was supported by its Supervisory Committee in this regard.[36] Relations between some members of the EP and OLAF soured further in 2013, in the wake of the 'Dalligate' affair,[37] which saw the chair of the centre-right EPP political group and members of the Parliament's Committee on Budgetary Control call for the resignation of the OLAF Director General.[38] Nevertheless, OLAF and its Director General have appeared resistant to this pressure.[39]

OLAF's independence vis-à-vis the Commission is reported, in practice, to be robust, with respondents from the Office's management asserting that a formal legal separation of the two entities would not necessarily increase the effective exercise of its mandated autonomy. The fact that the Commissioner responsible for OLAF was unaware of the 2012 investigation into former Commissioner John Dalli until the case was made public, was cited by OLAF as an illustration of the integrity of this relationship.[40]

Nevertheless, the informal practice of bi-monthly 'Clearing House' meetings held between the OLAF Director General and the Secretary General or (according to an EP publication) President of the Commission[41] arguably poses a question on the genuine level of the Office's independence from the latter institution. During such meetings, closed discussions are held on on-going OLAF investigations with the aim, according to EP research, of the Commission being able to pre-empt media scrutiny of cases liable to attract public attention and be exposed. The OLAF Supervisory Committee (SC) receives no information or reporting whatsoever on these meetings. Despite OLAF's assurance that data protection and procedures are fully respected in the course of these meetings, the discretionary aspect of such, and the inability of any oversight body to monitor (on the spot or ex-post) what information is divulged or how the exchange may influence the outcome of an investigation, puts the independence of the Office at greater risk. Furthermore, the fact that (to date) such meetings have been formalised to some degree only with the Commission constitutes an imbalance in OLAF's broader inter-institutional relationships. This is of particular relevance in light of earlier points calling into question the Office's operational independence from the Commission.

Commissioner scandal exposes fraud monitoring weakness in EU governance

OLAF was established in 1999 to take over the role of its predecessor UCLAF. Following fraud allegations involving Commissioner Edith Cresson, which eventually led to the fall of the Santer Commission in 1999, it was felt that UCLAF had been unable to perform its function adequately due to its close administrative relationship with the Commission. Increasing the independence of the new anti-fraud body was seen as necessary to avoid repetition of such failings and OLAF was therefore removed from the direct authority of the Commission Secretary General.

32 Interview with OLAF Director General and senior management, 5 December 2013
33 Via a letter from the then EP President Buzek to OLAF, supported by the opinion of the EP legal services. See A. Willis, 'Confusion reigns over MEP cash-for-amendments probe', EU Observer, (28 March 2011), available at http://euobserver.com/news/32082 (last accessed on 17 December 2013)
34 See G. Sebag, 'Institutional conflict over OLAF investigation into MEP scandal, Europolitics, (31 March 2011), available at http://www.europolitics.info/institutional-conflict-over-olaf-investigation-into-mep-scandal-art300020-46.html (last accessed on 17 December 2013)
35 OLAF, 'OLAF reaffirms its competence to investigate members of the European Parliament', (Press release OLAF/11/4), (28 March 2011), available at http://europa.eu/rapid/press-release_OLAF-11-4_en.htm?locale=en (last accessed on 17 December 2013)
36 Interview with OLAF Director General and senior management, 5 December 2013
37 For media reporting on the issue, see http://www.neurope.eu/dossiers/dalligate-cum-barrosogate
38 D. Hinton-Beales, 'Daul calls for commission to 'force resignation' of Olaf chief', The Parliament.com, (11 June 2013), available at http://www.theparliament.com/latest-news/article/newsarticle/daul-calls-for-commission-to-force-resignation-of-olaf-chief/ (last accessed on 17 December 2013)
39 Speech of Mr Kessler available at: http://ec.europa.eu/anti_fraud/documents/speeches/speaking_points_mr_kessler_cont_18062013_en.pdf
40 Interview with OLAF Director General and senior management, 5 December 2013
41 EP CONT Committee 2011 report on Corruption and Conflict of interest in the European Institutions: the effectiveness of whistleblowers, p12

In 2011, the SC issued an opinion[42] pointing to a further practice arguably inviting encroachment on OLAF's independence. It raised concerns over the practice of forwarding all final reports for all closed internal investigations, regardless of whether investigations were closed without follow-up, to the relevant institution. As such, reports containing personal data – including of whistle-blowers – of potential relevance to other, on-going investigations, were accessible outside OLAF. OLAF reformed the practice of including the names of whistle-blowers in final reports in 2012 following a Commission recommendation[43] though the SC continue to raise concerns on sensitive information that can be inferred from the information that is still included.

In the course of its work, the SC has, however, not confirmed any instances of potential undue influence on the Office's work. Nevertheless, it has raised concerns over its practical ability to ascertain this conclusively, given what it describes as 'an excessive and discretionary restriction' on its access to investigative case files. [44] While a set of working arrangements had been agreed upon, as of January 2014, to better clarify the relationship between OLAF and the SC,[45] the scope of the agreement remains thematically narrow.

Given the legal mandate of the SC as a body ensuring the independence of OLAF, and the instruction for OLAF to provide it with a Secretariat whose independence is guaranteed, weaknesses are apparent in reality. The fact that the Director General of OLAF serves as the appointing authority for the SC secretariat, and is duly empowered to nominate individuals to work for the Committee, invites a large conflict of interest.

The lack of budgetary autonomy of the SC Secretariat has also been reported as an issue, given that the Director General authorises all expenditure not linked directly to Committee members. OLAF does not see the current arrangement as problematic, [46]however, it has impacted upon the practical ability of the SC to operate in the past: for example, OLAF has previously refused to authorise travel costs for SC secretariat staff to support meetings of the committee outside Brussels despite funds being available.[47] (OLAF indicates that these decisions are taken on the grounds of general administrative rules.) That any unused funds from the annual budget of the SC are ultimately transferred back into the general OLAF budget also invites a potential conflict of interest, particularly at a time of constrained resources. The reality of this budgetary provision[48] embodies a financial incentive for limiting the independence of the committee and poses some concern.

With regard to the independence demanded from staff members during the execution of their duties, OLAF respondents noted few instances where conflicts of interest had posed an issue – asserting that mechanisms to prevent this were functioning in the context of standard procedural guidelines. The Director General suggested that in practice, the professional backgrounds of investigators – e.g. in national level anti-fraud or police authorities - further equipped them with a solid understanding of the importance of the independent exercise of duties.[49]

In terms of respect for its investigative mandate, OLAF reports a good working relationship with the Investigative and Disciplinary office (IDOC) of the European Commission in spite of the potential for overlap in some cases. The Director General confirmed that OLAF's right of investigative priority has always been respected in this regard. He also reports good levels of cooperation with Eurojust and Europol, remarking that the separation in their respective mandates is great enough so as to avoid any real confusion as to their functions. It was also noted that at the time of writing, a Memorandum of Understanding was being drafted between OLAF and Europol and Eurojust.[50]

42 Opinion 5/2011 of the OLAF Supervisory Committee
43 Commission Communication SEC(2012)679
44 Activity Report of the OLAF Supervisory Committee Jan 2012- Jan 2013, http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2012/scaar_2012_supcom_en.pdf, (last accessed 18.12.2013), p 7
45 Working Arrangements of Jan 2014 between OLAF and the OLAF Supervisory Committee, http://ec.europa.eu/anti_fraud/documents/legal-framework-agreements/working_arrangements_olaf_supervisory_committee_en.pdf, (last accessed 23.01.2014)
46 Interview with OLAF Director General and senior management, 5 December 2013
47 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014
48 Regulation 883/2013, art 18
49 Ibid
50 Ibid

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of OLAF?

Legal provisions restrict public disclosure of information concerning OLAF's investigative activities, but the Office is subject to various procedural transparency and reporting obligations. The reporting duties of the Director-General to other EU institutions are limited by confidentiality restrictions, and are not extended to the public. OLAF is legally obliged to handle access to document and information requests on its non-investigative activity. The OLAF Supervisory Committee meets behind closed doors and is not required to publish minutes, but must publish an annual report. Transparency provisions regarding senior OLAF appointments do not oblige open selection procedures and related interest/asset declarations for these officials are not required.

The governance structure of OLAF, and the roles and functions of its Director General and Supervisory Committee, are laid out in its founding legislation, and elaborated in public rules of procedure.[51]

In accordance with procedural rights, OLAF is also obliged to ensure notification of investigation to individuals involved and ensure their opportunity to verify previous statements and to comment on information concerning them before it may be used against them.[52] OLAF is furthermore obliged to report to its Supervisory Committee (SC) on reasons for the prolongation of an investigation for longer than 12 months.[53] In light of the tight confidentiality restrictions on investigative files, no public reporting is foreseen, thus the task of monitoring investigations (on the basis of these reports) and transmitting broad concerns to the public, lies solely with the SC.

The obligation to report on internal investigative findings (as detailed in the section on accountability) directed at the institutions and bodies or individuals concerned, does not legally extend to the public domain. The dissemination of information accrued during the course of an OLAF investigation to parties other than the institutional actors involved, competent member state authorities or concerned individuals, is prohibited.[54]

With regards to the transparency of activities in external investigations, OLAF must produce a similar report, but must do so in conformity with the administrative and procedural rules of the member state to which the report is being referred.[55]

In terms of broader reporting obligations, the Director-General of OLAF must report regularly to the main institutions on the findings of OLAF investigations, within the scope of his/her confidentiality obligations.[56] S/he must also make guidelines on investigative procedures for the staff of the Office publicly available online in all languages of the institutions.[57] The Supervisory Committee of OLAF is obliged to publish at least one report per year on its activities which is to be sent to the institutions. [58] It is instructed by its Rules of Procedure (RoPs) to take 'all necessary steps' to have the report published in the *Official Journal.*[59]

Publication of meeting agendas or minutes pertaining to the activities of the Director General of OLAF is not governed by any specific guidelines in its founding legislation. Meetings of the Supervisory Committee (SC) are held in private and the documents discussed in these sessions, and voting records, are also restricted from public access.[60] The minutes of meetings are systematically recorded (containing the decisions adopted under each item of the agenda) and circulated to Committee members and once approved, are archived unless the Committee decides to make them publicly available.[61] The Committee is instructed to adopt three working languages in which it shall carry out its work and compile its reports, draft opinions and decisions, and members can request that

51 Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (Regulation 883/2013)
52 Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, paragraph 18 (Reg 883/2013), art. 9
53 Ibid, art. 7(8)
54 Ibid, art. 10
55 Ibid, art. 11(2)
56 Regulation 883/2013, art. 17(4)
57 Ibid, art. 17(8)
58 Ibid, art. 15(9)
59 The European Anti-Fraud Office (OLAF) Rules of Procedure of the OLAF Supervisory Committee [24.11.2011] OJ L 308/114, art 15(4) (RoPs)
60 Ibid, arts. 7(1), 9(2)
61 Ibid, art. 10

documents be translated into their own language.[62] Any representative of the institutions or of a member state can be invited to participate in the meetings of the SC for specific agenda items at the discretion of the Committee.[63]

Under the general EU Public Access to Documents Regulation[64], individual citizens retain the right to submit access to document requests to OLAF, within the rules laid down in the regulation.[65] As OLAF falls administratively within the European Commission (EC), document requests and records are dealt within the EC's Register of Documents. However, documents pertaining to investigations can be exempted from this under the exceptions included in regulation 1049.[66]

In terms of the transparency of the appointments procedure for the Director General of OLAF, the Commission must publish a call for applicants, at least 6 months in advance of the end of the term of office, in the *Official Journal*. [67] Basic criteria for the appointment of the SC are laid down publicly in legislation, but there are no provisions obliging an open call or selection procedure. [68] Neither the Director General, nor the members of the SC are obliged to disclose proactively, nor publish, personal declarations of interests.

The budget of OLAF is made public and is entered into the EU general budget under the same budget heading as the Commission. A detailed breakdown of this entry must additionally be annexed to this section and must differentiate between staff costs related to the general OLAF Secretariat and those of the secretariat support to the Supervisory Committee.[69]

The rules regarding transparency of public procurement as detailed for the Commission are applicable *mutatis mutandis* for the public procurement actions of OLAF.[70]

62 Ibid, art. 7(2)
63 Ibid, art. 6(6)
64 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145/43 (Regulation 1049)
65 Commission Decision of 5 December 2001 amending its rules of procedure (notified under document number C(2001) 3714) (2001/937/EC, ECSC, Euratom), OJ L 345/94
66 Regulation 1049, art. 4
67 Regulation 883/2013, art. 17(2)
68 Ibid, art 15(2). Candidates for the SC require 'experience in senior judicial or investigative functions or comparable functions relating to the areas of activity of the Office' The appointments must be made by common accord of the Commission, EP and Council
69 Regulation 883/2013, art. 18
70 Regulation 966/12 of the European Parliament and of the Council of 25th October 2012 on the Financial Rules applicable to the General Budget of the European Union (2012), OJ L298/1, Title V

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of OLAF in practice?

The sparse legal obligations incumbent upon OLAF to report publicly on its non-investigative activities is partially exceeded in practice, but this level of openness does not seem to be mirrored in its reporting to its Supervisory Committee. OLAF adopts a restrictive approach to public access to documents requests, interpreting exceptions broadly. Transparency on the existence and proceedings of its 'Clearing House' meetings with the Commission is of particular concern. Criticism has also been made by some members of the European Parliament with regard to failings in responding transparently to accusations of procedural shortcomings.

OLAF provides information on its activities via an annual management plan, investigation priorities, and annual reports, despite no legal obligation over disclosure to the public. OLAF's annual reports for 2011 and 2012 were published including key statistics but no detail on specific investigative work.[71] Annual activity reports of the Supervisory Committee (SC) are published,[72] reflecting on activities from a more legalistic perspective.[73] Though logically laid-out, the level of technical detail would befit an audience with a good existing understanding of the OLAF structure. As required by law, the Guidelines on Investigative Procedures for Staff are also made available on the OLAF website.[74] The bi-monthly meetings between the Director General of OLAF and the Commission, known informally as 'Clearing House' meetings – in which information on on-going investigative cases is shared,[75] are not mentioned in law, and no meeting records are made publicly available. Information on these meetings is not even provided to the SC.[76] .

As public reporting on investigations is restricted by law,[77] the SC is *de facto* charged with channelling general concerns on its monitoring of OLAF investigative activity to the public. Nonetheless, the SC has highlighted its concern over the level of transparency of the reports provided to it by OLAF. The SC has stressed that the current format and content of reporting does not facilitate effective visibility of the Office's actions and as such diminishes its capacity to monitor the Office on behalf of EU citizens.[78]

Reporting on public access to document requests to OLAF is covered in the EC's annual report on the topic.[79] Though the OLAF website does not host a public document register, documents not related to its investigative procedures can be accessed through the Commission document register.[80] With regards to the registration of public access to documents requests (ATD requests),[81] these are, in practice, either initially received and recorded centrally by the EC Secretariat General [82] or by OLAF, via its own internal registration systems,[83] depending on who the applicant initially approaches. If initially received by the EC, requests pertinent to OLAF are transmitted to and responded to by a designated officer within OLAF.[84] OLAF does not, however, manage a dedicated ATD registration system: in order to protect the sensitivity of case-related data, requests are recorded in parallel, but non-integrated systems, depending upon their nature. However, the lack of synchronisation between these two parallel systems, and with that of the EC, along with divergent access restrictions,[85] result in serious difficulties (both internally and externally) in obtaining an accurate and transparent overview record of how all public access to documents requests are treated by OLAF.[86]

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71 The OLAF report 2012, http://ec.europa.eu/anti_fraud/documents/reports-olaf/2012/olaf_report_2012_en.pdf, (last accessed on 10 October 2013)
72 OLAF Supervisory Committee Reports and Opinions Section, OLAF Website, http://ec.europa.eu/anti_fraud/about-us/reports/supervisory_reports/index_en.htm, (last accessed on 10 October 2013)
73 Activity Report of the OLAF Supervisory Committee Jan 2012-Jan 2013, http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2012/scaar_2012_supcom_en.pdf, (last accessed on 10 October 2013)
74 Guidelines on Investigation Procedures for OLAF Staff, http://ec.europa.eu/anti_fraud/documents/gip/gip_18092013_en.pdf, (last accessed on 11 October 2013)
75 EP CONT Committee 2011 report on Corruption and Conflict of interest in the European Institutions: the effectiveness of whistleblowers, pg. 12
76 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014
77 Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, paragraph 18 (Reg 883/2013), art. 7(8)
78 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014
79 Report from the Commission on the application in 2012 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, COM(2013) 515 final
80 European Commission Document Register, http://ec.europa.eu/transparency/regdoc/?fuseaction=search, (last accessed on 11 October 2013)
81 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145/43
82 In the EC's ARES system. See OLAF Privacy Statement for Processing of Requests for Access to Documents under regulation 1049, http://ec.europa.eu/anti_fraud/documents/data-protection/dpo/54_access_to_docs.pdf, (last accessed on 11 October 2013)
83 OLAF Privacy Statement for THOR, http://ec.europa.eu/anti_fraud/documents/data-protection/dpo/168_thor.pdf, (last accessed 11 October 2013)
84 Commission Decision of 5 December 2001 amending its rules of procedure (notified under document number C(2001) 3714) (2001/937/EC, ECSC, Euratom), OJ L 345/94, art. 10
85 Due to the sensitive nature of information held therein, differing access regimes pertain to the two OLAF registration systems referred to here. From meeting with members of OLAF Unit C4 Legal Advice, 8 October 2013.
86 Meeting with members of OLAF Unit C4 Legal Advice, 8 October 2013.

Furthermore, requests received by the EC Secretariat General and meant for OLAF, where related to investigative activity, are redirected electronically rather than being coordinated within an integrated system, affecting the possibility for a common recording of meta-data. Additional complexity in obtaining an accurate overview of figures stems from the fact that, according to the OLAF Legal Unit, in a number of cases applicants have made simultaneous requests to OLAF and the EC Secretariat General for the same document.[87] As such, in terms of the ATD requests concerning OLAF in 2011 and 2012[88] which were initially directed towards the EC Secretariat General (in some cases, as duplicate requests), a total of 44 requests are recorded; however, in none of these cases is data automatically attainable (on whether the deadline was prolonged, on the decision on the request, reasons for possible refusal of access, or on confirmatory applications (if any) made following any initial refusal.[89]

With regards to the availability of metadata on ATD requests submitted directly to and handled internally by OLAF, the OLAF Legal Unit reports that an improved system for specifically recording requests under Regulation 1049 is currently under consideration. A provisional count undertaken had indicated approximately 42 ATD requests for 2011 and 76 for 2012, as well as 6 and 12 confirmatory requests respectively. However, it was indicated that duplications were likely to exist between these figures and those from the EC Secretariat General's database.[90] Following a request for information from TI-EU to OLAF, statistics were gathered by the Office revealing that out of a total of 44 requests made between July 2012 and June 2013, only 40% of documents requested were disclosed either fully or partially. The average duration for a decision to be reached on an access requests during this period stands at 2.93 weeks,[91] falling just under the 15 day standard initial response deadline.[92]

A crucial point to underline in the case of OLAF is the segregation in the applicability of public access rules to investigative and non-investigative documents. Given the privacy exemptions (as detailed in the law report on the office), material disclosed on investigations is very limited in practice. There are acknowledged to be difficulties at times in separating the policy aspects of OLAF work[93] (to which the public is entitled access) from investigation-related aspects within a single document, leading to a blanket restriction on documents which might contain both types of information.

OLAF also points out a level of uncertainty among people requesting access to data, regarding the appropriate legal basis for their particular requests (e.g. whether they really intend to submit a request under general public access to documents rules;[94] or on the basis of the right to defence stemming from the Charter of Fundamental Rights;[95] or on the basis of the right of access to personal data under data protection laws.[96])As such, when handling requests, the OLAF Legal Unit states that much emphasis is put on assisting applicants with the appropriate basis for their requests to ensure smooth procedural treatment of the request while protecting the data of applicants themselves (e.g. when requesting personal data from case files).

Nevertheless, criticism has been made of OLAF's procedural transparency in this regard. The 2011 discharge of OLAF (encompassing a part of the broader Commission discharge) by the European Parliament underlines a lack of transparency from the office in light of Fundamental Rights infringements during investigations and calls for full transparency concerning these incidents. It notes 'numerous attempts' by OLAF to 'obscure clarification of the allegations made' against them and states that it regards this as inappropriate and in need of redress.[97]

With regard to administrative transparency, CVs of the Director General and members of the Supervisory Committee are made public, however, no declarations of interest/assets are disclosed, or information on gifts received by these figures or staff. OLAF employs around 435 individuals[98] and publishes an organisational chart on its website, detailed down to Head of Unit level.[99] Its budget is published within the broader EC budget, though a separate establishment plan for OLAF staff is made available.[100] Information on funding opportunities provided by OLAF is published on its website, along with information on beneficiaries of grants from 2002 onwards.[101]

87 Meeting with members of OLAF Unit C4 Legal Advice, 8 October 2013.
88 Access Info Europe and Transparency International EU Office ATD request to the Secretariat General of the European Commission of 11th July 2013, GESTDEM Ref. 2013/3752, http://www.asktheeu.org/en/request/access_to_documents_requests_in#outgoing-1673
89 Database response provided by Secretariat General of the Commission In response to ATD request 2013/3752, http://www.asktheeu.org/en/request/641/response/2914/attach/6/05%20Demande%20initiale%202011%202012.pdf
90 Meeting with members of OLAF Unit C4 Legal Advice, 8 October 2013.
91 OLAF provided time measurements for this request in full weeks, rather than days.
92 TI-EU ATD meta-request to OLAF covering the period 1st July 2013-30th June 2013
93 Ibid
94 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents, OJ L 145/43
95 Charter (2012/C 326/02) of Fundamental Rights of the European Union [2012], OJ C326/391, art. 41(2)
96 Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, art. 12
97 European Parliament decision of 17 April 2013 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2011, Section III – Commission and executive agencies (COM(2012)0436 – C7-0224/2012 – 2012/2167(DEC)), points 293-294
98 OLAF Report 2012, pg. 9
99 OLAF Organisational Chart, http://ec.europa.eu/anti_fraud/documents/organisation_chart_en.pdf, (last accessed on 14 October 2013)
100 General Budget of the EU 2013, Section III, Commission, http://eur-lex.europa.eu/B37A2E31-238D-49CB-ABFD-6533A0F32B21/FinalDownload/DownloadId-BF85DC9FC3350172FD0C6A03BD221F94/B37A2E31-238D-49CB-ABFD-6533A0F32B21/budget/data/D2013/EN/SEC03.pdf, (last accessed 14 October 2013)
101 See http://ec.europa.eu/anti_fraud/about-us/funding/index_en.htm (last accessed on 13 November 2013)

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that OLAF has to report and be answerable for its actions?

OLAF is largely unaccountable to any other institution in the frame of its investigative activities and reporting obligations remain minimal. It is instructed to engage in an 'exchange of views' with the main EU institutions on an annual basis and must maintain cooperation with the EU law-enforcement agencies. However, explicit institutional accountability powers reside almost exclusively with the Commission, particularly regarding the appointment and conduct of OLAF's Director General. General EU financial rules govern financial oversight. Internally, OLAF's investigative activity is monitored by an independent Supervisory Committee though its scope of access to case files is narrow. As OLAF recommendations have no binding effect, avenues for legal redress by individuals concerned are limited and only procedural breaches by OLAF can be acted upon.

OLAF is obliged to report 'regularly' to the EP, Council, Commission and Court of Auditors on the overall findings of its investigative activity.[102] The report in question must specify the facts established by an investigation, the financial loss, if any, and the findings of the investigation, including the recommendations of the Director of OLAF on any action that should be taken. [103]

OLAF is furthermore legally mandated to conduct a formal exchange of views with the EP, Council and Commission once a year in order to discuss the Office's policy relating to methods of preventing fraud in the EU.[104] The Supervisory Committee may also take part in this exchange of views.

The Commission acts as the Appointing Authority for the appointment of the Director General of OLAF and as such, is therefore the body entitled to impose sanctions against him/her.[105] In the 2013 revision of the OLAF regulation, the power to approve the preliminary list of candidates for the role of Director General was removed from the Supervisory Committee, allowing them only to approve the *procedure used* to select the names on the list, drawn up henceforth by the Commission.[106] The Director General holds the power of appointing authority for the rest of the OLAF staff body, including the secretariat of the Supervisory Committee.[107]

Prior to opening a formal investigation, OLAF is legally empowered to choose whether or not it informs the institution in question of its deliberations.[108] In the event that it does not proceed, it must provide reasons for not opening an investigation to the requesting body/informant.[109] OLAF is furthermore bound to submit a final investigation report (and accompanying recommendations) on closed investigations to competent member state authorities, or the institution/service concerned (in the case of internal investigations).[110] In the case of the former, OLAF must ensure that the document drafted is done so in accordance with national rules on admissible evidence corresponding to the member state concerned.[111] OLAF is also bound to inform the judicial authorities of a member state concerned if the facts of an investigation could give rise to national criminal proceedings.[112] If OLAF at any point transfers information provided to it by a member state authority, it must inform that authority of this intention before transmission.[113]

OLAF has a right of 'immediate and unannounced access' to the premises or information and documents belonging to an institution or body[114] though the institution or body concerned must be notified whenever OLAF exercises this right.[115] Notification must be delivered by OLAF to the Secretary General or equivalent authority of the institution and any ensuing inspection carried out in the presence of either the individual concerned, or where

102 Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, (2013 OLAF Regulation), art 17(4)
103 Ibid, art 11
104 Ibid, art 16
105 Ibid, art 5(3)
106 Ibid, art 5(2)
107 Commission decision 1999/352 of 28 April 1999 establishing the European Anti-fraud Office (OLAF) [1999] OJ L136/20, art 2 (1999 OLAF decision); and Commission Decision of 27 September 2013 amending Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office, OJ L 257/19, art. 1(2) (2013 OLAF decision), art 6(1)
108 2013 OLAF Regulation, art 4(8)
109 Ibid, art 5(4)
110 Ibid, art 11
111 Ibid, art 11(2)
112 Ibid, art 11(5)
113 Ibid, art 14(1)
114 Ibid, art 4(2)(a)
115 Ibid, art 4(4)

necessary, a proxy. The internal OLAF guidelines on investigative procedures foresee general advance notification being provided to the Secretary General or equivalent in order to solicit assistance, but this is legally discretionary. Where notification could potentially threaten the integrity of an investigation, the normal channels of institutional notification can be 'deferred' on a reasoned decision of the Director General of OLAF.[116]

Aside from statements taken during on-the-spot inspections, OLAF can only interview any person directly concerned by an investigation, or any witness, with prior notice including of their relevant rights. For the former, this period stands at 10 working days but can be shortened to up to 24 hours, upon justified grounds of urgency, or with the consent of the person concerned. Where, in the course of an interview, evidence suggests a witness may in fact be directly concerned by the investigation, OLAF is compelled to cease the interview, inform the individual of their rights, and allow them the possibility to review their witness statements.[117] Similarly, where evidence emerges that any EU civil servant/representative may be a person directly concerned by an investigation, OLAF is obliged to inform them of such, as long as this notification would not prejudice the conduct of the investigation or any ensuing national judicial proceedings.[118] Prior to the conclusion of an investigation report, any concerned individual must, furthermore, be given the opportunity to approve or comment on facts or statements concerning him.

OLAF is instructed to remain in 'direct contact with the police and judicial authorities' of member states,[119] and must also cooperate fully with Eurojust and Europol and develop appropriate working arrangements to protect the financial interests of the EU.[120]

The Supervisory Committee is an internal body charged with the regular monitoring of OLAF's implementation of its investigative function, in particular with regards to the respect of procedural guarantees and the duration of investigations.[121] It is empowered to exercise its oversight functions through the delivery of recommendations on its findings to the Director of OLAF. These are not, however, legally binding and the Committee does not have the right to immediate and unrestricted access to all OLAF's case files. With the 2013 OLAF legislative revision, the Supervisory Committee lost the legal power to review cases before transmission to national authorities.[122]

Public complaints against OLAF have the right to be taken up and dealt with by the EU Ombudsman though there is no legal force for recommendations of the latter.[123] The EU Ombudsman ruled in 2013 that judicial review cannot be used as an accountability mechanism against OLAF with regards to its decision on investigative cases. This is upheld on the basis that an OLAF decision on an investigation cannot be considered to produce any legally binding effect that can be challenged.[124] As such, no legal remedy exists to hold OLAF to account for its findings on an investigation and it is up to the complainant to address their case to the competent national authority acting on OLAF findings if there is disagreement with their content. However, action can be, and has been, brought against the Office in response to its *conduct* of an investigation and in light of potential procedural irregularities as long as three specific criteria are upheld.[125] In such instances, the possibility for a defendant to claim damages exists. Furthermore, where an investigation exceeds 12 months, OLAF is under the obligation to periodically report to its Supervisory Committee on why this is the case.[126]

Concerning budgetary accountability, the Director-General of OLAF is responsible for forwarding the OLAF preliminary draft budget to the Commission's Directorate General for Budget once it has consulted the Supervisory Committee.[127] The Court of Auditors has the right to verify the revenue and expenditure of OLAF and reports on its observations on an annual basis.[128] The budgetary discharge of OLAF is conducted according to the financial regulations applicable to other EU institutions and bodies.[129] As per these rules,[130] OLAF disposes of the internal auditing function of the Commission, but this pertains only to its non-investigative work.

116 Ibid, art 4(6)
117 Ibid, art. 9(2)
118 Ibid, art 9(3)
119 Ibid, art 2(6)
120 Ibid, art 13(1)
121 Ibid, art 15
122 Regulation (EC) No 1073/1999 of the European Parliament and of the Council, art 11(7)
123 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 228 (TFEU)
124 Draft Recommendation of the European Ombudsman in her enquiry into complaint 1183/2012/MMN against OLAF
125 Judgment of the Court of Justice of 28 April 1971 in Case 4/69, Lütticke v Commission, pg. 10.
126 Reporting must be done 'at the expiry of that 12-month period and every six months thereafter…'. 2013 OLAF Regulation, art 7(8)
127 2013 OLAF Decision, art 6(2)
128 Regulation 966/12 of the European Parliament and the Council of 25 October 2012 on the Financial Rules applicable to the General Budget of the European Union (2012), OJ L298/1, arts 161-62
129 Ibid, art 165
130 Ibid, art 98

ACCOUNTABILITY (PRACTICE)

To what extent does OLAF have to report and be answerable for its actions in practice?

Serious doubts exist over the practical level of oversight of OLAF's investigative activity by its Supervisory Committee, despite limited efforts to improve cooperation. As such, scrutiny of on-going OLAF investigations is minimal. Similarly, while formal external reporting duties appears to be being adhered to, general public scrutiny of how well OLAF fulfils these obligations is difficult. Where inter-institutional tension has visibly flared, this has not led to consequences for the Office. Legal oversight functions are being performed by the EU Ombudsman and the European Court of Auditors within their respective scopes of activity.

As the Director General of OLAF is the figure within the Office held legally accountable for the execution of investigations,[131] the practice of delegating powers to open and close investigations to the Director in charge of operations and investigations ceased in 2011, following a recommendation from the Ombudsman.[132] This restored full accountability for the Office's investigative function to its legal representative and has been welcomed by its Supervisory Committee.[133] In practice, the Director General has attended public hearings in person to report on investigative activity as a representative of OLAF.[134]

OLAF is, furthermore, accountable for its investigative actions to its Supervisory Committee (SC) and as such, is required to report to the SC, *inter alia*, on cases that have not been closed after the initial twelve month investigative period and on the reasons for this.[135] While the reporting period was extended from nine to twelve months in the 2013 revision of OLAF's legal basis, the OLAF SC had expressed concern in their 2012 annual report over the non-receipt of information on a number of cases lasting more than nine months, thus casting doubt on whether this accountability mechanism was being fully respected.[136] The Supervisory Committee confirm that the delivery of such reports often only follows a prompt by the SC, requiring knowledge of the existence of the investigation for this to even be possible. Given that the SC no longer receives proactively from the Office an overview of on-going cases, even ascertaining the very existence of cases about which it should be informed, is reported to be difficult for the SC. Furthermore, the SC point out that the information provided in reports on lengthy cases is devoid of detail and remains strictly compliant with formal reporting obligations, undermining the possibility for proper scrutiny for the reasons preventing the timely conclusion of an investigation. In terms of the effectiveness of its supervisory role, it asserts that in reality, real supervision can only be undertaken on the basis of access to original case files. The SC underlines the fact that once the formal obligation of sending such reports has been fulfilled, there is no further opportunity for it to examine or question the investigative actions of OLAF[137], with it having lost its right to review files prior to transmission to national authorities,[138] and given that it no longer has automatic access to all closed case files.[139] As such, where a case lasts less than twelve months, the SC may in fact potentially never learn of its existence.

In an attempt to clarify and improve the working relationship between OLAF and its SC, a set of working arrangements[140] between the two bodies was signed in January 2014. However, the SC still expresses concern over the narrow scope of these rules, which focus primarily on the transfer of information, and highlight the need for a more formalised procedural relationship between the two bodies, enabling the effective functioning of accountability mechanisms. As the situation currently stands, instances of alleged illegal actions undertaken by OLAF and highlighted by the SC in its 2012 annual report[141] have yet to be addressed by OLAF.

In terms of its reporting obligations to the Commission, EP and Council, OLAF asserts that it maintains a close working relationship with the Budgetary Control (CONT) committee of the EP and fulfils its reporting to the

131 Commission decision 1999/352 of 28 April 1999 establishing the European Anti-fraud Office (OLAF) [1999] OJ L136/20, art 2 (1999 OLAF decision); and Commission Decision of 27 September 2013 amending Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office, OJ L 257/19, art. 1(2) (2013 OLAF decision), art. 5

132 Draft recommendation of the European Ombudsman in his inquiry into complaint 856/2008/BEH against the European Anti-Fraud Office of 9 December 2010

133 2013 Report of the OLAF Supervisory Committee, http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2012/scaar_2012_supcom_en.pdf, (last accessed on 19 December 2013), p 10

134 Meeting minutes from the 29th May 2013 of EP CONT committee, http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-513.087%2b01%2bDOC%2bPDF%2bV0%2f%2fEN, (last accessed on 19 December 2013)

135 Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, paragraph 18 (2013 OLAF Regulation),

136 2012-2013 Report of the OLAF Supervisory Committee, http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2012/scaar_2012_supcom_en.pdf, (last accessed on 19 December 2013), pg. 14

137 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014

138 Regulation (EC) No 1073/1999 of the European Parliament and of the Council, art 11(7)

139 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014

140 Working arrangements between OLAF and the Supervisory Committee, ARES ref(2014)70398 - 14/01/2014

141 2012-2013 Report of the OLAF Supervisory Committee, pg. 37

Parliament and MEP's through Annual Activity Reports and responses to specific requests.[142] Nonetheless, friction between the EP and OLAF has been observed in the form of calls for the resignation of the Director General of OLAF over the Office's handling of the Dalli case.[143] This did not lead to any formal consequences for OLAF, but did reveal a clear divergence between institutions regarding how accountable OLAF should really be.

With regards to the Council, OLAF reports to the Working Party on Combating Fraud through regular activity reports.[144] The degree of systematic reporting is difficult to ascertain due to the non-public nature of these reports: nonetheless, the partial disclosure of one of the most high-profile reports to one of the institutions,[145]and the absence of any indication of dissatisfaction from the latter on reception of such reports, would be indicative of fulfilment of this obligation.

Over the course of 2010 to 2013, ten cases were opened by the European Ombudsman concerning OLAF. While the vast majority of cases were of an administrative nature, appealing access to document decisions, one complaint did challenge OLAF's proper adherence to investigative procedures and was upheld by the Ombudsman.[146] This goes some way to demonstrate the effective use of the Ombudsman's recommendations as a public accountability mechanism though it must be remembered that such recommendations produce no legal force.

OLAF can be partially held to account for its actions through the audit work of the European Court of Auditors. In 2011 the ECA produced a follow-up to its 2005 special report on the management of OLAF,[147] which concluded that of the 17 recommendations it had made in 2005, three had not been accepted and twelve were yet to be fully implemented. The ECA report acknowledged the on-going validity of the initial recommendations and insisted on continued efforts to address fully its conclusions.[148] The ECA also verifies the expenditure of OLAF on an annual basis, leading to the discharge of the budget for OLAF by the CONT committee of the EP.[149]

142 OLAF webpage on Cooperation with EU Institutions, http://ec.europa.eu/anti_fraud/policy/cooperation-with-eu-institutions/index_en.htm, (last accessed on 19 December 2013)

143 The Parliament Article OF 11th June 2013,,Daul Calls for Commission to 'force resignation' of OLAF Chief, http://www.theparliament.com/latest-news/article/newsarticle/daul-calls-for-commission-to-force-resignation-of-olaf-chief/#.UsWu8fRdXwk, (last accessed on 2 January 2014)

144 Ibid

145 The partial publication of OLAFs report to the Commission on the investigation into former Commissioner John Dalli

146 EU Ombudsman Case number: 2515/2011/(VIK)CK

147 ECA Special Report Number II, Follow-up to Special report 1/2005, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SRCA:2011:02:FIN:EN:PDF, (last accessed on 19 December 2013)

148 Ibid

149 Budgetary Discharge webpage of the EP CONT committee, http://www.europarl.europa.eu/committees/en/cont/publications.html?id=CONT00006#menuzone, (last accessed on 19 December 2013)

INTEGRITY (LAW)

To what extent are there mechanisms in place to ensure the integrity of the staff and leadership of OLAF?

The appointment (and sanctioning) of the Director General of OLAF is undertaken by the Commission in consultation with the EP, Council and the OLAF Supervisory Committee. There are no specific pre-employment integrity checks laid down in law, and integrity obligations linked to the post are limited. Obligations under the EU Staff Regulations apply to all OLAF staff, and are supplemented by investigative guidelines and rules on confidentiality: however, procedural integrity may be undermined by the powers of the Director General to act as both judge and party to an investigation. Concern also remains over the lack of detailed internal whistle-blowing provisions and the absence of an external reporting mechanism in the first instance. Integrity provisions governing the Supervisory Committee lack detail, but a formal code of conduct was adopted in October 2013 and is due to be published April 2014.

As OLAF is formally a Directorate General of the European Commission, it is the latter that undertakes the recruitment of OLAF's Director General. Provisions in secondary law oblige the Commission to disseminate an open call for applications for the position in the *Official Journal of the European Union* six months in advance of the end of the term of the incumbent post-holder. The term of the Director-General stands at 7 years and is not renewable[150] Though no specific pre-employment integrity checks for the OLAF Director General are laid down in law, the selection procedure used by the Commission is subject to the favourable opinion of the Office's independent Supervisory Committee.[151] The EC must then draw up a list of 'suitably qualified candidates' and may only appoint the Director General subject to consultation with the European Parliament and the Council. No criteria are, however, laid down in law regarding the necessary qualifications for the post.

The OLAF Director General is subject to the general integrity safeguards pertaining to EU civil servants as laid down in the EU Staff Regulations:[152] however, specific legal safeguards linked to the post are limited. While the OLAF legal basis compels the Director General not to take instructions from any government, institution or external body,[153] no further obligations are provided for. As such, the office-holder is not obliged to declare private interests or assets; is not subject to specific post-employment obligations; and is not subject to a specific code of conduct. As the Commission functions as the appointing authority for the Director General[154], it has the right to levy disciplinary sanctions on the latter, granted it is done through a reasoned opinion forwarded to the EP, Council and OLAF Supervisory Committee.[155]

A specificity of the Director General's legal mandate which raises integrity concerns is his authority to draw up final investigation reports[156] combined with a lack of provisions preventing him from being actively and individually involved in the conduct of an investigation. It has been underlined that this renders the Director General as both judge and party to the outcome of an investigation, something which risks undermining the integrity of a decision.[157]

As is the case for the Director General, staff of OLAF are formally part of the EC administration, and are duly subject to integrity provisions laid down in the EU Staff Regulations and specific EC decisions which, *inter alia*, seek to prevent conflicts of interest;[158] prohibit unauthorised external activities,[159] disclosure of information,[160] or acceptance of gifts/payment; [161] and lay down specific post-employment obligations.[162] From 2014, newly recruited staff will also be subject to a pre-appointment conflict of interest check;[163] there is however, no specific provision

150 Commission Decision of 27 September 2013 amending Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office, art. 5(1) (2013 OLAF Decision)
151 Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 [2013] OJ L248/1, art. 17(2) (2013 OLAF Regulation)
152 See European Commission integrity (law) sub-chapter for further details. 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, principally, arts. 11-26a (Staff Regulations);
153 2013 OLAF regulation, art. 17(3)
154 2013 OLAF decision, art 5(2)
155 2013 OLAF regulation, art 17(9)
156 2013 OLAF regulation, art. 11(1)
157 2013 Report of the OLAF Supervisory Committee, available at http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2012/scaar_2012_supcom_en.pdf, (last accessed on 19 December 2013), p 42
158 Staff Regulations, arts. 11a, 13
159 Ibid, arts. 12b, 15, 17a, 40 and Commission Decision C(2004) 1597 of 28 April 2004 on outside activities and assignments, Chapter 2 (Outside activities decision)
160 Staff Regulations, arts. 17, 19
161 Ibid, art 11. Guidelines are elaborated in Communication SEC(2012) 167 of 7 March 2012 from Vice-President Šefčovič to the Commission on Guidelines on Gifts and Hospitality for the staff members
162 Ibid, art. 16, and Outside activities decision, Chapter 3
163 See http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P7-TA-2013-287, (last accessed on 10 September 2013). This includes an obligation for the EC to report annually on the application of the 'cooling off' provision.

outlining how this is assessed and against what criteria.[164] Disciplinary measures follow those laid down for the European Commission as a whole. (Further details can be found in the European Commission chapter of this study.)

All EU staff are obliged by the Staff Regulations to immediately report any presumption of the possible existence of illegal activity or misconduct to either their direct superior, their Director General, or to OLAF.[165] This provision embodies a general legal instruction on whistle blowing for the EU staff body. While effective as a legal mechanism for reporting by staff of other institutions, OLAF staff reporting on the possible instance of fraud or illegality remain effectively legally deprived by this provision of an external channel for reporting, in the first instance. No specific rules are in place to address this, with OLAF staff arguably given less protection as whistle-blowers than other EU civil servants.

As of 2013 OLAF staff are also governed by newly revised rules on their investigative conduct, [166] which include provisions on the unauthorised use of information held by OLAF and its employees, and state that the principle of professional secrecy applies.[167] The EU Treaties further explicitly uphold the protection of data handled by EU institutions and award control of compliance with these rules to 'independent authorities':[168] OLAF is free to designate its own specific data-protection officer.[169]

Some integrity safeguards are formally in place governing the conduct of the panel of independent expert members composing OLAF's Supervisory Committee. The latter is appointed upon the accord of the Commission, EP and Council and must be made up of independent individuals who have 'experience in senior judicial or investigative functions or comparable functions relating to the areas of activity of the Office'.[170] Committee members serve 5-year, non-renewable terms,[171] and can be dismissed from their post on the grounds of misconduct by common accord of the Commission, EP and Council.[172] Upon the expiry of the term of a member, they must remain in their post until they are replaced.[173] Instructions to act independently and respond to potential conflicts of interest exist but are framed broadly.[174] Committee members were subject to a specific code of conduct at the time of writing, however, it was understood that such a code would not be made public until the completion of linguistic checks by April 2014.[175]

As a formal part of the European Commission, the integrity safeguards regarding the financial management and public procurement exercised by OLAF are covered within general EU financial rules.[176] Further details are contained in the European Commission chapter of this study.

164 Ibid, art. 27
165 Staff Regulations, art. 22a
166 2013 OLAF regulation
167 2013 OLAF regulation, art. 10(2)
168 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 16 (TFEU)
169 Ibid, art. 10(4)
170 2013 OLAF regulation, art 15(2)
171 Ibid, art. 15(3)
172 Ibid, art. 15(5)
173 Ibid, art. 15(4)
174 OLAF Supervisory Committee Rules of Procedure, [2011] OJ L308/114, art. 4
175 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014
176 Regulation 966/12 of the European Parliament and of the Council of 25 October 2012 on the Financial Rules applicable to the General Budget of the European Union (2012), OJ L298/1, Title V

INTEGRITY (PRACTICE)

To what extent is the integrity of members of OLAF ensured in practice?

OLAF is set to publish new ethics guidelines in 2014 to accompany revised rules on investigative procedures. The Supervisory Committee has welcomed this, but concerns remain over the absence of independent reporting channels for internal whistle-blowers. Breaches of staff obligations are reported to be rare, and management report satisfaction with staff awareness of ethics rules: however, no proactive monitoring is undertaken and ethics training is not broadly provided. Data protection is regarded as a priority and no court rulings are reported to have been made against OLAF in this regard, to date. However, concerns remain on current practices for exchanging case-related information with EU institutions, and the risks to the protection of procedural integrity and EU whistle-blowers. A newly adopted code of conduct for the Supervisory Committee is set to be published in 2014.

The integrity of the appointment procedure for the OLAF Director General has not been subject to public criticism, with the independent Supervisory Committee acknowledging the effectiveness of the multi-institution approval safeguards currently in place.[177] Nevertheless, the Committee's role in the process has been diminished by the 2013 revision to the Office's legal basis.

To complement the general integrity-related provisions in the EU Staff Regulations (SR) incumbent upon staff,[178] further, internal OLAF provisions were, at the time of writing, under review. The OLAF management reported that a new set of internal ethics guidelines were being drawn up and were expected to be introduced and made public in 2014. Prior to the introduction of these new provisions, proactive monitoring of compliance with current rules appears to be minimal. No specific ethics-related audits have been conducted within OLAF, for example, however respondents from the Office's management report their satisfaction with the level of staff awareness of ethics rules and that staff were 'acutely aware' of the reputational risk to OLAF of non-adherence to such rules. Nevertheless, it was unclear on what basis such assessment had been made.

At the time of writing, more detailed rules on internal whistle-blowing were not foreseen to be included in the new rules despite acknowledgement from respondents that reporting internal misconduct remains potentially 'more awkward' for staff in OLAF than in other institutions, given that no exceptional (external) channels for initial reporting were yet in place.[179] The OLAF Supervisory Committee have underlined this concern and state that despite the existence of an internal legal opinion recommending that the Supervisory Committee serve as an exceptional reporting channel for internal OLAF whistle blowers, the independence and purpose of such a channel is effectively undermined as the SC has no formal powers to act upon information received and remains obliged to report to the Director General of OLAF in any case. The Committee reports that only 2 instances of internal whistle blowing have ever transpired at OLAF, neither of which were directed through the SC, and that it has been aware of instances where staff have expressed reticence at the prospect of making such a report, fearing a lack of safeguards.[180] The SC highlights, furthermore, an absence of whistle blower training specific to the risks within OLAF.

In terms of broader ethics-related staff training, OLAF indicated that general induction sessions are conducted for all new staff members that include special emphasis on rules concerning gifts and hospitality. For the estimated 32 per cent of staff working directly on investigative files, risks specific to their function are reportedly discussed with them by management. Nonetheless, the OLAF 2013 Annual Management Plan reveals that OLAF staff receive an annual average of 6.3 training days per year, falling short of the Commission-wide target of 10 days per year, and this despite the acknowledged deeper complexity of OLAF staff functions.[181] OLAF report that in instances where there may be concerns over staff potentially acting incorrectly, the issue is dealt with at management level.[182]

Regarding the actual frequency of cases of violation of staff obligations or investigative procedural rules specific to OLAF, the SC note that the introduction of a revised set of investigative guidelines has provided clarity on some previously problematic procedural rules such as legality checks, thus resulting in improved and more correct adherence to procedures.[183] However, this follows strong criticism received by OLAF following their handling of the

177 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014
178 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 (Staff Regulations)
179 Interview with OLAF Director General and senior management, 5 December 2013.
180 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014
181 OLAF Management Plan 2013, http://ec.europa.eu/atwork/synthesis/amp/doc/olaf_mp_en.pdf, (last accessed on 19 December 2013), pg. 22
182 Ibid
183 Ibid, pp. 10-11

investigation into the former EU Commissioner John Dalli.[184] OLAF insisted that levels of internal staff misdemeanours or breaches of rules were, on the whole, too low to be able to identify any 'problematic' areas.[185]

Concerning the prioritisation of data protection rules, and given the specific mandate of the office, OLAF noted that the issue was unsurprisingly identified in an internal 2013 risk assessment exercise. As such, data protection is reportedly taken very seriously internally and due to the vigilance of the internal data protection officer, no court cases have been upheld against OLAF in this regard, to date.[186] In 2012, using the argument of a greater and more correct application of data protection rules, OLAF began to enforce greater restrictions on the SC's access to case files. Although this was met with criticism from the SC, this more restrictive working relationship remains in force.[187] The European Data Protection Supervisor has judged that OLAF generally complies with EU data protection rules with the exception of one case involving the disclosure of the identity of a whistle blower to his appointing institution.[188]

Nonetheless, while OLAF has restricted the access of the SC to case files, current practice regarding how it exchanges case-related information with the EU institutions has raised serious concerns. A 2011 opinion of the SC [189] highlighted the practice whereby OLAF forwards reports on all closed internal investigations, regardless of whether they were closed without follow-up, to the relevant institution. As such, files containing personal data of potential relevance to other, on-going investigations are accessible outside OLAF. The SC has pointed to the possible repercussions of this practice on the independent investigative function of the Office, and the implications on the adequate protection of whistle-blowers.[190] Similar concerns have also been raised regarding the 'Clearing House' meetings held between OLAF and the European Commission to share information on specific, on-going investigations. (See the Independence (practice) section for further information.)

The SC was itself, at the time of writing, linguistically reviewing a recently adopted code of conduct for its members, to be introduced as of April 2014.[191] The code of conduct is expected to codify existing practices related, for example, to procedures for members to recuse themselves from examining OLAF case-related information where it might pose a potential conflict of interest with their national level investigative functions (all members hold such functions, with their role at OLAF considered an external activity).[192]

184 Corporate Europe Observatory, 'Controversy over leaked summary of OLAF Supervisory Committee Document', available at http://corporateeurope.org/sites/default/files/supcom_-_executive_summary_-_olaf_investigation_on_dalli_case.pdf, (last accessed on 19 December 2013)
185 Interview with OLAF Director General and senior management, 5 December 2013
186 Ibid
187 2013 Report of the OLAF Supervisory Committee, http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2012/scaar_2012_supcom_en.pdf, (last accessed on 19 December 2013), pg. 7
188 Ibid, pg. 20
189 Opinion 5/2011 of the OLAF Supervisory Committee
190 Ibid
191 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014
192 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014

RESOURCES

To what extent is OLAF equipped with resources to allow it to effectively carry out its duties?

As is the case for all Commission services, OLAF is subject to resource cuts in the period up to 2018. This follows a period of relative stability in its budget and staffing levels. Concern has been raised over the effect that cuts will have on OLAF's ability to fulfil its mandate –against a backdrop of continuing anxiety over current investigative resource capacity, and other staffing issues linked, for example, to low levels of training and absenteeism. Internal measures have, however, already been initiated to increase the number of staff devoted to operational issues. The current method of resource allocation to the OLAF Supervisory Committee (administered through the main OLAF office) and its implications on the organ's independence and activity have been called seriously into question.

The OLAF budget encompasses the entire budget for both the Office as well as for its Supervisory Committee and supporting secretariat.[193] It is drawn up by the Director General after consultation with the Supervisory Committee, and then forwarded to the European Commission's Directorate General for Budget for entry into the annual Commission budget;[194] ultimately being decided upon by the European Parliament and the Council, as the EU budgetary authority. Though no institutional-level disputes have been observed regarding resource allocation to OLAF, its Supervisory Committee has highlighted concerns over how closely provisions to ensure it is consulted during budget drafting, are being adhered to.[195]

OLAF's administrative budget remained relatively stable between 2011-2013[196] going from 57m EUR in 2011 to 57.4m EUR in 2013 and peaking at 58.2m EUR in 2012.[197] The 2014 budget stands at 57.2m EUR.[198] Nevertheless, as part of the European Commission, OLAF is obliged to reduce its workforce by 5% in the 2013-2017 period, equating to a 1% cut each year.[199] As of 2012, OLAF has responded to budgetary pressure by reducing the number of staff employed in support activities in order to increase its staffing of investigations.[200] Nonetheless, figures contained within the OLAF establishment plans between 2010 and 2013 show an overall reduction of staff numbers from 384 in 2011 to 378 in 2013 and relative steadiness in numbers of policy and investigative (AD) and administrative support (AST) posts despite the aforementioned redeployment.[201] A reduction of temporary staff between 2010 and 2013 is however evident in the budget, with an overall 26% decrease in posts.[202] The OLAF Supervisory Committee was subject to a 25% staff cut following the appointment of the current OLAF Director General, with its Secretariat cut from 8 to 6 posts: this had since been reversed, as of late 2013, following vocal criticism of the disproportionate nature of the reduction.[203]

The Director General of OLAF has spoken out in defence of the preservation of OLAF's resource allocation given the pressure exerted on the Commission to make cuts over the coming years.[204] He states that although the Office is currently adequately managing its resources, any further cuts would render it insufficiently resourced to fulfil its mandate.[205] Moreover, in its 2013 Annual Management plan, OLAF notes, under its objectives, a need for human resource assistance in order to fulfil effectively its mandate.[206] Pressure on resources allocated to investigations has also been cited by both the European Court of Auditors[207] as well as the Supervisory Committee[208] as a factor contributing to the frequently excessive duration of investigations by OLAF (in 2012, the average time taken to

193 Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, art 15(2) (Regulation 883/2013), art. 18

194 Commission Decision of 27 September 2013 amending Decision 1999/352/EC, ECSC, Euratom establishing the European Anti-fraud Office, art. 6(2)

195 OLAF Supervisory Committee Annual Report 2012, http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2012/scaar_2012_supcom_en.pdf, (last accessed on 8 December2013), pg. 24

196 Title 24, Section III (Commission) of the 2013 General Budget of the EU, http://eur-lex.europa.eu/CCF0BAE2-D9BA-48A9-B220-E275908DAB21/FinalDownload/DownloadId-98D9A2381388A863A339FD8073FBE19D/CCF0BAE2-D9BA-48A9-B220-E275908DAB21/budget/data/D2013/EN/SEC03.pdf, (last accessed 8 December 2013)

197 OLAF Annual Report(s) 2012, 2011 and 2010, http://ec.europa.eu/anti_fraud/about-us/reports/olaf-report/index_en.htm, (last accessed on 24 January 2014)

198 Title 24, Section III (Commission) of the 2014 General Budget of the EU, PG. 287, available at http://eur-lex.europa.eu/budget/data/LBL2014/EN/SEC03.pdf, (last accessed on 27 January 2014)

199 European Commission, Human Resources Report of the European Commission – 2013, (2013), (Luxembourg; Publications Office of the European Union), pg. 9 (EC HR Report 2013)

200 OLAF 2012 Annual Management Plan, http://ec.europa.eu/anti_fraud/documents/about_us/mgmt_plan/olaf_2012_mp_ipps.pdf, (last accessed on 8 December 2013)

201 Section III (Commission), General Budget of the European Union 2011, 2012 and 2013, http://eur-lex.europa.eu/budget/www/index-en.htm

202 Ibid

203 Interview with OLAF Supervisory Committee Chair and staff, 20 January 2014

204 BBC News article, EU Negotiators Clinch Deal of 2014 Budget, http://www.bbc.co.uk/news/world-europe-24909708, (last accessed on 9 December 2013)

205 Interview with OLAF Director General and senior management, 5 December 2013

206 OLAF 2013 Annual Management Plan, http://ec.europa.eu/atwork/synthesis/amp/doc/olaf_mp_en.pdf, (last accessed on 8 December 2013), pg. 22

207 ECA Special Report No 2/2011 — Follow-up of special report no 1/2005 concerning the management of the European Anti-Fraud Office, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SRCA:2011:02:FIN:EN:PDF, (last accessed on 9 December 2013), pg. 33

208 OLAF 2012 Supervisory Committee Report, pg. 22

close a case was 22.6 months).[209] In terms of resource constraints affecting broader transparency-related issues, OLAF reported that resources were adequate to cover genuine demands for public access to documents requests, for example, but acknowledged the issue of 'vexatious' requests as particularly resource intensive.[210]

OLAF has also drawn attention to the issue of staff absenteeism[211] within the institution[212] and the difficulties in identifying appropriately skilled staff for investigative roles.[213] With the support of its Supervisory Committee, OLAF delivered a common letter to the Presidents of the Commission, Parliament and Council in December 2012, echoing this message.[214] The issue of training is an area of further potential concern. Figures in the Office's Annual Management Plan show a current average annual training rate of 6.3 days per staff member, in comparison to the Commission-wide training target of 10 days.[215] While OLAF states that it does not view this as a problem, given the highly specialised mandate of OLAF,[216] a lack of continued professional development could be a weakness regarding the effective delivery of its mandate.

The OLAF Supervisory Committee has raised concerns over its budgetary independence in the past, as well as over the effectiveness of the application of funds allocated to the supervisory function by the Office. The Committee has pointed to the implications that a common budget line has over its role as an independent supervisor of OLAF investigations. [217] In response however, the Director of OLAF states that he sees no conflict between the Office directly administering the budget of its supervisory body and that to date, the Committee had never fully spent its allocated annual budget.[218] The Committee point out that its respective budget extends only to the expenses of Committee members, and not to its staff, and that in the past, the Director General has refused to authorise costs related to the latter, on the grounds of general Office administrative rules. While only limited instances of this occurring have been raised, a tension is evident between interpretations of how budgetary allocations should be used. Given OLAF's reluctance to accept further budget cuts, and the possibility for unspent parts of the SC budget to be transferred back to the central OLAF budget, concern justifiably exists over potential incentives for undue financial control by the Office over its independent supervisory body. Such risks would serve to fundamentally undermine the duties of the latter.

209 The OLAF report 2012, pg. 3, available at http://ec.europa.eu/anti_fraud/documents/reports-olaf/2012/olaf_report_2012_en.pdf, (last accessed on 10 October 2013)
210 Interview with OLAF Director General and senior management, 5 December 2013
211 OLAF 2013 Annual Management Plan, http://ec.europa.eu/anti_fraud/documents/about_us/mgmt_plan/olaf_2013_mp_en.pdf , (last accessed on 9 December 2013), pg. 22
212 OLAF declared an absenteeism rate of 4.3% in its last Annual Management Plan Report, with the Commission average standing at 2.9%
213 Interview with OLAF Director General and senior management, 5 December 2013
214 OLAF Supervisory Committee Annual Report 2012, pg. 25
215 Ibid
216 Interview with OLAF Director General and senior management, 5 December 2013
217 OLAF Supervisory Committee Annual Report 2012, pg. 34
218 Interview with OLAF Director General and senior management, 5 December 2013

INVESTIGATING ALLEGED CORRUPTION

To what extent does OLAF engage in investigation regarding alleged corruption?

A newly revised internal guide on investigative procedures has been developed to enhance coherence with the 2013 revisions to the Office's legal basis and to clarify investigative practices. In terms of the exercise of its investigative role in countering corruption, OLAF has not displayed reluctance in using its powers in high-profile cases, despite the consequent criticism it has received. A large increase has been noted in the number of investigations opened by the Office, with its own Supervisory Committee raising concerns on this. Prosecution of corruption cases is a competence of national authorities and OLAF monitors this on an *ad hoc* basis. It has expressed concern over divergences in prosecution levels across Member States.

OLAF is legally mandated to carry out external and internal administrative investigations for the purpose of strengthening the fight against fraud, corruption and any other illegal activity adversely affecting the EU's financial interests.[219]

Internal administrative investigations within EU institutions/bodies are also included in its mandate when 'serious facts' indicate a breach of the EU staff obligations and would be 'likely' to lead to disciplinary and, potentially, criminal proceedings. The roles of OLAF and the institutions' own internal investigative bodies, such as the Investigation and Disciplinary Office of the European Commission (IDOC), are generally delineated according to the severity of cases, with OLAF essentially having first choice on the cases it wishes to investigate if it deems them grave enough to fall within its remit, (where it has received information itself). In cases to the contrary, IDOC (or its equivalent) functions as a 'catch-net' for staff cases which could potentially include elements of misconduct, though usually on an ethical or less financially significant level.[220] OLAF report that no tension exists between its competences and those of these bodies.[221]

When exercising its investigative role externally, in member states' jurisdictions, (again, solely on issues affecting the financial interests of the EU) it is obliged to comply with national law and procedures.[222] Furthermore, member states are bound by the obligation to transmit any relevant information they may hold on corruption affecting the financial interests of the EU to OLAF.[223] In order to facilitate the smooth and efficient cooperation between national and EU investigative functions, OLAF's legal basis foresees the creation in each member state, of an 'anti-fraud coordination service'.[224] This embodies an attempt to mitigate competence overlap and the duplication of national actions.

OLAF provisions instruct the Office to investigate individuals regardless of seniority and recent investigations into high ranking individuals in a number of institutions would attest to the fact that OLAF is not reluctant, nor under undue pressure, not to do so. The Investigation of former Commissioner John Dalli left OLAF relatively exposed to public criticism of its handling of the case, yet OLAF's work was defended by its Director General, Giovanni Kessler.[225] Similar high level investigations have been publicised in recent years, involving, for example, MEPs [226] and senior figures at the European Court of Auditors.[227] However, as official reporting on investigations is not public, it is difficult to ascertain to what extent the investigation of such individuals is the rule or the exception, nor the tenacity of these investigations. Nevertheless, the public fall-out from several of these high profile cases, suggests that OLAF does not systematically act less vigilantly against senior figures.[228]

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219 Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 [2013] OJ L248/1, art. 1, (Regulation 883/2013)

220 Interview with the Secretary General of the European Commission, 25 September 2013

221 Interview with OLAF Director General and senior management, 5 December 2013

222 Regulation 883/2013, art. 3(1)

223 Ibid, art. 8

224 Ibid, art 3(4)

225 I. Camilleri, 'Police Declarations on Dalli case change nothing', The Times of Malta, (19 June 2013), available at http://www.timesofmalta.com/articles/view/20130619/local/Police-declarations-on-Dalli-case-change-nothing-OLAF.474439#.Uo87G9Jg9Ao, (last accessed on 22 November 2013)

226 G. Sebag, 'Institutional Conflict over OLAF investigation into MEP scandal', Europolitics, (31 March 2011), available at http://www.europolitics.info/institutional-conflict-over-olaf-investigation-into-mep-scandal-art300020-46.html, (last accessed on 22 November 2013)

227 T. Vogel, 'OLAF launches investigation into auditors', European Voice, (7 July 2011), available at http://www.europeanvoice.com/article/imported/olaf-launches-investigation-into-auditors/71560.aspx, (last accessed on 22 November 2013)

228 V. Pop, 'EU antifraud chief: We can improve Brussels' image', EU Observer, (14 May 2012), available at http://euobserver.com/justice/116243, (last accessed on 6 December 2013); and, A. Willis, 'Row Intensifies over investigation into MEP scandal', EU Observer, (30 March 2011), available at http://euobserver.com/news/32097, (last accessed on 6 December 2013)

A marked increase in the number of investigations opened by OLAF took place in 2012 prompting the establishment of a new special investigative team.[229] According to OLAF's own statistics, the number of investigation cases opened between 2011 and 2012 rose from 146 to 431.[230] This has coincided with the establishment of a new 'Investigation Selection and Review' unit governed by a code of 'Investigation Policy Priorities' including proportionality, subsidiarity and efficiency: the code is publicly available as an annex to the OLAF Annual Management Plan.[231] OLAF is also legally endowed with the power to open own-initiative investigations,[232] on the basis of a decision taken by the Director: however, official reporting does not specify how frequently such investigations are launched.

In terms of how well OLAF exercises its investigative function, the latest annual report from the Office's Supervisory Committee has pointed to potential deficiencies. [233] The Committee's main concerns relate to the duration of investigations and related reporting;[234] the large increase in the number of open investigations;[235] and OLAF's regard for the conduct of legality checks prior to the opening of investigations.[236]

Once an investigation has been concluded, OLAF has no powers to sanction any misconduct it uncovers: as such, disciplinary measures following internal investigations are undertaken, in the first instance, by the respective institution concerned. OLAF notes that follow up to its external investigations at the national level is monitored broadly, and on an *ad hoc* basis by the Office: these respondents indicate that the level of follow up very much varies according to member state.[237]

Remarks in the OLAF annual report and the Commission proposal for the creation of a European Public Prosecutor's Office[238] point to the need to strengthen mechanisms for ensuring the prosecution of crimes and instances of fraud with a European dimension. OLAF acknowledges a good working relationship with Eurojust and Europol, noting that while certain investigative areas may see overlap, the bodies in their current form all possess very different mandates.[239]

229 The European Anti-Fraud Office, 'The OLAF Report 2012', (2013) (Luxembourg: Publications Office of the European Union), available athttp://ec.europa.eu/anti_fraud/documents/reports-olaf/2012/olaf_report_2012_en.pdf, (last accessed on 22 November 2013), pg. 18 (OLAF Report 2012)
230 Ibid, Table 4
231 OLAF Annual Management Plan 2013, pp. 25-26, available at http://ec.europa.eu/atwork/synthesis/amp/doc/olaf_mp_en.pdf, (last accessed on 6 December 2013)
232 Regulation 883/2013, arts. 5(1),(2)
233 Activity Report of the OLAF Supervisory Committee (Jan 2012-2013), http://ec.europa.eu/anti_fraud/documents/reports-sup_comm/2012/scaar_2012_supcom_en.pdf, (last accessed on 6 December 2013)
234 Ibid, pg. 20-22
235 Ibid, pg. 9-10
236 Ibid, pg. 10-11
237 Interview with OLAF Director General and senior management, 5 December 2013
238 OLAF Report 2012, pg. 27
239 Interview with OLAF Director General and senior management, 5 December 2013

ENGAGING IN CORRUPTION-PREVENTION ACTIVITIES

To what extent does OLAF engage in preventive activities regarding fighting corruption?

OLAF's preventative activities focus mainly on anti-fraud rather than anti-corruption more broadly. Therein, OLAF possesses a dual role - developing and contributing to European Commission anti-fraud policy and at the same time, coordinating relevant actions taken by national bodies and internal Commission services. As such, OLAF's input has a relatively far legislative reach and is strengthened through designated networks of EU interlocutors, the funding of national fraud prevention programmes, and the capacity to cooperate with third countries - extending its prevention efforts outside the EU. OLAF reports sufficient progress against its own fraud prevention targets and its response to recommendations made by the ECA demonstrates a reluctance to decrease prevention-oriented activity.

OLAF was established as the successor to the Commission 'Task Force for Coordination of Fraud Prevention'[240] and is explicitly mandated with the responsibility to prepare regulatory and legislative fraud prevention initiatives[241] as well as contribute to the design and development of methods of preventing fraud. OLAF is furthermore charged by the EU Treaties with playing a coordination role in member state activities aimed at preventing fraud and corruption.[242] Nevertheless, the scope of its preventative work currently focuses predominantly on anti-fraud, rather than anti-corruption, more broadly.

OLAF's Policy Directorate has contributed to the development of the Commission Anti-Fraud Strategy, launched in June 2011.[243] The overarching aim of the strategy is to improve the prevention, detection and conditions for the investigation of fraud through the introduction of anti-fraud measures at service level within the EC, with the assistance of OLAF. At the time of writing, OLAF reported that it was cooperating well with Commission directorates-general, and sector-specific strategies were being fully implemented.[244] In line with the objectives set by the programme, OLAF saw its own organisational framework revised in 2013 and has provided input into several legislative proposals, programmes and communications on fraud prevention emanating from the Commission.

With regard to the coordination role it plays vis-à-vis EU institutions, OLAF has been in charge of developing the Commission's Fraud Prevention and Detection network and reports in its 2012 Annual Report that 'regular' meetings of the network have been taking place.[245] OLAF also chairs the Committee on the coordination of the fight against fraud (COCOLAF) which serves as a forum for the exchange of information on general issues regarding EU financial fraud prevention between the Commission and the member states.[246] 2012 saw the organisation of one *ad hoc* COCOLAF meeting and OLAF indicates that annual meetings are foreseen.[247]

In terms of external coordination, OLAF reports that it opened an increased number of coordination and investigation cases throughout 2012 (the most recent year for which figures were available, at the time of writing).[248] OLAF also administers the 'Hercule II' funding programme which promotes activities in member states which protect the financial interests of the EU and promote the exchange of best practice in the area of anti-fraud.[249] The programme delivered grants in more than half of the EU's member states in 2012, via 34 financed projects, with a beneficiary satisfaction rate of 85% - exceeding OLAF's own targets.[250]

That year, it also finalised negotiations on behalf of the EU of a Protocol to Eliminate the Illicit Trade in Tobacco Products in line with the World Health Organisation's Framework Convention on Tobacco control, following a five-year negotiation period.[251] OLAF also possesses competences to conclude 'Administrative Cooperation agreements' (ACAs)[252] either bilaterally or multilaterally with member states, third countries and international organisations, which may include preventative activities such as strategic analysis, threat assessment and risk

240 Commission Decision of 28 April 1999 establishing the European Anti-Fraud Office, OJ L 136/20 (OLAF), art. 1
241 Ibid, art. 2(4)
242 Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999, paragraph 18 (Reg 883/2013), art 1(2)
243 Commission Communication of 24 June 2011 on its Anti-Fraud Strategy, http://ec.europa.eu/anti_fraud/documents/preventing-fraud-documents/ec_antifraud_strategy_en.pdf, (last accessed on 12 December 2013)
244 Interview with OLAF Director General and senior management, 5 December 2013
245 The European Anti-Fraud Office, 'The OLAF Report 2012', (2013) (Luxembourg: Publications Office of the European Union), available athttp://ec.europa.eu/anti_fraud/documents/reports-olaf/2012/olaf_report_2012_en.pdf, (last accessed on 9 December 2013), pg. 28 (OLAF Report 2012)
246 Commission Decision of 23 February 1994 setting up an advisory committee for the coordination of fraud prevention, OJ L 61/27
247 OLAF Report 2012, pg. 28
248 OLAF 2013 Annual Management Plan, http://ec.europa.eu/atwork/synthesis/amp/doc/olaf_mp_en.pdf, (last accessed 10.12.2013), pg. 4
249 Hercule II webpage, http://ec.europa.eu/anti_fraud/about-us/funding/training/, (last accessed on 12 December 2013)
250 OLAF 2013 Annual Management Plan, pg. 13
251 OLAF Report 2012, pg. 25
252 Reg 883/2013, art. 1

analysis, and the exchange of best practice.[253] In 2012 OLAF signed ACAs with five international bodies including the World Bank.[254]

The ECA Special Report on OLAF in 2011 recommended a decrease in the Office's focus on contributing to prevention and anti-fraud legislation and proposed a refocusing of the Office's efforts in its investigative work.[255] OLAF responded by acknowledging a need for reorganisation to improve internal efficiency regarding its investigative function but reaffirmed the importance of its role as a contributor to the Commission's anti-fraud policy and the value of its specialist knowledge of prevention.[256]

Though OLAF recognises its achievements in the domain of prevention in its 2012 annual report, it goes on to posit the need for a European Public Prosecutor's Office which it feels would provide a dedicated structure for a more comprehensive and effective coordination role vis-à-vis the investigation and prosecution of fraud.[257] This also implicitly highlights where the Office's own competences might be extended.

253 See the model text for such agreements at http://ec.europa.eu/anti_fraud/documents/international-cooperation/aca_third_countries_and_dp_annex_en.pdf (last accessed on 27 December 2013)
254 OLAF 2013 Annual Management Plan, pg. 13
255 European Court of Auditors Special Report No.2, 2011, http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=SRCA:2011:02:FIN:EN:PDF, (last accessed on 12 December 2013)
256 Ibid, pp. 52-53
257 OLAF Report 2012, pg. 27

ENGAGING IN EDUCATIONAL ACTIVITIES ON ANTI-CORRUPTION

To what extent does OLAF engage in educational activities regarding fighting corruption?

OLAF has no mandate to provide educational services to the general public on the broad topic of anti-corruption. Rather, its dissemination of best practice and results from cooperation forums are its main indirect tool for public education. It does, however, maintain a network of Anti-Fraud Communicators at EU and national level which is tasked with informing European citizens on the work undertaken by the office and the public benefits of anti-fraud measures.

OLAF has no legal competence conferred upon it regarding public education on fraud and anti-corruption. However, under the scope of its communication strategy, it has created the 'Anti-Fraud Communicators Network' (OAFCN)[258] which composes the OLAF spokesman and the spokespeople at national level charged with public information on national investigative activities. Under its objectives, the network promotes the free-flow of information and informs European citizens on the work undertaken by the Office. More broadly, it also aims to provide information on anti-fraud measures and their benefit to EU financial interests. The last informal performance review of the effectiveness of the OAFCN by the Council was in 2007 and dubbed the network as being 'an excellent and […] efficient instrument of communication'.[259]

The OAFCN holds annual seminars which revolve around the general issue of preventing fraud by educating the public on key issues relating to corruption. The network pursues this pedagogical goal through its communications strategy.

In terms of its operational objectives, there is no outright priority focus placed by OLAF on education of the general public other than one of the objectives of the 'Hercule II' Training programme[260] which is to disseminate the results of fraud prevention initiatives 'among a broader public'. OLAF's other main training programme, 'Pericles',[261] targets only specialists working within national and EU fiscal authorities and financial institutions and encourages the strengthening of cooperation between them.

258 See the OAFCN webpage at http://ec.europa.eu/anti_fraud/media-corner/anti-fraud-comunicators-network/oafcn/index_en.htm, (last accessed on 29 November 2013)
259 Ibid
260 The Hercule II programme provides funding for action to combat fraud affecting the EU's financial interests, including cigarette smuggling and counterfeiting. See the Hercule Training Programme website at http://ec.europa.eu/anti_fraud/about-us/funding/training/index_en.htm, (last accessed on 3 December 2013)
261 The Pericles Programme funds 'exchanges, assistance and training' for authorities, banks and others involved in combating euro-counterfeiting – both in the Eurozone and in EU countries outside the Eurozone. See the Pericles Training Programme website at http://ec.europa.eu/anti_fraud/euro-protection/training/index_en.htm, (last accessed on 3 December 2013)

LAW ENFORCEMENT AGENCIES (EUROPOL AND EUROJUST)

Strengths	Weaknesses
• Appeal procedures for access to personal data are functioning • No evidence of undue interference in agencies' operations and administrative work • National authorities making increasing use of cooperation mechanisms offered by the agencies, such as joint investigations teams • Intelligence gathered being used in EU level priority-setting in the fight against cross-border crime	• High refusal rate for public access to documents and routine recourse to exceptions to their own rules on public access to documents • Absence of common integrity rules for Member State representatives at agencies • Lack of internal whistle-blowing provisions • Low inter-agency cooperation on corruption issues • Highly dependent upon Member States to combat corruption • Minimal oversight by the EP and national parliaments

Recommendations

- Europol and Eurojust should implement comprehensive public document registries in line with existing EU legislation, as suggested by the EU Ombudsman
- Europol and Eurojust should introduce integrity rules for Member State representatives exercising functions at the agencies to ensure coherence and the application of a harmonised set of sanctions in case of misconduct
- EU Member States should give agencies' powers to compel them to act, especially regarding important trans-national corruption cases
- EU legislators must strengthen the oversight powers of the European Parliament over Europol and Eurojust by extending its monitoring role beyond budgetary implementation and financial management issues

About Europol and Eurojust

Europol (the European Police Office) and Eurojust (the European Union's Judicial Cooperation Unit) are law enforcement agencies established by the European Union in charge of, respectively, police and judicial cooperation between Member States. Their headquarters are both located in The Hague.

Europol was established further to the Maastricht Treaty, beginning life as the Europol Drugs Unit in 1993. Its limited scope was expanded by the 1998 Europol Convention, and it began full operations in 1999. Europol formally became an EU agency via a 2009 Council Decision, which also increased its powers.

Eurojust was established by the 1999 European Council summit in Tampere, and began full operations further to a 2002 Council Decision. Its powers were later strengthened by the Council in 2008, with its mission then reiterated in the Lisbon Treaty which included the possibility for Eurojust to house a future European Public Prosecutor's Office (EPPO).

Both agencies are charged with preventing and combating organised crime, terrorism and others serious crimes at EU level. Europol gathers intelligence and provides risk analysis to Member States, while Eurojust allows Member States to coordinate transnational criminal investigations and judicial proceedings at EU level. For both agencies, corruption is considered among the serious crimes on which they have competence.

Europol is governed by a Management Board comprising a representative from each EU Member State and the Commission. Its administration is led by a Director, appointed by the Council. Europol employs 550 staff.

Eurojust comprises a 28- strong college – one representative per EU Member State – responsible for its operations, and led by a president. The agency employs 245 staff, with an Administrative Director leading the day-to-day functioning of the agency.

In 2013, the European Commission issued draft proposals revising the governance and oversight of the two agencies. At the time of writing, these proposals had not been adopted.

INDEPENDENCE (LAW)

To what extent are Europol and Eurojust independent by law?

The EU Treaties include provisions on the mission and work of Eurojust and Europol, and the respective legislation governing their establishment and functioning ensure they are distinct legal entities. Nevertheless, their operational independence is not explicitly guaranteed in law. Their primary mission is to support, respectively, the judicial or police cooperation between Member States but they have no enforcement power in this respect. Competent national authorities and the Council of the European Union, in particular, exercise an important role in the management of these agencies (e.g. appointment and control processes). Nevertheless, Europol and Eurojust benefit from broad administrative autonomy and enjoy financial independence.

No specific provisions in the founding acts of these agencies relate to their independence in itself but the EU Treaties include provisions on the mission and work of Eurojust and Europol. [1] Contrary to other EU agencies, the explicit reference to Europol and Eurojust in the Treaties enhances the legal certainty surrounding their existence, their sustainability and thus their autonomy. Those provisions also entail that the European Parliament and the Council have the power to determine the 'structure, operation, field of action and tasks'[2] of Eurojust and Europol by means of Regulations.

With regard to their operations, both agencies are allowed to set up 'Joint Investigations Teams' on a voluntary basis to coordinate investigations requiring cross-border cooperation and have the right to initiate requests to competent national authorities to start investigating specific cases. For Eurojust, the powers conferred on National Members are left to the discretion of Member States; however the Council has specified minimum requirements in this regard.[3] Current legislation does give National Members the right to issue and complete requests for judicial cooperation, to execute these requests and to order national competent judicial authorities to open an investigation,[4] but always 'in agreement with a competent national authority, or at its request and on a case-by-case basis'.[5] However, the exchange of information between National Members does not require any prior authorization of national competent authorities.[6]

In the case of Europol, national units must be 'able to fulfil their tasks and, in particular, have access to relevant national data.'[7] However, national units may forego their duty to exchange information if it 'would entail harming essential national security interests; jeopardizing the success of a current investigation or the safety of individuals; or disclosing information relating to organisations or specific intelligence activities in the field of State security'.[8]

The founding acts of both agencies include specific provisions on the need for competent national authorities to justify any non-compliance with requests from the agencies for information or to hold investigations.[9] [10] However, competent national authorities may refuse to disclose their reasons if doing so would 'harm essential national security interests',[11] 'would jeopardise the safety of individuals '[12] [13] or would 'jeopardise the success of investigations under way'.[14]

With regard to the procedures for key appointments, for Eurojust, each EU member state appoints one national member to its College and duly informs Eurojust and the Council General Secretariat thereof.[15] Appointment criteria, selection procedures, the status and salaries of the National Members are left to the discretion of Member States,[16] however they must be in a position to access specific, national level judicial information.[17] Though the mandate of the former can be no less than four years, member states may renew their terms and no term limits

1 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, arts 85 and 88 (TFEU)
2 TFEU, arts 85, 88
3 Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA and by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust, arts. 9a-f (Eurojust Council Decision)
4 Eurojust Council Decision, art. 9c
5 Eurojust Council Decision
6 Eurojust Council Decision, art. 13(3)
7 Council Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA), art. 8(3) (Europol Council Decision)
8 Europol Council Decision, art. 8(5)
9 Eurojust Council Decision, art. 8
10 Europol Council Decision art. 7(3)
11 Eurojust Council Decision, art. 8
12 Eurojust Council Decision, art. 8
13 Europol Council Decision, art. 7(3)
14 Europol Council Decision, art. 7(3)
15 Eurojust Council Decision, XX
16 Eurojust Council Decision, art. 9
17 Eurojust Council Decision, art. 9(3)

are specified in the founding act.[18] The President of the College and up to two Vice-Presidents are elected by the College itself, from amongst its members, subject to Council approval. The Administrative Director is appointed, following a call for applicants, by a two-thirds majority of the College, and can be similarly dismissed.

In the case of Europol, the Management Board is composed of one representative per Member State (MS) and of one EC representative enjoying voting rights.[19] Its chairperson and its deputy chairperson are selected by the trio presidencies[20] from among the MS representatives. Their mandate follows the term of the rotating trio presidencies but provisions exist for extension/renewal subject to Council approval.[21] The Director and the deputy Directors are appointed and or dismissed by the Council by a qualified majority, and detailed recruitment procedures have been laid down.[22]

The administrative Director of Eurojust[23] and the Director of Europol are subject to the EU staff regulations, including the obligation to preserve their independence[24]. Seconded National Experts by Member States are also subject to rules entailing loyalty and independence.[25] [26] Additional internal documents provide guidance to mitigate corruption risks at the administrative level.[27] Recruitment guidelines[28], vacancy notices[29] and/or rules of procedure ensure that staff and the head of the administration[30] are recruited according to high professional standards.

As EU agencies, Eurojust and Europol comply with the EU Financial Regulations via implementing rules.[31] [32] The budgets of both agencies are funded from the general budget of the European Union, and these are subject to approval by the budgetary authority, the agencies have autonomy for budgetary implementation. This principle complies with the administrative autonomy granted to EU agencies and allows Europol and Eurojust to remain financially independent from Member States contributions or any other EU institutions or third party.

18 Eurojust Council Decision, art. 9(1)
19 Europol Council Decision. art. 37
20 To increase coordination between Council Presidencies, groups of three member states holding successive presidencies cooperate closely over an 18 month period.
21 Europol Council Decision, art. 37(10)
22 Decision of the Management Board of Europol of 4 June 2009 establishing the rules on the selection, extension of the term of office and dismissal of the Director and Deputy Directors of Europol (2009/1011/JHA)
23 Eurojust Council Decision of 28 February 2002, arts. 28–30
24 Staff Regulations, art. 11a
25 Decision of the Management Board of Europol, Laying down rules on the secondment of national experts to Europol, file n°3540(296r9), July 2009
26 An example of seconded national expert vacancy including general conditions applying to national experts can be found at http://www.eurojust.europa.eu/careers/VacanciesLibrary2013/13-EJ-SNE-02.pdf (last accessed on 5 September 2013)
27 For instance, see the Code of Good Administrative Behaviour adopted by Eurojust, establishing guidelines to avoid misbehaviour and maladministration in general, and the Code of Good Administrative Behaviour adopted by the European Commission, applying to EU agencies.
28 Europol Recruitment Guidelines, The Hague, file n°2310-r1, 24 May 2011
29 Eurojust recruitment policy, available at http://eurojust.europa.eu/careers/Pages/recruitment-policy.aspx (last accessed on 5 September 2013)
30 See the provisions related to the criteria for eligibility for the position of Administrative Director at Eurojust: Rules of Procedure (2002/c 286/01), of Eurojust of 22 November 2002, art. 24
31 College Decision 2009-8 adopting the Financial Regulation applicable to Eurojust (Eurojust Financial Regulation)
32 Financial Regulation Applicable To Europol (2010/C 281/01), 16 October 2010, (Europol Financial Regulation),

INDEPENDENCE (PRACTICE)

To what extent are Europol and Eurojust independent in practice?

No instances of undue interference have been noted with regard to the operations and administration of Europol and Eurojust. However, the operational effectiveness of these agencies relies primarily on the willingness and ability of national authorities to exchange information, open investigations, prosecute, and coordinate cases. Difficulties or refusals to follow-up requests addressed by the agencies to Member States often arise from the diversity of national legal regimes or from a lack of alignment of priorities between the EU and national levels. External observers point to the need to strengthen the powers of these agencies to compel action by Member States, but the agencies report broadly satisfactory cooperation.

No instances of undue interference in the administration and operations of either Europol or Eurojust have been reported in recent years.[33] However, neither in law nor in practice are Europol and Eurojust operationally independent of Member States in order to fulfil their mandate.

At Europol, appointment procedures for directorate positions are a responsibility of Member States in the Council, based on advice by the Agency's governing body, i.e. the Management Board, governed following the rotating trio presidencies. Accordingly, Europol is politically controlled by the executive authorities in Member States, which has, in the past, led to decision-making being paralysed.[34] Previously, the Director was considered to be heavily dependent on the Management Board (MB) for 'almost all decisions' and to suffer from excessive oversight by its members[35] due to an earlier, internal corruption scandal.[36] However, since the Europol reform in 2009 and the new founding legislation, relations between the Director and the MB are reported to have improved, with the latter giving better priority to its strategic mandate.[37]

The vague provision in the Europol Decision[38] for Member States to share information and feed into the Europol exchange of information system (SIENA) is a major constraint for Europol in the conduct of its operational activities.[39] Liaison officers refrain from systematic information exchange with Europol, while most of the information is exchanged bilaterally, for a variety of reasons.[40] The excessive reliance on [national] liaison officers for the exchange of information[41], and also for operational and enforcement activities, are areas in need of improvement.[42] The lack of multilateral exchange of information hampers the agency's operational independence in practice, but also implies a bias in the accuracy of threat assessments.[43] However, Europol noted an increase in 2012 in the level of information exchanged and also in its quality compared to previous years.[44] In addition, though, problematic differences were observed in the status and influence at national/local level of national units, hampering follow-up of Europol assessments at member state level.[45] The limited (legal or financial) ability of Europol to coordinate operational activities itself or among Member States, also constrains the agency.[46] Providing Europol with binding powers to compel a Member State to open an investigation or to compel them to justify any refusal have thus been identified as a current need.[47] Nevertheless, the Director of Europol reports that the agency rarely has to use its formal ability to request national authorities to open an investigation given that the authorities are normally happy to proceed swiftly.[48]

Similar observations can be made regarding Eurojust: however, the College-based governance system does seem to give it more autonomy in the conduct of its activities compared to Europol.[49] Nonetheless, the 2012 Eurojust Annual Report illustrates that operational activities entirely depend on the goodwill of Member States (e.g. for the coordination of operations, the opening of investigations, the establishment of JITs). Refusals to execute requests

33 Interviews with personnel from Europol and Eurojust, 6 and 7 November 2013
34 M. Busuioc, M. Groenleer, 'Beyond Design. The Evolution of Europol and Eurojust', Amsterdam Centre for European Law and Governance Research Paper, March 2011, pg.11
35 Ibid
36 See http://www.statewatch.org/news/2001/jun/03europol.htm
37 Interview with the Director of Europol, 6 November 2013
38 Europol Decision, art. 8(4)(a)
39 Europol Evaluation pg. 47
40 Ibid, pg. 48
41 Ibid, pg. 60
42 Ibid, pp. 52-53
43 See Council conclusions on the increased and more effective use of the Europol Information System in the fight against cross-border crime, 3172nd Justice and Home Affairs Council meeting, Luxembourg, 7 and 8 June 2012
44 Europol Annual Report, pg. 18
45 Europol Evaluation, pg. 52-53
46 Europol Evaluation., pp. 57-58
47 Europol Evaluation, pp. 57-58
48 Interview with the Director of Europol, 6 November 2013.
49 M. Busuioc, M. Groenleer, pg. 12 and interviews with personnel from Eurojust, 7 November 2013

for follow-up often arise from the diversity of legal regimes across Member States (e.g. concerning the admissibility of evidence and legal difficulties pertaining to the execution of European arrest warrants, house searches, or the hearing of witnesses).[50] Dedicated tools to ensure an appropriate level of exchange of information by Member States with Eurojust have been developed but are not yet fully effective,[51] though, informal contact seems to create sufficient pressure for Member States to coordinate transnational cases.[52] This 'pressure' is also much dependent on the influence and powers of the National Members within their constituencies.[53] A respondent from Eurojust indicated that the agency did not see a need to amend the minimum powers for National Members as described by the Eurojust Decision in this respect, despite the agency having no leverage in the appointment of National Members by national authorities.[54] Practitioners and academics have though underlined the need to strengthen Eurojust's ability to initiate investigations in national constituencies so as to enable the agency to fulfil its current mandate.[55]

In addition, only 12 Member States have fully implemented the Eurojust Decision creating gaps and uncertainty regarding how Eurojust exerts its powers in practice.[56] A central feature of the discussion on this issue concerns assessment of the level of implementation of the obligation for national authorities to systematically exchange information on specific crimes (i.e. terrorism).[57] A respondent from Eurojust emphasised, nevertheless, that data gathering is not the core aspect of the agency's judicial mission.[58]

Looking forward, the future institutional design of the Area of Freedom, Security and Justice will have a considerable impact on the structure and organisation of these agencies, in particular: the way cooperation agreements with third parties will be negotiated; the eventual establishment of the European Public Prosecutor for protecting EU financial interests; the potential for strengthened EP scrutiny powers over both Eurojust and Europol; and, most significantly, the recasting of their founding Council Decisions.[59] [60]

50 Eurojust Annual Report 2012, pg. 43
51 M. Busuioc, M. Groenleer, pp. 10-11
52 Eurojust Annual Report 2012, p. 47
53 M. Busuioc, M. Groenleer, pg. 14
54 Interview with the Head of the Secretariat of the Eurojust College, 7 November 2013
55 Eurojust and the Lisbon Treaty: Towards more effective action Conclusions of the strategic seminar organised by Eurojust and the Belgian Presidency (Bruges, 20-22 September 2010), pg. 8
56 Eurojust annual report 2012, pg. 47
57 Eurojust Decision, art. 13. Compliance of national systems with Eurojust Decision has been assessed during the 6th Round of Mutual Evaluation. Individual reports are made available by the Council.
58 Interview with the Head of the Secretariat of the Eurojust College, 7 November 2013.
59 See the Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA, COM(2013) 173 final
60 See the Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust), COM(2013) 535 final

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can access the relevant information on Europol and Eurojust's activities?

Europol and Eurojust both apply the general principle of public access to EU documents[61] while sharing a number of similar exceptions to the principle due to the nature of their activities. Specific rules are in place governing access to personal data, with both agencies maintaining dedicated appeal bodies in this regard, though divergence exists on the binding nature of decisions from these bodies. Contrary to Eurojust, decisions issued by the Europol appeal body are not binding upon Europol. Both agencies apply the financial transparency principles laid down by the EU Financial Regulation. Specific provisions on the disclosure of assets and gifts are not in place for College or Management Board members.

The EU Treaties enshrine the idea of transparency, the principle of public access to documents, as well as the obligation for all EU bodies to work 'as openly as possible',[62] to 'ensure that [their] proceedings are transparent' and to elaborate specific provisions on access to documents in their own Rules of Procedure.[63] Europol and Eurojust both 'take in account' the principles and exceptions laid down by EU Regulation 1049/2001[64] [65] [66] and have adopted rules regarding public access to their own documents accordingly.[67] [68] The preambles to these latter rules recognise the benefits of openness[69] but also recognise the necessity to ensure personal data protection, to protect professional secrecy and to safeguard the agencies' abilities to carry out their main tasks.[70]

Consequently, access to a document (in whole or in part) can be refused, *inter alia*, where disclosure would undermine the protection of the public interest;[71] [72] of the privacy and integrity of individuals; of commercial interests; of court proceedings, inspections, audits; and of the conduct of the decision making process, 'unless there is an overriding public interest in disclosure'.[73] With regard to documents originating in whole or in part from a third party, prior consent of the party may be sought: however Eurojust is compelled to consult the third party where this concerns a Member State (unless the national member has agreed to disclosure), or a classified document;[74] Europol, meanwhile, must consult any party with whom it has a 'cooperation agreement'.[75]

While Europol's access to documents rules specifically provide for a publicly available document register (as foreseen in Regulation 1049/2001),[76] the corresponding Eurojust Decision does not. In contrast to the 15 day deadline for responding to initial requests under Regulation 1049/2001, both agencies provide for a 30-day deadline in their respective rules.[77]

Individuals are also entitled to access data concerning them held by either agency and can request corrections or deletion of incomplete/incorrect data.[78] [79] Such requests to Eurojust must be introduced through a Member State of the individual's own choice and must be free of charge. The Europol Decision foresees an equivalent procedure, 'without excessive costs'.[80] Access to personal data shall be denied if such access may jeopardise Eurojust

61 As laid down in Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2001] OJ L145/43 (ATD Regulation). For more details on this regulation, please refer to the EC transparency (law) report.
62 Treaty on the functioning of the European Union, (Consolidated version 2012) [2012] OJ C326/13), art. 15 (TFEU)
63 Ibid
64 ATD Regulation
65 Council Decision (2002/187/JHA) of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime [2002] OJ L63/1, art. 39 (Eurojust Decision)
66 Council Decision (2009/371/JHA) of 6 April 2009 establishing the European Police Office (Europol) [2009] OJ L121/37, art. 45 (Europol Decision)
67 College of Eurojust Decision to adopt rules regarding public access to documents, 13 April 2004 (Eurojust ATD rules). For more details on this regulation, please refer to the EC transparency (law) report.
68 Decision of the Management Board of Europol laying down the rules regarding access to Europol documents, File no. 3550-95r3, 8 July 2009 (Europol ATD rules)
69 Ibid, Preamble, para. 3
70 Ibid, Preamble, para. 6
71 In the case of Eurojust, public interest pertains to: public security, defence and military matters, international relations, financial, monetary or economic policy of the Community or a Member States, fulfilment of Eurojust's tasks in reinforcing the fight against serious crime, national investigations and prosecutions in which Eurojust assists, or fulfilment of the applicable rules on professional secrecy. See College of Eurojust Decision to adopt rules regarding public access to document, art. 4(1(a))
72 In the case of Europol, public interest pertains to: i.e. public security including the safety of natural and legal persons, the proper fulfillment of Europol's tasks, investigations and operational activities of Member States, third parties or EU bodies, defence and military matters, international relations, the financial, monetary or economic policy of the Community or a Member State, see Decision of the Management Board of Europol laying down the rules regarding access to Europol documents, , art. 4(1(a))
73 Ibid, art. 4
74 "[C]lassified documents" shall mean documents that have been classified by Eurojust in accordance with its security rules in order to protect essential interests of Eurojust, the European Union or one or more Member States, third countries or international organisations. See Eurojust ATD rules, art. 3(e)
75 Eurojust ATD rules, arts. 4(4) and 10(1), and Europol ATD rules, art 4(4)
76 Europol ATD rules, art. 11
77 Idem, art. 7(3)
78 Eurojust Decision, arts. 19-20
79 Europol Decision. art. 30
80 Ibid

activities, a national investigation assisted by it, or the rights and freedoms of a third party.[81] Europol has adopted corresponding exceptions and also denies access if refusal is necessary to enable it to fulfil its tasks and to protect public security or prevent crime.[82] Individuals can appeal to a Joint Supervisory Body (JSB) at either agency if they are not satisfied with the reasons given for refusal or if their request was not met within the prescribed time limit (3 months).[83] [84] Contrary to Eurojust provisions,[85] the decisions issued by the JSB are not legally binding upon Europol. The JSB 'draws up harmonised proposals for common solutions to existing problems'[86] to be submitted to the Director, or can refer the matter to the Management Board if not satisfied with the latter's response.[87]

With regard to procedural transparency, in addition to dedicated provisions contained in their founding acts, the rules of procedure for each agency are public and contain detailed information on their respective roles and decision-making procedures.[88] [89]

There are no legal provisions requiring the publication of Europol or Eurojust decisions regarding the appointment, renewal, removal and or/ dismissal of their internal bodies or staff. In the case of Eurojust, such decisions about the JSB are communicated to the Council General Secretariat and within Eurojust itself, and updates to the list of the agency's National Members is made available to the European Commission only. In the case of Europol, no dedicated provisions on public disclosure are to be found.[90]

The principle of budgetary transparency is enshrined in each agency's Financial Regulation. In both cases, it is obligatory for Europol and Eurojust to publish a summary of their adopted annual budgets as well as amending budgets including staff establishment plans within three months of their adoption.[91] [92] These provisions also include the obligation to publish information on experts recruited by the agencies to evaluate procurement and grant proposals submitted to them. This information shall be 'easily accessible, transparent, and comprehensive'[93] in due observance of 'confidentiality and security requirements' and data protection rules.[94] When anonymity is required, the information is forwarded to the European Parliament, 'in an appropriate manner'.[95]

With regard to procurement, both Europol and Eurojust follow the rules and procedures laid down in the EU Financial Regulations and its implementing rules.[96] [97] Specific procedures are designed depending on the type and the value of procurement. Therefore, both agencies apply general EU provisions related to publicity of decisions, exceptions included. For more details, please refer to the EC Procurement sub-chapter.

There are no existing provisions related to the disclosure of assets and the registration of gifts received applying to College and Management Board members, nor to agencies' senior staff.

81 Eurojust Decision, art. 19
82 Council Decision of 6 April 2009 establishing the European Police Office, art. 30
83 Ibid, art. 32
84 Eurojust Decision, art. 22
85 Eurojust Decision, art. 23(8)
86 Europol Decision, art. 34(3)
87 Ibid, art. 34(4)
88 Rules of Procedure of Eurojust (2002/C 286/01), 22 November 2002
89 Management Board of Europol rules of procedure (2010/c 46/08)
90 For Europol and Eurojust staff, the EU Staff Regulations entail that any decisions of this kind are published within the institution. 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, doc 1962R0031, 01 January 2011, (Staff Regulations), art. 25
91 College Decision 2009-8 adopting the Financial Regulation applicable to Eurojust, (Eurojust Financial Regulation), art. 26
92 Financial Regulation Applicable To Europol (2010/C 281/01), 16 October 2010, (Europol Financial Regulation), art. 26
93 Ibid, art. 26(4) and Eurojust Financial Regulation, art. 26(4)
94 Ibid
95 Ibid.
96 Europol Financial Regulation, art. 74
97 Eurojust Financial Regulation, art. 74

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of Europol and Eurojust in practice?

Europol and Eurojust publish a range of legally-required information on their activities and financial management on their websites, though the scope of availability of non-English translations differs. In particular, the Eurojust annual report is published in EU 23 languages while Europol publishes its corresponding report only in English. Neither agency maintains a public register of documents – one among several discrepancies between their respective rules on access to documents and general EU rules criticised by the EU Ombudsman. Questions also pertain to how freely the agencies apply exceptions to disclosure of documents, given the high refusal rate, and of personal data. A lack of transparency in recruitment procedures and decisions has also been identified.

Europol and Eurojust both publish many documents related to their functioning on their respective websites (e.g. annual activity and budgetary reports, their legal frameworks, agreements with third parties, etc.). Effort is made at Eurojust to translate some documents into a majority of EU languages (e.g. Annual Reports), contrary to Europol, whose documents (its Annual Review in particular) are only available in English. Both agencies also publish their annual budgets including staff establishment plans and financial accounts and make public the composition and names of their main governing bodies, but not of their staff.[98] [99] However, the publicity of all beneficiaries of the agencies' budgets, including information on experts recruited for the evaluation of procurement tenders and grant applications is not available. Despite the central role of Europol national units to the functioning of the agency, a list of names of their members is not published, in view of the need to protect individuals involved in sensitive investigations.

Eurojust is not aligned with the Public Access to Documents Regulation[100], requiring EU bodies to maintain a public document register and handle initial requests within a maximum deadline of 15 working days – Eurojust maintains a 30-day deadline. These gaps were addressed by the EU Ombudsman to whom Eurojust responded that it might consider establishing a register. Eurojust also asserts that the EU Regulation on public access to documents does not apply to it as such, despite the Eurojust Decision mentioning this regulation as a basis.[101] In terms of actual requests, Eurojust receives a low number (11 in 2011 and 17 in 2012). In 2012, 4 requests for documents were refused and 2 were partially granted.[102] In most cases, Eurojust response times were in line with its own rules[103] however such information is not included in the section dedicated to access to documents requests within its Annual Report. Two requests were addressed in less than 10 working days.[104] No confirmatory applications were reported.[105] In practice, a difference is made between non case related documents (the head of the relevant department concerned and the Director are involved in the decision) and case-related documents (requiring the accord of the National Member concerned and/or College approval). 'Case-related documents' include decisions taken by the College but addressed to a National Member in particular. For case-related documents, the Data Protection Officer is systematically consulted in the process.[106]

For the years 2011–2012, Europol received 10 requests for access to documents, 3 of which were requests for documents made to the General Secretariat of the Council and for which Europol was consulted: the agency provided its consent for disclosure in all three cases. Of the remaining 7, 3 were refused access while 3 were granted partial access: justifications against full disclosure, where recorded, pertain principally to the broad justification of public safety. The remaining request was closed pending the outcome of an own-initiative inquiry by the Ombudsman related precisely to the agency's access to documents rules. In most cases, Europol replied within its own time limit of 30 working days, while the longest recorded delay is well beyond the rules (180 days),

98 The list of the Europol Management Board members is accessible online, disclosing names, Member state and administration of origin. See https://www.europol.europa.eu/sites/default/files/publications/list_of_mb_members.pdf

99 Eurojust website discloses the names with short biography of College members, Deputy National Members, assistants and liaison magistrates. See http://eurojust.europa.eu/about/structure/college/Pages/college.aspx
In the course of our research, we also learned that the Europol switchboard does not transfer external callers to any members of Europol staff unless the caller requests them by name specifically: requesting to speak to the staff member responsible for a particular function is not sufficient.

100 Regulation 1049/2001

101 Report of the European Ombudsman following his visit to the European Union's Judicial Cooperation Unit (Eurojust) (Report to Eurojust), OI/8/2012/OV, paras. 22-24 and interview with the Head of Legal Services at Eurojust on 7 November 2013.

102 Eurojust Annual Report 2012, p. 51

103 See http://www.asktheeu.org/en/request/access_to_documents_requests_in_7#incoming-2912

104 Idem

105 Following an initial request for an extract of the access to documents (ATD), Eurojust redacted information receipt and responses dates of introduced ATD in 2012. While this was disclosed after further correspondence, the initial reluctance to provide the information does suggest an overzealous approach to exceptions under its ATD rules. It is hard to ascertain how disclosure of response times would foreseeably and not purely theoretically, undermine protected interests.

106 Interview with the Head of Legal Services at Eurojust on 7 November 2013.

though in agreement with the requestor.[107] In practice, disclosure of documents has been guided by the 'owner-principle', thereby requiring Member States or third parties to approve disclosure.

Similarly to Eurojust, the Ombudsman called on Europol to align its rules with the Regulation governing public access to EU documents regarding response times[108] and to establish a public register including references to both public and non-public documents.[109] Both agencies cited the 'sensitive nature' of documents' they hold as obstacles in this regard[110] but this was seen as unconvincing by the Ombudsman.[111] Administrative arrangements to secure approval for disclosure within the agencies and within national authorities are seen as time consuming.[112] Allocating more resources to handling requests is not, however, seen as a solution to this.[113] Since 2009, the Ombudsman has opened three cases related to public access to documents against each agency.

Eurojust has expressed its dissatisfaction with current EU legislation regarding public access to documents. It considers that current rules are not appropriate regarding the judicial nature of its mission, and considers that three different regimes should apply regarding access to its documents, on the basis of whether a document is: an 'operational' document (case-related); a document produced by Eurojust (i.e. a College Decision); or a non-case-related document.[114] To some extent, Europol also expressed the opinion that current EU access to documents rules are not tailored to its mission.[115]

In practice, all requests for access to personal data are processed by the respective Data Protection Officer. At Eurojust, the Data Protection Officer accepts requests even if they were not introduced through national authorities.[116] Information on the respective Joint Supervisory Bodies (JSB) of Europol and Eurojust, including their compositions, are available, though this does not include declarations of interest. The JSBs publish all their decisions and opinions issued since their establishment, along with information on their tasks, and implementing rules, *inter alia*. [117] Over the years 2008-2012, the Europol JSB handled five appeal cases related to the processing of personal data.[118] In four cases, Europol revised its decision according to the appeal's result or even before a final decision was reached, despite their non-binding nature. In the most recent case reported, Europol was found to be in compliance with existing rules.[119] Despite this good record, the European Data Supervisor asserted that the current JSB system at Europol 'does not fulfil the independent criteria for supervision' and is 'lacking enforcement powers'. [120] The European Data Protection Supervisor will replace the Europol JSB role in the future.[121] Over the years 2007-2012, only three appeals were introduced to the Eurojust JSB. In all cases, the JSB asked Eurojust to reconsider its position and abide by the applicant's request. All this demonstrates that there are initial obstacles to transparent disclosure of personal data, but nevertheless, the mechanisms for individuals to challenge decisions by both agencies, in this regard, are effective.

For the years 2010 and 2011, the European Court of Auditors (ECA) highlighted transparency issues related to the composition of recruitment panels at Eurojust and of recruitment decisions at Europol.[122] [123] The Ombudsman also asked Europol[124] and Eurojust[125] to clarify whether they disclose the names of selection panels, with the view to enhancing transparency and preventing conflict of interests. In response, Europol indicated that the names of selection panel members are systematically disclosed only to short-listed candidates at the interview stage, but that other applicants in a recruitment procedure could request these names – with the information made available on a case-by-case basis. The agency also informed the Ombudsman that it would be amending its recruitment guidelines to inform non-short listed candidates explicitly of their right to request the release of these names in light of the Ombudsman having raised the issue.[126] Separately, Europol has informed TI-EU that all selection

107 See http://www.asktheeu.org/en/request/656/response/2574/attach/2/PA%20Overview%20table%20made%20partially%20accessible%2030%2008%202013.pdf
108 Report of the European Ombudsman following his visit to the European Police Office (Europol) (Report to Europol), OI/9/2012/OV, para. 28
109 Idem paras. 32-39
110 Europol commented that mentioning even non-public document in a registry would imply redacting the name of the document when needed because its title would provide indirect information on its (presumably non-public) content. Interview with Europol legal officer on 6 November 2013
111 Report to Europol, paras. 35-38 and Report to Eurojust paras. 28-29
112 Interview with Legal officer at Europol on 6 November 2013 and interview with the Head of Legal Services at Eurojust, on 7 November 2013
113 idem
114 Interview with the Head of Legal Services at Eurojust, on 7 November 2013
115 According to Europol, a significant amount of the information and documents it retains are for law enforcement use, and of a classified nature, originating from Member States and third part cooperation partners. In this respect, trust among law enforcement national authorities is the key element to secure swift police cooperation and high level of exchange of information with Europol. Interview with Europol legal officer on 6 November 2013.
116 Interview with the Assistant to the Data Protection Officer at Eurojust, 7 November 2013
117 The Europol JSB has its own website, totally independent of Europol's one. See http://europoljsb.consilium.europa.eu/. For Eurojust, information is available at http://eurojust.europa.eu/about/structure/jsb/Pages/independent-joint-supervisory-body.aspx
118 Europol Joint Supervisory Body, Activity Report October 2008 – October 2012, Converging Paths
119 Idem, pp. 13 - 14
120 Letter of Peter Hustinx, Supervisor, to Olegas Skinderskis, Chair of CATS, para. 6. Retrieved from http://register.consilium.europa.eu/pdf/en/13/st15/st15942.en13.pdf
121 Idem, para. 1
122 Report on the annual accounts of Eurojust for the financial year 2010, together with Eurojust's replies, [2011 OJ 366 141] and Report on the annual accounts of Eurojust for the financial year 2011, together with Eurojust's replies [2012 OJ 388 31]
123 Report on the annual accounts of the European Police Office (EUROPOL) for the financial year 2010 together with the Office's replies [2011 OJ 366 32] and Report on the annual accounts of the European Police Office (EUROPOL) for the financial year 2011 together with the Office's replies [2012 OJ 388 32]
124 See the letter from the European Ombudsman to Europol available at http://www.ombudsman.europa.eu/fr/cases/correspondence.faces/fr/51419/html.bookmark
125 See the letter from the Ombudsman to Eurojust available at http://www.ombudsman.europa.eu/fr/cases/correspondence.faces/fr/51412/html.bookmark#_ftnref2
126 See http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/53768/html.bookmark

board members have to formally declare any potential conflicts of interest in relation to the candidates. This declaration is kept as a record in the recruitment file of successful candidates.[127]

Eurojust, meanwhile, informed the Ombudsman that short-listed candidates are informed of the names of selection board members at the interview stage, and in advance of interviews if requested by these candidates. The agency noted that it 'may consider' publishing the names of selection board members in advance on its website.[128]

With particular regard to procurement, both agencies advertise high value contracts and publish information on awarded tenders, including contractors,[129] (although information on experts recruited to evaluate procurement tenders and grant proposals is not disclosed). Information on low value contracts is not disclosed.[130]

127 Information provided by Europol to TI-EU by email on 25 February 2014.
128 See http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/53862/html.bookmark
129 Europol only publish contractors of the past three years while Eurojust provides a record of contractors from 2006 onwards.
130 The definition of 'low-value' contracts differs between agencies: at Eurojust, it is between 15-60k EUR, while for Europol it is 25-60k EUR.

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that Europol and Eurojust have to report and be answerable for their actions?

The operational performance of Europol and Eurojust is primarily overseen by member state representatives within the agencies' respective governing bodies: these bodies are bound by corresponding reporting obligations to the Council. National parliaments have a loosely defined role, via the EU Treaties, in political oversight of both Europol and Eurojust, but their involvement remains limited. The European Parliament scrutinises the agencies' financial management but need only be informed about operational aspects (as is the case for the Commission). Both agencies are subject to external audits: limits are in place regarding internal audit scrutiny of classified or case related material. Independent appeal bodies are designed to oversee the handling of personal data at each agency, however, their decisions are only binding upon Eurojust. OLAF retains investigative powers at both agencies; however, ambiguity remains on the scope of access to information it enjoys at Eurojust due to recent changes to Eurojust's legal basis yet to be reflected in rules governing its cooperation with the Anti-Fraud Office.

While Council Decisions established Europol and Eurojust, the agencies' structures, operations, fields of action and tasks are regulated under the ordinary legislative procedure by both the European Parliament (EP) and the Council.[131]

The Administrative Director of Eurojust is accountable to the agency's College,[132] working under its authority, and s/he must report 'regularly' on the performance of the Agency.[133] The President of Eurojust, on behalf of the College, reports to the Council on Eurojust activities and budgetary management via an annual report. The Council also expects the President to outline any criminal policy problems highlighted through the agency's work and any proposals to improve judicial cooperation on criminal matters. The President also 'forward[s]'[134] a report to the European Parliament on the work carried out by Eurojust and by the agency's Joint Supervisory Body (JSB).[135]

In the case of Europol, member state scrutiny is exercised through its Management Board (MB), which monitors the Director's performance, including the implementation of MB decisions,[136] and must be informed by him/her on the implementation of priorities defined by the Council.[137] The MB itself reports on annual budget forecasts, on its work programme and on its general activities during the year to the Council. The latter endorses and forwards these documents to the European Parliament 'for information'.[138] National Parliaments takes part in Europol and Eurojust scrutiny by 'being involved in the political monitoring of Europol and [the] evaluation of Eurojust's activities'.[139]

With regard to budgetary issues, both agencies must submit budgetary forecasts including staff establishment plans annually to the budgetary authority, once the European Commission (EC) has expressed its opinion.[140] Yearly provisional accounts and a report on budgetary and financial management are sent to the EC, which forwards them to the Court of Auditors (ECA) for observations. Final accounts are forwarded to the EP, Council, EC and to the ECA and are published accordingly,[141] together with agency replies to any observations. The ECA can also issue special reports on the agencies, at the request of other EU institutions. Both agencies, via their Directors, also have to respond to any information requested by the EP related to the discharge procedure for that financial year.[142]

For both agencies, an internal audit function is also foreseen by their respective legal bases,[143] which may be undertaken by the Commission's internal audit service in the case of Eurojust.[144] In principle, the internal auditors of both agencies are entitled to 'full and unlimited access to all information required in the performance of these

131 Treaty on the European Union (Consolidated version 2012) [2012] OJ C326/47, arts. 85, 88 (TEU)
132 Composed of National Members, appointed by their respective Member States.
133 Council Decision (2002/187/JHA) of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA and by Council Decision (2009/426/JHA) of 16 December 2008 on the strengthening of Eurojust, consolidated version, art. 29(5) (Eurojust Decision)
134 Eurojust Decision, art. 32(2)
135 Eurojust Decision, art. 32(2)
136 Council Decision (2009/371/JHA) of 6 April 2009 establishing the European Police Office (Europol) [2009] OJ L121/37, arts. 37(9)(b), 38(5), (Europol Decision)
137 Europol Decision, art. 38(4)(i)
138 Europol Decision., art. 37(10)
139 TEU art. 12(c)
140 Eurojust Decision, art. 35; Europol Decision, art. 42
141 Eurojust Decision, art. 36; Europol Decision, art. 43
142 Eurojust Decision, art. 36; Europol Decision, art. 43(9)
143 Eurojust Decision, art. 38; Europol Decision, art. 37(9)(f)
144 Eurojust Decision, art. 38 (2); Financial Regulation Applicable To Europol (2010/C 281/01), 16 October 2010, art. 73(1) (Europol Financial Regulation)

duties'.[145] Nonetheless, in the case of Europol, its Director 'may limit the scope of an audit' by denying access to 'strategic, operational and classified information' (…)' and inform the Commission of the reasons.[146] In the case of Eurojust, it is provided that case-related work and documents are out of the auditor's reach.[147] Both internal auditors report to the Management Board/the College and to the respective agency directors, and these latter actors shall ensure to take actions' as a result.[148] [149] Annual internal audit reports are also forwarded to the EC and to the discharge authority.[150]

Both Europol and Eurojust have tailor-made data protection regimes set out in law.[151] Individuals have the right to access personal data concerning themselves processed by the agencies, subject to broad exceptions related to protecting agency operations, national investigations, and the rights of third parties. These requests must be submitted via national authorities: in the case of Europol, the agency must respond within 3 months, and decides on access in cooperation with the member state concerned. With regard to Eurojust, no deadline for responses is laid down, and decision is made by the national authority. Requests to Europol can be liable to a fee, while they must be free in the case of Eurojust.[152] Individuals also retain the right to request correction of their personal data,[153] and can challenge both agencies and the Member States for any incorrect or unauthorized processing of data related to them. In this respect, agencies have established Joint Supervisory Bodies (JSB), which allow individuals to appeal initial decisions related to data processing. Nevertheless, JSB decisions are only binding in the case of Eurojust:[154] the Europol JSB relies on the Director and/or the MB for compliance.[155] (For more details, please refer to the transparency indicator.) Europol and Eurojust decisions related to data processing cannot be challenged by individuals at the CJEU as Member States hold responsibility to apply them.[156]

OLAF has the ability to conduct investigations into suspected fraud and corruption at Eurojust, on its own initiative or upon the request of the College President or the Administrative Director; rules are in place to govern these investigations[157] and require the full cooperation of staff and College members.[158] An alternative procedure is foreseen in the case of evidence that one of these organs is involved in a given allegation.[159] In reference to provisions laid down in Eurojust's original 2002 legal basis, the rules governing its cooperation with OLAF emphasise an obligation of confidentiality, and proscribe OLAF 'access [to] documents, evidence, reports, notes or information held or created in the course of its case related activities'.[160] While the provisions have been deleted in the recast Eurojust Decision of 2008, the rules on cooperation with OLAF remained unchanged at the time of writing, which could imply legal uncertainty about the capacity of OLAF to carry out properly its mission at the agency. Contrary to Eurojust, Europol has not made public its implementing rules related to OLAF investigations, but it is subject to the same rules established by the dedicated EU regulation on OLAF.[161] The disciplinary proceedings and sanctions for Europol and Eurojust staff suspected of misconduct (including fraud and/or corruption) are laid down in the EU Staff Regulations.[162]

145 Europol Financial Regulation, art. 72(2); College Decision 2009-87 adopting the Financial Regulation applicable to Eurojust, art. 72(2), (Eurojust Financial Regulation)
146 Europol Financial Regulation, art. 71(2)
147 Eurojust Financial Regulation, art. 73(6)
148 Europol Financial Regulation, art. 72(3)
149 Eurojust Financial Regulation, art. 73
150 Europol Financial Regulation, art. 72(5); Eurojust Financial Regulation, art. 72(5)
151 See the Eurojust Decision, arts. 14-25 and the Europol Decision arts. 27-35
152 Europol Decision, art. 30 and Eurojust Decision art. 19
153 Europol Decision, art. 31 and Eurojust Decision art. 20
154 Eurojust Decision, art. 23(8)
155 Europol Decision, art. 34(4)
156 See the Outcome Report on the Eurojust/ERA Conference "10 years of Eurojust, Operational achievements and Future Challenges", 8862/13, 26 April 2013, pg. 13; the binding legal effects of Eurojust acts are the responsibility of Member States; and Europol Decision, article 52(1)
157 As foreseen by the Eurojust Decision, art. 38(4). See also College of Eurojust Decision of 13 July 2004 on the implementation of Regulation (EC) no. 1073/1999 concerning investigations conducted by the European Anti-Fraud Office in accordance with Article 38(4) of the Eurojust Decision (OLAF Decision)
158 OLAF Decision, arts. 1(1), 1(2), 2
159 OLAF Decision, art. 2(4)
160 OLAF Decision, art. 3; Council Decision (2002/187/JHA) of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime [2002] OJ L63/1, preamble (5)
161 See Regulation (EC) No 1073/1999 of the European Parliament And of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), art. 1(3)
162 For more information on this, please refer to the EC accountability (law) and integrity (law) reports.

ACCOUNTABILITY (PRACTICE)

To what extent do Europol and Eurojust have to report and be answerable for their actions in practice?

Member state and Council oversight of Europol and Eurojust is taking place, with the agencies complying with reporting obligations. Mechanisms for external audits and budgetary oversight by the EP are functioning. Beyond this, the EP has minimal involvement in scrutinising the agencies due to a lack of legal competence; however, informal practices have developed, enhancing this oversight to a limited extent (e.g. via hearings, requests for information, visits). Oversight by national parliaments, however, remains minimal. The EU Ombudsman is proving to be an efficient way for citizens to pressure agencies to comply with EU rules mainly regarding access to documents and recruitment procedures. The oversight being exercised by agency-specific bodies on the protection of personal data appears to be functioning very effectively. OLAF investigations are being undertaken at both agencies, without incident and with sanctions being applied where applicable.

With regard to day-to-day management, Europol is accountable to the Council and Member States through its Management Board (MB). In the past, the MB has, however, been considered to be overly focused on micro-managing rather than 'strategic' oversight,[163] potentially making relations difficult between the Board and the Europol Director. New budgetary arrangements[164] and the past Board experience of the current Director (as both a member and President), have improved the situation, enabling the MB to better focus on strategic issues.[165]

Eurojust is mainly accountable to the Council at ministerial level, which monitors its activities through recommendations/conclusions based on the agency's annual activity report: the Council also asks for information on the implementation of these recommendations to be included in the following year's report.[166]

For both agencies, the Council adopts priorities for the fight against organised crime, i.e. the Policy Cycle, in which the agencies have a central operational support role. While this policy document is primary addressed to Member States and to the Council Standing Committee on Operational Cooperation on Internal Security (COSI), it also calls on the agencies to commit resources to 'effectively support' agreed priorities.[167] COSI also monitors the agencies' scope for cooperation,[168] with the activities and results of the former being brought to the attention of the EP and national parliaments through dedicated reports.[169]

The ECA executes annual audits on the agencies, and issues statements of assurance on their accounts, together with comments on their internal control systems and budgetary management. These reports are taken in account by the EP Committee for Budgetary Control (CONT) for the discharge procedure and discussed accordingly. For the financial year 2011, the ECA commented extensively on gaps observed in financial management at Europol,[170] which led the EP to ask Europol to provide information on some of the issues identified,[171] and which Europol duly provided.[172] This same procedure is functioning for Eurojust:[173] [174] in 2012, for example, the ECA pointed to possible 'room for improvement' in the transparency of recruitment procedures[175] though reported that Eurojust had addressed other previous shortcomings in this respect.[176]

Additional informal EP oversight practices, aside from budgetary scrutiny through the CONT and Budget committees, have developed over time (e.g. via hearings; the attendance of agency representatives at EP sessions; requests for information; and EP visits to agencies)[177] even where not primarily foreseen by current

163 M. Busuioc, 'European Agencies: Pockets of Accountability', in M. Bovens, D. Curtin, P. 't Hart: 'The Real World of EU Accountability: What Deficit?', (Oxford: Oxford University Press, 2010), pg. 93
164 Europol is funded by the general budget of the European Union since 2009. Prior to this, it was funded by Member States contributions. Interview with the Secretary of the Europol Management Board, 6 November 2013. This reliance on Member State contributions could have given particular MB members greater influence within the Board.
165 As provided by the Europol Decision, art. 37(3)
166 See for instance the Draft Council Conclusions on the tenth Eurojust Annual Report (calendar year 2011), 30 May 2012, §15
167 See Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017 , 6 -7 June 2013, p.5
168 See the Note from Presidency to COSI on Cooperation between JHA agencies: issues for discussion, 6127/13, 7 February 2013
169 For instance, see the Draft Report to the European Parliament and national Parliaments on the proceedings of the Standing Committee on operational cooperation on internal security for the period July 2011 - December 2012, 5839/13, 4 February 2013
170 Report on the annual accounts of the European Police Office for the financial year 2011, together with the Office's replies (2012/C 388/32), §14-21
171 European Parliament decision of 17 April 2013 on discharge in respect of the implementation of the budget of the European Police Office for the financial year 2011 (C7-0268/2012 – 2012/2205(DEC))
172 Europol Annual Activity Report 2012, pp. 25-27
173 European Court of Auditors, Report on the annual accounts of Eurojust for the financial year 2011, together with Eurojust's replies (2012/C 388/31)
174 European Parliament decision of 17 April 2013 on discharge in respect of the implementation of the budget of Eurojust for the financial year 2011 (C7-0253/2012 – 2012/2191(DEC))
175 European Court of Auditors, Report on the annual accounts of Eurojust for the financial year 2012 together with Eurojust's replies, pg. 6
176 Report on the annual accounts of Eurojust for the financial year 2012, Annex I
177 F. Trauner: The European Parliament and agency control in the Area of Freedom, Security and Justice, West European Politics (2012), 35 (4), pg. 12. See also Evaluation of the implementation of the Europol Council Decision and of Europol's activities, Rand Europe, 2012 (Europol Evaluation), pg. 142 and Eurojust Annual Report 2012, pg. 41

legislation. At the moment, the level of EP involvement through the LIBE committee in monitoring LEA activities remains low[178] and has been the result of work by a few active MEPs on these issues.[179] The entry into force of strengthened parliamentary controls on these agencies (both at national and European levels) was being discussed at the EU level, at the time of writing, through new regulations to be adopted by the Council and the EP.[180] Respondents at Europol report that despite dedicated EU Treaty provisions, the current involvement of national parliaments is not exercised to a large extent, aside from a small number of them, but that the agency would be ready to engage with others, on their own initiative.[181]

From 2000 to present, 18 complaints[182] by citizens and/or Ombudsman own-enquiries have been introduced against Europol (of which 5 are still open). Many of these complaints relate to access to documents requests, with the vast majority concerning staff issues (e.g. dismissals, health and safety, recruitment procedures, etc.). In several cases, Europol was asked by the Ombudsman to abide by the applicant's requests, despite no instances of maladministration being explicitly established. From 2005 to present, 7 complaints[183] and/or own inquiries have been introduced against Eurojust (of which 4 are still open). Of those complaints, 4 relate to Eurojust's handling of recruitment procedures or staff dismissals; 1 complaint relates to a staff dispute and 2 complaints relate to requests for documents. Of the 3 completed cases, Eurojust was found only partially guilty of maladministration in one of them.

For complaints related to the processing of personal data, both agencies have been subject to the supervision of their JSBs, which has been functioning effectively. It is of note that the role of the Europol JSB will be replaced by the European Data Protection Supervisor in the future.[184].For an overview of requests handled by the Europol and Eurojust's JSBs and access to documents issues, please refer to the transparency practice sub-chapter.

Respondents from both agencies indicate that OLAF investigations have previously been conducted: cooperation during these investigations is reported to have been positive. For more information, please refer to the integrity practice sub-chapter.

No comments regarding procurement practices at Europol and Eurojust have been raised by relevant bodies.

178 M. Busuioc: 'European Agencies: Pockets of Accountability', in M. Bovens, D. Curtin, P. 't Hart: 'The Real World of EU Accountability: What Deficit?', (Oxford: Oxford University Press, 2010), pg. 104

179 Europol Evaluation, pg. 143

180 See the Proposal for a regulation of the European Parliament and of the Council on the European Union Agency for Criminal Justice Cooperation (Eurojust) (COM 2013/0535) and the Proposal for a Regulation of the European Parliament and of the Council on the European Union Agency for Law Enforcement Cooperation and Training (Europol) and repealing Decisions 2009/371/JHA and 2005/681/JHA (COM 2013/173)

181 Interview with Robert Wainwright, Europol Director, 6 November 2013

182 See http://www.ombudsman.europa.eu/cases/. Note: sometimes, an applicant introduces several different complaints, consolidated into one procedure.

183 Idem

184 See the Letter of Peter Hustinx, Supervisor, to Olegas Skinderskis, Chair of CATS, §6. Retrieved from http://register.consilium.europa.eu/pdf/en/13/st15/st15942.en13.pdf

INTEGRITY (LAW)

To what extent is the integrity of Europol and Eurojust ensured by law?

Integrity standards and mechanisms for Europol and Eurojust staff are generally aligned with those in the EU Staff and Financial Regulations, with both agencies having supplemented these with respective codes of conduct. Neither code contains reference to disciplinary measures for breaches by staff. Moreover, neither agency has put in place specific whistle-blowing provisions. Harmonised EU-level integrity rules are not comprehensively laid down for Member State representatives executing functions within these agencies: furthermore, neither agency can sanction these individuals for misconduct. Pre-employment security screening and other checks pertaining to staff and member state representatives are governed by national security clearance procedures when required: common criteria defined at EU level seek to ensure equivalence. Legal provisions oblige the agencies to install internal audit mechanisms, but limits are in place regarding scrutiny of classified or case related material.

The integrity of Europol and Eurojust staff (including Directors and Deputy Directors) is primarily safeguarded by the EU Staff Regulations – to which they are subject[185 186] – and which lay down provisions to prohibit unauthorised external activity, disclosure of information, or acceptance of gifts/payment, and to prevent conflict of interests including vis-à-vis future employment, *inter alia*.[187] In addition to these provisions, the legal frameworks for both agencies stipulate explicitly that staff are bound by a lifelong duty of confidentiality.[188]

A code of conduct is in place at Eurojust laying down principles of 'good administration'[189] for staff, governing their interaction with the public: this includes provisions on equal treatment, impartiality, and on dealing with requests from the public. The code also provides guidelines on the acceptance of (speaking) invitations and gifts; on the authorisation of external activities; and confers specific post-employment duties on staff. Though broad in scope, the code does not include indication of measures to monitor adherence to rules, or specific recording or verification measures – for example, a register of gifts received.

At time of writing, Europol was in the process of updating its code of conduct for staff. Its current code contains sections on individual conduct, on conduct towards colleagues and on conduct towards the organisation, and outlines several key values – including integrity – that should lead Europol's work. Contrary to the detail and scope of the Eurojust code, the Europol code includes only basic stipulations on the duty of staff to report conflicts of interest, not to accept gifts, to report any instances when performing their work where they consider that they are being required to act in an illegal or unethical way, or which raise 'a fundamental issue of conscience'. Staff are also required not to accept instructions from third parties, or to engage in outsider activities that might 'harm the confidence in the impartial performance of duties'. In general, the current code allows wide room for interpretation, and includes no detailed provisions on implementation, reporting channels (e.g. for the authorisation of outside activities, or to report misconduct), nor any indication of sanction mechanisms for breaches of the code.[190]

Obligations incumbent upon seconded national experts (SNEs) at Eurojust are in line with those applicable to SNEs at the European Commission, and duly include provisions to safeguard their independence and prevent conflicts of interest.[191] Implementing rules are in place for SNEs at Europol including provisions to prevent unauthorised external activity, require the disclosure of financial interests (including those of family members) and the occupation of a spouse/partner, and require written confirmation from the seconding authority that the secondee is free of any conflicts of interest.[192]

No EU-level legal safeguards or rules are in place to govern the integrity of other Member States representatives exercising functions in Europol and Eurojust (Eurojust National Members, Europol national units (liaison officers), Europol Management Board, etc.);[193] however, they are required to respect the same lifelong duty of confidentiality

185 See Council Decision 2002/187/JHA of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA and by Council Decision 2009/426/JHA of 16 December 2008 on the strengthening of Eurojust, art. 30 (Eurojust Council Decision)

186 Council Decision of 6 April 2009 establishing the European Police Office (Europol) (2009/371/JHA), art. 39 (Europol Council Decision)

187 See 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, principally, arts 11-26a (Staff Regulations). For more details, see the EC integrity (law) report. The Staff Regulations apply to Commission staff as well as to Eurojust/Europol staff.

188 Eurojust Council Decision, art. 25; Europol Council Decision, art. 41(2)

189 Code of Good Administrative Behaviour for Staff of Eurojust in their Relations with the Public, 16 March 2003 (Eurojust COGAB)

190 Europol Code of Conduct, of 23 August 2007, file no. 3540-257, esp. arts. 1.6 and 1.11

191 A process is ongoing at Eurojust to adopt specific implementing measures for SNEs, in line with the obligation laid out in the Eurojust Council Decision (art. 30) but according to a Eurojust response to an access to documents request from TI-EU, the College is yet to adopt such arrangements. For the applicable rules, see Commission Decision of 12 November 2008 laying down the rules on the secondment to the Commission of national experts and national experts on professional training

192 Decision of the Management Board of Europol, laying down rules on the secondment of national experts to Europol, File no. 3540-296r9, 8 July 2009, art. 8(1)(a),(b),(d)

193 Interviews with staff at Europol, 6 November 2013

pertaining to agency staff.[194] The status of these member state representatives is fixed by national authorities and their conduct is governed by relevant national provisions, inviting a divergence in the scope of the safeguards in place, and the corresponding disciplinary mechanisms. As such, neither Europol nor Eurojust have a legally defined role in sanctioning misconduct by these individuals.[195] (The Europol code of conduct is addressed to liaison officers also, but without prejudice to national rules, and without reference to any possible mechanisms to enforce the code or sanction breaches.)

Security clearance delivered by national authorities is required for most positions at Europol and Eurojust (including for SNEs and Member States representatives). A common approach has been developed by the Council[196] outlining criteria to ascertain an individual's trustworthiness - including regarding any prior criminal activity, or association with intelligence services – and applies to both agencies.[197] Checks into financial assets[198] and previous employment are only performed for Top Secret Level clearance 'to the extent possible under national laws and regulations' but may be performed for lower level clearance depending of national practices.[199]

With regard to financial operations, staff members with relevant duties at both Europol and Eurojust are obliged to report any decision contrary to the principles of 'sound financial management or professional rules'[200] [201]. In such cases, staff members report to the Eurojust Administrative Director/Europol Director or to a specialised financial irregularities panel set up by the Commission[202] and to the College/Management Board if the Director fails to take action within a reasonable period of time. Staff undertaking financial tasks are also obliged to report any 'illegal activity, fraud or corruption which may harm the interest of the community'. [203] [204] This reiterates the obligation incumbent upon all staff at Europol and Eurojust to report any suspected misconduct to their line management or OLAF.[205] Nonetheless, specific whistle-blowing provisions are not in place at either agency.

For both agencies, an internal audit function is foreseen by their respective legal bases,[206] which may be undertaken by the Commission's internal audit service in the case of Eurojust.[207] In principle, the internal auditors of both agencies are entitled to 'full and unlimited access to all information required in the performance of these duties'.[208] Nonetheless, in the case of Europol, its Director 'may limit the scope of an audit' by denying access to 'strategic, operational and classified information' (…)' and inform the Commission of the reasons.[209] In the case of Eurojust, it is provided that case-related work and documents are out of the auditor's reach.[210] Both internal auditors report to the Management Board/the College and to the respective agency directors, and these latter actors shall ensure to take actions' as a result.[211] [212]

(For information on the administrative sanctions and disciplinary proceedings pertaining to Europol and Eurojust staff, please refer to the European Commission section.)

194 Eurojust Council Decision, art. 25; Europol Council Decision, art. 41(2)
195 Interviews with staff at Europol and Eurojust on 6 and 7 November 2013
196 Council Decision (2011/292/EU) of 31 March 2011, on the security rules for protecting EU classified information [2011] OJ L141/17,
197 Idem, preamble (6). This document defines four different levels in the EU classification system (restricted, confidential, secret or top secret levels). Security clearance investigations at the confidential level (level II) should include and 'to the extent possible under national laws and regulations' a look into committed acts of violence or criminal activities, previous engagement by the intelligence services, vulnerability to blackmail, inter alia. More importantly, financial background and spouse's, cohabitant and/or close family members' background may also be checked according to national law and practices.
198 Ibid., i.e. Annex I(III)(12)(a) 'unexplained affluence' or 'pressure due to financial difficulties'
199 Ibid. Annex I(III)(12)
200 College Decision 2009-87 adopting the Financial Regulation applicable to Eurojust, art. 41 (Eurojust Financial Regulation)
201 Financial Regulation Applicable To Europol (2010/C 281/01), art. 41 (Europol Financial Regulation)
202 Europol Financial Regulation, art. 47(4)
203 Europol Financial Regulation, art. 41
204 Eurojust Financial Regulation, art. 41
205 Staff Regulations, art. 22a
206 Eurojust Council Decision, art. 38; Europol Council Decision, art. 37(9)(f)
207 Eurojust Decision, art. 38 (2); Europol Financial Regulation, art. 73(1)
208 Europol Financial Regulation, art. 72(2); Eurojust Financial Regulation, art. 72(2),
209 Europol Financial Regulation, art. 71(2)
210 Eurojust Financial Regulation, art. 73(6)
211 Europol Financial Regulation, art. 72(3)
212 Eurojust Financial Regulation, art. 73

INTEGRITY (PRACTICE)

To what extent is the integrity of members of Europol and Eurojust ensured in practice?

Member state representatives executing functions at Europol and Eurojust are subject to national level integrity, conduct and clearance procedures. Though systematic problems have not been reported, neither agency is in fact able to enforce compliance or sanction misconduct by these actors in practice. Internal reporting mechanisms for irregularities or deviations from standard procedures appear effective. Safeguards are in place to ensure the integrity of recruitment and procurement procedures and ensure sound financial management. Audits are carried out regularly and recommendations are properly followed up. Safeguards regarding misuse of personal data or sensitive information appear to be effective in preventing breaches.

With member state representatives executing functions within Europol or Eurojust subject to national-level rules governing their conduct, the extent to which the agencies can monitor compliance is limited. [213] For example, the introduction of a code of conduct for Eurojust College members was being considered at the time of writing, but was not intended to set standards for integrity in particular.[214] Nevertheless, informal practices in both agencies are in place to handle cases of potential misconduct, but ultimately, they do not have the ability to enforce nationally applicable rules but can only to refer a case to national authorities for further action or sanction. [215]

Regarding security clearance standards among national authorities, respondents at the agencies noted that there are divergences of scope in the checks performed[216] but that these were not considered to pose a serious risk to agency integrity standards. Where doubts arise, Europol reportedly has the ability to advise a national authority to reconsider a granted clearance and the duty (as per security rules) to inform concerned authorities in Member States about any concerned security risks.[217]

Suspected fraud at Europol in 2001

In 2001, a French policeman working at Europol was arrested by the Dutch police for alleged fraud and misappropriation of up to 100k EUR of the agency's funds. Evidence was uncovered during an audit two years earlier, and following an internal investigation, the Europol Management Board decided to refer the case to the Dutch authorities. Europol was later raided by Dutch law enforcement, who suspected the fraud was not limited to a single individual. The French suspect was suspended and his immunity lifted.

Sources: EU Observer (http://www.euobserver.com); Daily Telegraph UK (http://www.telegraph.co.uk)

Administrative staff at Europol and Eurojust are subject to EU Staff Regulations regarding their rights, obligations and sanctions, and both agencies have put in place administrative procedures to deal with complaints and carry out enquiries when appropriate.[218] Proactive measures to prevent misconduct are limited: while newcomers receive induction training of 4-5 days at Eurojust, and over a 2-3 month period at Europol, ethics and corresponding rules are not specifically emphasized therein. At both agencies, agents involved in financial transactions receive specific training (e.g. on conflicts of interests), however no specifically ethics related training is regularly or systematically delivered for staff exercising other functions.[219] Respondents at both agencies expressed confidence that newcomers and existing staff were fully aware of their obligations, e.g. regarding rules on the unauthorised acceptance of gifts or hospitality, given that many held previous professional experience in national level law enforcement, however, no specific monitoring of this (e.g. through staff surveys) had taken place, at the time of writing.[220] Significantly, however, prospective Eurojust staff are requested to sign a declaration of commitment to serve the public interest independently[221] and to declare any interest that 'might be prejudicial' to their independence.[222] Verification of these declarations does not, though, appear to be undertaken.

With regards to seconded national experts (SNEs), rules to prevent conflicts of interest are reported to be functioning well, but neither agency engages in proactive verification of statements of assurance provided by

213 Interview with Klaus Rackwitz, Administrative Director at Eurojust, 7 November 2013
214 Interview with the Head of the College Secretariat of Eurojust, 7 November 2013
215 E.g. At Eurojust, a potential case of misconduct by a member state representatives would be discussed at the College level and handled by the Presidency team to refer a case to its MS of origin. At Europol, the case would be handled by the Chair of the MB.
216 Interview with the Head of the College Secretariat of Eurojust, 7 November 2013
217 Interviews at Europol, 6 November 2013
218 Interviews with staff at Europol and Eurojust on 6 and 7 November 2013. Europol reports however that specific sessions on the handling of gifts and the management of potential conflict of interest situations were delivered across the organisation in 2013. Information provided by Europol to TI-EU by email on 25 February 2014
219 Idem
220 Interviews at Europol and Eurojust, 6 and 7 November 2013.
221 See http://eurojust.europa.eu/careers/Pages/application-procedure-form.aspx (last accessed on 5 November 2013)
222 Idem

seconding authorities prior to the engagement of SNEs.[223] Working practices are, nevertheless, complementing safeguards on SNEs: for example, at Eurojust, SNEs are often part of a national desk and involved in operational activities but are never part of an investigation comprising a commercial dimension.[224]

Rules regarding the reporting of gifts and hospitality exceeding a value of 25 EUR and received by Europol and Eurojust representatives are reportedly being adhered to:[225] the latter agency has implemented a specific IT system for such reporting.[226]

At both agencies, an Internal Audit Function (IAF) provides consultative support for financial management on a daily basis and issues recommendations.[227] In addition, in 2010, the Internal Audit Service (IAS) of the Commission carried out a specific internal audit at Europol on the implementation of internal control standards whose recommendations were effectively taken into account[228] and all implemented in 2013. Assurance audits on planning and budgeting are also performed by the IAS in coordination with the agencies' IAFs.[229] Europol addressed most of these recommendations in 2012.[230] Detailed reports have not been made publicly available. Concerns have been raised that IAF advice on spending decisions can be overruled by the authorizing officer at Europol (though no such cases have been reported) and that the roles of the IAF and IAS overlap in practice, creating confusion.[231]

Respondents at both Europol and Eurojust indicate that EU financial rules are being adhered to, but identify procurement as potentially posing the greatest corruption/fraud risk at each respective organisation. Nonetheless, they felt the size and mission of the agencies entails that the level of actual procurement remains low in terms of overall budget expenditure on an annual basis, thereby mitigating the risks somewhat. Safeguards to prevent conflicts of interest pertaining to staff involved in procurement procedures are in place, principally via the submission of signed declarations and the identification of members of selection committees in tender procedures, though no information was disclosed during the interviews on how these are actively verified. [232]

Recruitment is perceived at Europol, in particular, to be a further area susceptible to integrity risks. In 2010, a senior official was suspected of having attempted to circumvent normal recruitment procedures, which led to an internal investigation in cooperation with OLAF and sanctions ultimately being applied.[233] This case was identified by a member of the selection panel, demonstrating that internal mechanisms for reporting misconduct appear to be functioning at Europol. However, neither agency has specifically elaborated internal provisions regarding whistle blowing and the protection of individuals reporting misconduct.[234]

Misuse of personal data is perceived as a risk related to individual rights rather than as fraud or corruption.[235] The leakage of sensitive information to non-authorized or criminal audiences is more seriously considered but still perceived as unlikely due to internal safeguards.[236] These safeguards appear to be robust as respondents reported no major breaches in recent years.[237]

223 Interviews at Europol and Eurojust, 6 and 7 November 2013.
224 Interview with Klaus Rackwitz, Administrative Director at Eurojust, 7 November 2013
225 Interviews at Europol and Eurojust, 6 and 7 November 2013.
226 Interview with Klaus Rackwitz, Administrative Director at Eurojust, 7 November 2013
227 For Europol, see the Europol Annual Activity Report 2012, pp. 4, 27 and the Europol Evaluation, pg. 144
228 Ibid, pg. 23
229 Ibid, pg. 4
230 Ibid., pg. 27
231 Europol Evaluation, pg. 144
232 Interviews with staff at Europol and Eurojust on 6 and 7 November 2013
233 Interview with staff at Europol, 6 November 2013.
234 Interviews with staff at Europol and Eurojust on 6 and 7 November 2013
235 Interviews at Europol and Eurojust on 6 and 7 November 2013
236 Interview with staff at Europol and Eurojust on 6 and 7 November 2013
237 Interview with staff at Europol and Eurojust on 6 and 7 November 2013

RESOURCES

To what extent do Europol and Eurojust have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

While Europol and Eurojust have seen increases in their human resources in recent years, they are now both subject to a 5% cut in posts up to 2018. Questions have been raised by the European Parliament regarding recruitment levels and procedures at Eurojust: the agency also continues to employ a disproportionately high number of support staff. Both agencies have seen broad growth in their finances over recent years, but are now subject to zero-growth policies. Budget cuts have resulted in the de-prioritisation of some investment in IT systems by Europol, and reallocation of funds at Eurojust, to safeguard operational work. Both agencies are confident that these activities will not be affected by constrained resources: however, concern remains, particularly with regard to the funding of joint investigation teams.

Human resource levels at Eurojust and Europol have seen broad growth in recent years. In 2013, Eurojust employed 245 staff (plus 35 seconded national experts (SNEs)), as compared with 227 (plus 30 SNEs) in 2009.[238] Europol meanwhile, employed 555 staff (SNEs: 40) in 2013 and 444 (SNEs: figure not available) in 2009.[239] Despite these past increases, the agencies are now subject to a 5% cut in staff numbers in the period up to 2018.

Both Europol and Eurojust employ staff only on fixed-term contracts, for a maximum of nine years[240] From a structural point of view, the proportion of Europol staff employed at assistant level[241] as compared to administrator level[242] (desk officer and managerial) was 28% in 2013;[243] in contrast, at Eurojust, this proportion stood at 67% in 2013. Although this represents a decrease as compared with the 78% proportion noted in 2009, it remains high. Eurojust also reports a high vacancy rate (above 10%), despite repeated calls from the discharge authority to address the situation: the latter has therein highlighted deficiencies in the agency's recruitment procedures and planning.[244]

Both agencies are currently entirely funded by the EU budget; however, Europol was funded by member state contributions until its 2009 reform.[245] The Eurojust budget stood at 33m EUR in 2013, marking a significant rise from 2009 (22.5m EUR) though a slight decrease as compared to 2012 (33m EUR), in line with a zero-growth policy for the coming years.[246] Respondents at Eurojust were confident that the budget decrease had not and would not affect the agency's core functions and their operational capacities.[247]

The Europol budget stood at 82.5m EUR in 2013, marking a significant increase from 2009 (65.4m EUR) but a small decrease in comparison to 2012 (84.2m EUR).[248] Europol is also subject a zero-growth policy in its budget, despite anticipating an increase in workload: notably due to the establishment of the European Cybercrime Centre and increased *ad hoc* requests from Member States or EU institutions. This zero-growth budget policy has compelled Europol to re-prioritise its activities and has caused delays in IT developments, primarily related to the channels used for the exchange of information.[249] Nevertheless, the agency reports that the global implementation of its 2013 objectives were only affected to a limited extent by these factors.[250] Furthermore, it reports that resource reallocation has meant it has seen gains in its 'efficiency' and effectiveness',[251] and hence also preserved its operational capacity. This was further confirmed by respondents during interviews for this study.[252]

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238 See Statement of revenue and expenditure of Eurojust for the financial year 2009 (31 March 2009), OJ L85/83, available at http://eurojust.europa.eu/doclibrary/budget-finance/budgets/Eurojust%20budget%202009/Eurojust-budget-2009-EN.pdf (Eurojust budget 2009)
and Statement of revenue and expenditure of Eurojust for the financial year 2013 (27 March 2013) OJ C91/95, available at http://eurojust.europa.eu/doclibrary/budget-finance/budgets/Eurojust%20budget%202013/Eurojust-budget-2013-EN.pdf (Eurojust budget 2013) (last accessed on 23 January 2014)

239 See Europol final budget and establishment plan 2013, available at https://www.europol.europa.eu/sites/default/files/final_budget_and_staff_establishment_plan_2013.pdf (Europol budget 2013)
and Europol Budget 2009 (5 July 2008) OJ L178/46,available at https://www.europol.europa.eu/sites/default/files/publications/budget2009.pdf (Europol budget 2009) (last accessed on 23 January 2014)

240 Evaluation of the implementation of the Europol Council Decision and of Europol's activities, Rand Europe, 2012 (Europol Evaluation), pg.43. Staff categories mainly comprise temporary agents, contract agents, and experts seconded from national authorities)

241 For the purposes of this calculation, this category comprises AST level and contract agent staff.

242 For the purposes of this calculation, this category comprises AD level staff only.

243 See Europol budgets 2009 and 2013

244 See the European Parliament resolutions on discharge of Eurojust for financial years 2010 (especially the Annex) and 2011.

245 See the Europol illustration in Europol Annual activity Report 2012, pg. 20

246 See Eurojust budgets 2009 and 2013

247 Interviews with personnel from Eurojust, 7 November 2013

248 See Europol budgets 2009 and 2013

249 Europol Annual Activity report 2012, pp. 6-7

250 Idem

251 Idem, pg. 8

252 Interviews with personnel from Europol, 6 November 2013

A substantial element in the assistance that these agencies provide to national authorities is the technical and financial support provided to Joint Investigations Teams (JITs). [253] At Europol, funding for JITs is included in their regular budget. At Eurojust, JITs were previously funded by European Commission grants[254] but from 2014 onwards, these grants will cease, and JITs will be fully funded from the Eurojust budget. This will require budgetary reductions in other areas of expenditure, and the agency had already executed such reallocations in late 2013.[255] Respondents at Eurojust regret the loss of external funding, but indicate that the safeguarding of an appropriate level of funding for their operational activities (including JITs) is a priority for them, particularly in the face of further budget cuts in the future. This sentiment was echoed at Europol.[256]

Despite budget cuts, non-IT facility and infrastructure provision appears strong at both agencies: Europol moved into a new purpose-built headquarters in 2011 while Eurojust was in the process of developing new premises, at the time of writing.[257]

253 The financial support provided covers mainly travel, accommodation, translation and interpretation costs, and the loan of IT material. See Eurojust Annual Activity Report 2012, pg. 9
254 At Eurojust, the JITs funding project was supported by the European Commission from 2010 to 2013. See the Eurojust Annual Report 2012, pg. 35
255 Eurojust Annual Activity Report, pg.21
256 Interviews with personnel from Europol and Eurojust, 6 and 7 November 2013
257 Eurojust Annual Activity Report 2012, pg.31; Interviews with personnel from Europol and Eurojust, 6 and 7 November 2013

PROVIDING EU INSTITUTIONS WITH INTELLIGENCE ON ANTI-CORRUPTION TO DEVELOP POLICY

To what extent are Europol and Eurojust able to provide other EU Institutions and bodies with relevant information for EU anti-corruption policy development?

Europol and Eurojust were established with the view to tackle serious organised crime activities at EU level, including corruption. Intelligence gathering through the exchange of information and risk assessments is one of their core tasks, especially for Europol. The latter carries out these assessments with the primary aim of informing decision-makers but the reports are also made public.

Europol and Eurojust's pool of competences cover criminal offences relating to organised crime, terrorism and 'other forms of serious crime'[258]: For both agencies, corruption is considered one of the serious crimes on which they have competence.[259]

Europol's core tasks include the collection, storage, analysis and exchange of 'information and intelligence',[260] and of notifying Member States of 'any connections identified between criminal offences'.[261] Europol also has the legal obligation 'to prepare threat assessments, strategic analyses and general situation reports relating to its objective'.[262]

The role of Eurojust includes stimulating and improving the coordination of investigations and prosecutions in Member States, taking into account information provided by Member States and by 'any body',[263] especially Europol.[264] However, respondents from Eurojust reported that the agency only handles cases brought to its attention by Member States and does not proactively refer criminal cases or highlight trends to national authorities.[265]

Europol, on the contrary, performs strategic analysis reports for policy-makers on EU organised crime in general (OCTA and SOCTA reports); on West African and Russian organised crime (OCTA-WA and ROCTA); and on terrorism threats in the EU (TE-SAT). Eurojust contributes to some of these assessments with regard to methodological aspects[266] and is associated in their implementation.[267]

As such, a formal policy-making process has developed through the SOCTA, designed 'to assist strategic decision-makers in the prioritisation or organised crime threats'[268] i.e. law enforcement agencies in the Member States or the Council.[269] The purpose of SOCTA is to enhance the fight against organised crime through an 'intelligence-led approach' in four-year 'Policy Cycles'.[270] From SOCTA, the Justice and Home Affairs configuration of the Council sets priorities in the fight against organised crime and drafts multi-annual strategic plans on which yearly operational action plans are based, each of them being driven by one Member State in particular. Monitoring of the implementation of operational action plans is performed annually by the Council Standing Committee on Operational Cooperation on Internal Security (COSI). The involvement of Europol in the setting up of political priorities is central since the agency became the 'main information provider at a strategic level',[271] and the agency itself recognises its central role in collecting intelligence.[272] On corruption in particular, the last SOCTA report identified the issue as a 'crime enabler'[273] rather than a specific area of focus i.e. as a 'facilitating factor creating opportunities for crime or crime-fighting',[274] providing examples of widespread corruption risks (illicit waste disposal, trafficking in endangered species, real estate investments, illegal immigration, weapons trafficking, etc.).

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258 Council Decision (2002/187/JHA) of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA and by Council Decision (2009/426/JHA) of 16 December 2008 on the strengthening of Eurojust, consolidated version, (Eurojust Council Decision), art 4(1)(a)
259 Europol Decision, Annex and Eurojust Decision, art. 4(1)(a)
260 Council Decision (2009/371/JHA) of 6 April 2009 establishing the European Police Office (Europol) [2009] OJ L121/37, (Europol Decision), art. 5(1)(a)
261 Idem, art. 5(1)(b)
262 Idem, art. 5(1)(f)
263 Eurojust Decision, art. 3(1)(a)
264 Treaty on European Union (Consolidated version 2012) [2012] OJ C326/13, art. 85
265 Interview with the Head of the Secretariat of the Eurojust College, 7 November 2013. "Eurojust do not create cases on its own."
266 Joint Europol-Eurojust Annual Report to the Council and Commission for 2012, pg. 4
267 Eurojust Annual Activity Report, pg. 19
268 Europol SOCTA 2013, acknowledgements
269 This assessment SOCTA methodology was developed in cooperation with expert groups composed of MS representatives, with third partner countries, with the EC and the Council General Secretariat and approved by the Council Standing Committee on Operational Cooperation on Internal Security (COSI). See TEU article 71; Europol SOCTA 2013, Annex I, pg. 42
270 Idem, pg. 9
271 Evaluation of the implementation of the Europol Council Decision and of Europol's activities, Rand Europe, 2012 (Europol Evaluation), pg. 42
272 Europol Annual Activity Report, 2012, p. 13
273 Ibid, pg. 13
274 Ibid., pg. 11

Accordingly, the priorities set by the Council for years 2014-2017 in the fight against organised crime do not mention corruption, as such, as an operational area to focus on at the EU level.[275]

For insights on the state of corruption prosecution at EU level and the role of Eurojust in this regard, please refer to the dedicated indicator.

In addition to its involvement in the Policy Cycle, Europol hosts the recently established 'European Cybercrime Centre' (EC3) with the aim for it to 'become the focal point in the EU's fight against cybercrime, through building operational and analytical capacity for investigations and cooperation with international partners in the pursuit of an EU free from cybercrime'.[276]

On a technical level, in order to support their work, both agencies cooperate with each other on an *ad hoc* basis through Analysis Working Files (AWFs), while Eurojust recently gained access to the Europol exchange of information system (SIENA) allowing better cooperation through secured channels.[277]

275 Council conclusions on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017, 6-7 June 2013 [9849/13]
276 Europol website. See https://www.europol.europa.eu/ec3, (last accessed 19 December 2013)
277 Note from Eurojust and Europol to COSI: Joint Europol-Eurojust Annual Report to the Council and Commission for 2012, 9038/13, 30 April 2013, pg. 5

SUPPORTING THE DETECTION AND INVESTIGATION OF CORRUPTION CASES IN THE EU

To what extent do Europol and Eurojust support the detection and investigation of corruption cases at EU level and around the EU (i.e. involving EU funds)?

While Europol and Eurojust have both the mandate and the capacity to work specifically to combat corruption in the EU, the issue has not been identified as an explicit focus crime area for Europol or as an operational priority by the Council. Eurojust handle very few cases related to corruption in comparison to other crime areas, due to the difficulty in securing evidence of any transnational dimension and the fact that it only handles cases brought to its attention by national authorities. Cooperation between both agencies on the topic is very limited despite the capacity for them to do more in this area.

Europol and Eurojust's pool of competences cover organised crime, terrorism and 'other forms of serious crime', with corruption included within this latter category.[278] As defined by the EU Treaties, Eurojust's tasks also include the initiation of criminal investigations 'particularly those relating to offences in the protection of [the] EU['s] financial interests',[279] with such offences including fraud.[280] [281]

In addition to initiating investigations, Eurojust's tasks include the coordination of investigations and prosecutions and arbitrating in conflicts over jurisdiction between Member States. Europol's tasks are similar: beyond strategic and operational analysis, it can require national authorities to initiate, conduct or coordinate investigations.[282] It also helps Member States in on-going investigations and provides advice on investigations techniques.[283] In both cases, the EU treaties indicate that law enforcement measures remain the responsibility of Member States.[284] [285] The current state of EU legislation does not allow Europol and Eurojust to take measures of coercive nature themselves: they can 'only' assist/coordinate Member States with regard to investigations, offer a platform for exchange of information, and provide expertise via the exchange of best practice and knowledge between national counterparts. In addition, the powers of Eurojust regarding the execution of arrest warrants at the European level are limited to facilitation procedures between the issuing and the executing national authorities. Many shortcomings on the practical execution of the European Arrest Warrant have been noted by Eurojust.[286]

However, both agencies have the ability to propose that Member States establish Joint Investigation Teams[287] (JITs) to undertake investigative measures in one or more country. JIT agreements are concluded between national authorities and define the purpose of the teams, the period of their functioning, their participants (leaders and members) and any specific arrangements.[288] It should be noted that many constraints exists; e.g. investigative tasks may only be allocated to a JIT member following the approval of the Member State in which the team is operating and the Member State from whom the team member has been seconded.[289] Similarly, information gathered can be used for the prosecution of a case subject to the consent of Member State in which the team is operating.[290] The agencies may though be part of an established JIT: Europol staff do this in a support capacity but may not take part in any 'coercive measures'. Eurojust national members (or their immediate deputies/assistants) can participate, however their respective Member State can decide whether the member serves in a Eurojust capacity or as a national representative.[291] JITs can be considered as an 'investigative arm' for both agencies but national representatives and the authorisations of concerned Member States do remain central in the process.

278 Council Decision (2002/187/JHA) of 28 February 2002 setting up Eurojust with a view to reinforcing the fight against serious crime as amended by Council Decision 2003/659/JHA and by Council Decision (2009/426/JHA) of 16 December 2008 on the strengthening of Eurojust, consolidated version, art 4(1)(a), (Eurojust Council Decision); and Council Decision (2009/371/JHA) of 6 April 2009 establishing the European Police Office (Europol) [2009] OJ L121/37, art. 4 and Annex, (Europol Decision)
279 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 85, (Lisbon Treaty)
280 See Council Act of 26 July 1995 drawing up the Convention on the protection of the European Communities' financial interests [1995] OJ C316/48
281 An additional Council convention focusing on and defining passive and active forms of corruption involving EU officials was adopted in 1997. See Council Act of 26 May 1997 drawing up the Convention made on the basis of Article K.3 (2)(c) of the Treaty on European Union, on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union [1997] OJ C195/2
282 Europol Decision, art.5
283 Idem
284 Lisbon Treaty, art. 85(2)
285 Idem, art. 88(3)
286 See Eurojust Annual Report 2012, pp. 22-23
287 A team composed of representatives of concerned Member States and EU institutions (OLAF, Commission, third States, etc.) for a limited period and a specific purpose to carry out criminal investigation in one or more Member States. See Council Framework Decision of 13 June 2002 on joint investigation teams [2002] OJ L162/1
288 See Council Resolution of 26 February 2010 on a Model Agreement for setting up a Joint Investigation Team (JIT) [2010] OJ C70/1
289 Idem, art. 1(5)–(6)
290 Ibid, art. 1(10)
291 Europol Decision, art. 6(1); Eurojust Decision, art. 9(f)

Eurojust included corruption as one of its operational priorities for 2012-2013.[292] In 2012, it registered 30 corruption related cases (of 1533), compared with 26 in 2011, indicating a relatively stable but low number. The 2012 cases were mainly associated with money laundering and fraud,[293] three cases giving rise to the establishment of a JIT: 27 cases related to the protection of the financial interest of the EU (so called 'PIF offences').[294] Accordingly, the number of corruption related cases and cases related to EU fraud lags behind other priority crimes tackled by Eurojust (i.e. drug trafficking, illegal immigrant smuggling, trafficking in human beings, terrorism, fraud, money laundering, cybercrime, etc.).[295]

Of the number of cases related to PIF offences, fraud or corruption registered in 2012, five cases involved cooperation with OLAF and one case opened in 2010 was transferred to them.[296] According to Eurojust, criminal provisions related to PIF offences in Member States are 'effective, dissuasive and proportionate' but 'difficulties are encountered in practice in investigating and prosecuting such crimes effectively'.[297] Related statistics at national level are also an area of weakness.[298] Furthermore, according to respondents at Europol, the agency has not been asked to cooperate specifically on corruption cases by Eurojust despite the possibility existing.[299] According to Eurojust, it has no ambition of being proactive on specific topics (i.e. corruption) and only handles cases brought to its attention by Member States.[300] In addition, Eurojust reports that the transnational dimension of corruption cases is often difficult to document, and that such cases are often connected to money laundering and financial crime (fraud), topics on which Eurojust is very active.[301] Indeed, of the total amount of information on cases exchanged via Europol on SIENA in 2012, less than 2% explicitly related to corruption.[302]

With specific regard to Europol, its Serious Organised Crime Threat Analysis (SOCTA) identifies corruption as one of the major threats to well-functioning public and private institutions and as 'an integral part of criminal activities'.[303] However, the Council did not refer to corruption when setting the agency's priorities for the Policy Cycle 2014-2017,[304] and the Europol Review 2012 does not include corruption as a specific area within its operational activities.

Both agencies have cooperation agreements[305] [306] with OLAF which include reference to corruption and fraud. The full potential of these agreements is reportedly yet to be exploited.[307]

292 Eurojust Annual Report 2012, pg. 59
293 Eurojust Annual Report 2012, pg. 29
294 Idem, pg. 59. According to the report, 'one case may involve more than one crime type' which suggests that some cases are counted twice or more in these statistics.
295 Ibid
296 Ibid, pg. 43
297 Contributions to the Commission's consultation on protecting the EU's financial interests and enhancing prosecutions, pg.14
298 Idem
299 Interview with the Director of Europol, 6 November 2013
300 Interview with the Head of the Secretariat of the Eurojust College, 7 November 2013. Contrary to Europol, Eurojust's mission does not include producing intelligence.
301 Idem. According to the Eurojust Annual Report 2012, Eurojust handled 144 money laundering cases in 2012 and 122 in 2011 and 382 fraud cases in 2012 (218 in 2011)
302 Information provided at European Commission, DG HOME, Conference: 'An Open and Safe Europe – What's next?', EU Home Affairs Background statistics, pg. 13 (29 January 2014)
303 Europol SOCTA 2013, EU Serious and Organised Crime Threat Assessment, pg. 13
304 Council conclusions 9849/13 on setting the EU's priorities for the fight against serious and organised crime between 2014 and 2017, 6-7 June 2013
305 See Administrative arrangements between the European Police Office (Europol) and the European Anti-Fraud Office (OLAF), April 2004
306 See the Practical agreements on arrangements of cooperation between Eurojust and OLAF, September 2008
307 Interview with the Director of Europol, 6 November 2013

EUROPEAN OMBUDSMAN

Strengths	Weaknesses
• Broad disclosure of case-related material • Improved procedures for filtering complaints • Complaints being addressed and range of investigative powers being used • Proactive promotion of good administrative conduct	• Length of time taken to close cases – impacted by resource constraints • Informal practices for compliance with ethics rules inviting discretionary treatment • Lack of internal whistle-blowing provisions • Eligibility criteria/appointment procedure for the post of Ombudsman not comprehensively defined • Low level of acceptance by EU institutions and agencies of serious recommendations issued by the European Ombudsman

Recommendations

- The EU budget authorities should increase the resource capacity of the European Ombudsman to deal with case handling
- The European Ombudsman's Office should formalise internal practices to ensure compliance by the European Ombudsman and his/her staff with integrity obligations, with the possible introduction of a code of conduct for the Ombudsman
- EU Member States and EU legislators should introduce detailed eligibility criteria and a detailed appointment procedure for the Ombudsman
- The European Ombudsman should increase the use of special reports to address non-acceptance by EU institutions and agencies of his/her serious recommendations

About the European Ombudsman

The European Ombudsman was established in 1992, following the signature of the Maastricht Treaty. In 1994, the European Parliament adopted rules governing the Ombudsman's duties, and elected the first office-holder – Jakob Söderman - in 1995. Nikiforos Diamandouros succeeded him in 2003 and remained in office until 2013. The current Ombudsman is Emily O'Reilly. The Ombudsman is elected for a renewable, seven-year term, by the European Parliament, to whom she is accountable, and is based in Strasbourg.

The EU Ombudsman is an independent body charged with receiving and investigating complaints of maladministration reported by EU citizens, residents, or any organisation enjoying legal personality, in their relations with the EU institutions and bodies, except the European Court of Justice acting in its judicial capacity. The Ombudsman does not investigate maladministration by national authorities and must close any inquiry if the facts of the case are subject to legal proceedings. Though enjoying wide inquiry powers, the Ombudsman's recommendations and decisions are not binding on EU authorities. The EU Ombudsman's mandate also includes the promotion of good administrative principles.

The Ombudsman is supported by a small cabinet, and a secretariat general composed of a communication unit and two complaint-handling directorates. A specialised unit handles complaints falling outside the Ombudsman's mandate. The secretariat general also coordinates a European network of national and regional ombudspersons.

The European Ombudsman as a body has evolved considerably over the years, growing from a staff of 10 in 1995-1996 to 67 in 2013; with 298 complaints handled in 1995, compared with 2242 in 2012.

INDEPENDENCE (LAW)

To what extent is the European Ombudsman's office independent by law?

The independence of the European Ombudsman is guaranteed in the EU treaties and further safeguarded via a number of implementing rules and provisions. Criteria laid down in legislation regarding eligibility for the office also ensure an *a priori* high degree of independence, though no criteria for verifying this are specified in law. The Ombudsman enjoys privileges and immunities equivalent to that of a judge from the CJEU, and is protected from arbitrary dismissal. The office enjoys wide autonomy in deciding upon the initiation of inquiries, and extensive investigative powers, including with regard to access to classified material held by EU authorities, however its powers to sanction non-cooperation during investigations are limited.

The office of the European Ombudsman is enshrined in the EU Treaties, which explicitly provides for its independence from any other actor, including the EU institutions.[1] The independence of the office is also guaranteed through the rules of procedure of the EP[2] and the Ombudsman's role is reiterated in the Charter of Fundamental Rights of the European Union[3] and also in EU treaty provisions related to citizens' rights.[4] The EP alone is empowered to define the Ombudsman's legal framework, which nonetheless requires the opinion of the EC and the consent of the Council.[5]

The European Ombudsman is elected by the European Parliament after each EU election and the duration of the office-holder's mandate follows the EP's term of office,[6] with no restrictions laid down regarding re-appointment. To be eligible for the office, candidates must be EU citizens with full civil and political rights, meet the conditions for the highest judicial functions in their home country, and 'offer every guarantee of independence'[7] – however, no detailed criteria against which the latter should be assessed are laid down in law. Although nominations for the Ombudsman's office do not need to be issued by a specific body, they require the support of at least 40 MEPs from at least 2 Member States to be considered eligible.[8] Once elected and before taking up their duties, the Ombudsman-designate must swear an oath in front of the CJEU testifying to her/his independence.[9] The Treaties forbid the Ombudsman, furthermore, from engaging in 'any other occupation, gainful or not' during his/her term of office.[10] The Ombudsman is also expected to 'behave with integrity' regarding the acceptance of 'certain appointments and benefits' after leaving office.[11]

Safeguards against the arbitrary dismissal of the European Ombudsman are in place. Should s/he no longer fulfil the conditions required 'for the performance of his duties' or is found to be 'guilty of serious misconduct', the office-holder can only be dismissed by the CJEU upon a request from the EP plenary, [12] further to a proposal introduced by at least one tenth of MEPs (76)[13] and a parliamentary committee report. The Ombudsman is expected to resign in the event of a positive plenary vote calling for his/her resignation. In the event that s/he does not do so, the EP President must request a formal CJEU ruling dismissing the office-holder.[14]

Regarding the operational independence of the Ombudsman, the latter is entitled to receive complaints directly, or via an MEP, from any EU citizen for matters related to maladministration by any EU institution or body, with the exception of the European Court of Justice when 'acting in its judicial role'.[15] [16] The Ombudsman's office decides upon the admissibility of a complaint, and autonomously decides whether to open a resulting inquiry. If a complaint falls outside the Ombudsman's mandate, the latter has the ability to redirect the complainant to a competent

1 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 228(3), (TFEU)
2 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, Annex XI, part A, art. 9 (EP RoPs)
3 CFA, art. 43
4 TFEU, art. 20
5 TFEU, art. 228(4)
6 EP RoPs, Annex XI, part A, art. 7
7 EP RoPs, Annex XI, part A, art. 6
8 Applicants do not have to be nominated by a specific body to become candidates. To be elected, candidates for the office must have the support of at least 40 MEPs from at least 2 Member States and attract the majority of the votes of the assembly. See EP RoPs, Rule 204
9 EP RoPs, Annex XI, part A, art. 9(2)
10 TFEU, art 228(3)
11 EP RoPs, Annex Xi, part A, art. 9(3)
12 EP RoPs, Annex XI, part A, art. 8
13 EP RoPs, Rule 206
14 In the event of a request for the Ombudsman's dismissal, a report is drafted by the PETI committee and must be adopted by majority, before being sent to the plenary for approval by a secret vote - this following a debate and possible hearing of the Ombudsman. The Ombudsman is expected to resign in the event of a positive plenary vote. In the event that s/he does not do so, the EP President must requests a formal CJEU ruling dismissing the office-holder. See EP RoPs, Rules 206
15 TFEU, art 228(1), and Charter of Fundamental Rights of the European Union [2012], OJ C326/391, art. 43, (CFA)
16 Though complaints may be submitted in any official EU language, which determines the language of subsequent proceedings, the Ombudsman has the power to decide 'which documents are drawn up' in that language. See EP RoPs, Annex XI, part B, art. 15(3)

authority. The office can also open inquiries upon its own initiative into systemic issues of concern,[17] and enjoys the same investigative powers as in inquiries resulting from complaints. These powers of investigation include the ability to compel EU staff to provide evidence, inspect the files held by an institution, and the autonomy to commission studies or external reports.[18] EU institutions and bodies must provide the Ombudsman with any information or documents s/he requests, including classified material,[19] though the Ombudsman and his/her staff are obliged not to disclose material 'obtained in the course of their inquiries'.[20] Where requested documents originate from a Member State, the latter must be informed, and in the case of information classified as secret, must give its consent to access by the Ombudsman.[21] However, where the Ombudsman makes a request directly to a Member State, the latter may refuse access where 'information is covered by laws or regulation on secrecy or by provisions preventing its being communicated', but may provide it where the Ombudsman agrees not to disclose it.[22] The Ombudsman also has the freedom to cooperate with national level Ombudsmen in his/her work; however, this cannot be used as an instrument to gain access to material refused by a Member State.[23] While the Ombudsman has no sanction powers against EU institutions or bodies, or member state authorities, should they not comply with requests for assistance during investigations, in such instances s/he can refer the matter to the EP, 'which shall make appropriate representations'.[24]

Complaints submitted to the Ombudsman can be classified as confidential by either the Ombudsman her/himself or the complainant. [25] The EU institution/body concerned by any subsequent inquiry retains the right to request that parts of its response to any inquiry be disclosed only to the complainant.[26]

Despite the wide autonomy conferred to the Ombudsman for handling cases and conducting inquiries, its decisions are not binding in law and its activities cannot interfere with legal proceedings pertaining to the same facts in a case. Should this arise, the Ombudsman is obliged to close the complaint 'without further action'. [27] Nevertheless, the Ombudsman may submit a special report to the EP where she/he feels the response of a concerned institution to his/her recommendations following an inquiry is unsatisfactory.[28]

The European Ombudsman has the autonomy to decide upon its own work programme, but must submit an annual report to the EP on the outcome of its inquiries and can also submit special reports to the institution, at his own initiative.[29] With regard to financial autonomy, the European Ombudsman's budget is adopted by the EU budgetary authority, further to estimates drawn up by the office itself.[30]

The Ombudsman and members of the secretariat enjoy the privileges and immunities of the European Communities.[31] The staff of the Ombudsman's secretariat are further subject to the provisions on professional independence contained within the EU Staff Regulations. (See the relevant sections on the European Commission for further details.)

17 TFEU, art. 228(1)
18 EP RoPs, Annex XI, part B, art. 5
19 EP RoPs, Annex XI, part A, art. 3(2). Access to classified and/or sensitive material is subject to compliance with the relevant rules on security of each specific body.
20 EP RoPs, Annex XI, part A, art 4(1)
21 EP RoPs, Annex XI, part A, art. 3(2)
22 EP RoPs, Annex XI, part A, art 3(3)
23 EP RoPs, Annex XI, part A, art 5(1)
24 EP RoPs, Annex XI, part A., art. 3(4)
25 EP RoPs, Annex XI, part B, art. 10(1)
26 EP RoPs, Annex XI, part B, art. 4(5)
27 Ombudsman's decision, art. 10(3)
28 EP RoPs, Annex XI, part B, art. 8(4),
29 EP RoPs, Annex XI, part B, arts. 11(1), 11(2), and TFEU, art. 228(1)
30 Regulation (EU, EURATOM) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, Title III, art. 37-50
31 EP RoPs, Annex XI, part A, art. 10(3)

INDEPENDENCE (PRACTICE)

To what extent is the European Ombudsman's office independent in practice?

The European Ombudsman enjoys broad operational and budgetary independence, and no significant instances of interference or pressure have been reported in recent years. Cooperation by institutional actors subject to investigations is generally satisfactory: mechanisms to address non-cooperation are functioning though rarely called upon. Concerns remain on the potential politicisation of the office of Ombudsman, given the absence of detailed eligibility criteria to run for the position and the minimal verification of candidates' independence.

In the absence of detailed legal criteria concerning the eligibility of candidates for the office of European Ombudsman, in practice, no comprehensive verification of their independence appears to be undertaken,[32] beyond hearings being held with individual candidates by the competent European Parliamentary committee. The absence of safeguards against politicisation of the role were highlighted during the election of a new Ombudsman in 2013, when several sitting MEPs put themselves forward as candidates.[33] This raised concerns including from within the EP itself,[34] with commentators noting the potential obstructive effect this might have on the participation of external candidates.[35] While the Ombudsman's secretariat plays no role in the election process, the outgoing Ombudsman publicly emphasised the importance of the independence of the office-holder in the run up to the election.[36] To date, only former national level ombudspersons have been elected to the European-level office, with respondents from the European Ombudsman's secretariat expressing confidence that the appointment of an individual with a clear political affiliation would be unlikely.[37] Media reports during the most recent election, however, pointed to 'significant support in the Parliament for electing an MEP',[38] despite the final outcome.

In terms of operational independence, respondents from the secretariat indicate that the European Ombudsman is able to exercise its activities, including its investigative powers, without interference from other actors. This also extends to complaints related to the EP, despite the oversight function the latter executes over the Ombudsman's office itself.[39] While a former Ombudsman was subject to severe, public criticism in 2000 by the then EC President,[40] no undue pressure has recently been put on the Ombudsman by other institutions.[41] Furthermore, no Ombudsman has to date been subject to dismissal proceedings.

Cooperation from concerned institutions is reported to be good; however, delays in responses from the latter, for example, with the granting of access to documents, do occur. The Ombudsman has exercised his right to submit special reports to the EP, where assistance from institutions has not been forthcoming, and these have received a high degree of attention from the competent EP committee: respondents assert that this power has, though, been exercised rarely, with the Ombudsman seeking to resolve such issues through informal means, while maintaining independence.[42]

Commission President puts pressure on the Ombudsman

Following a Commission proposal on public access to EU documents, allegedly drafted without appropriate public consultation, the first EU Ombudsman, Jacob Söderman, wrote an article in 2000 in the *Wall Street Journal Europe* criticizing the numerous exceptions to public disclosure of documents put forward in the proposal. As a response, the then President of the European Commission, Romano Prodi, publicly criticised the Ombudsman's initiative as 'emotional and seriously erroneous' and 'detrimental to the normal functioning of the institutions'. These comments were widely interpreted as an – ultimately unsuccessful – attempt to undermine the Ombudsman's independence.

Sources: Helsingin Sanomat International Edition (www2.hs.fi/english/); Statewatch (http://www.statewatch.org)

32 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013.
33 MEPs Ria Oomen Ruijten (PPE), Dagmar Roth-Behrendt (S&D) and Francesco Enrico (F&D) were candidates during the last election.
34 See http://tacd-ip.org/archives/929 (last accessed on 13 January 2014)
35 D. Wallis, 'Party Positioning to Elect New EU Ombudsman', [Blog post] (3 May 2013) available at http://dianawallis.wordpress.com/2013/05/03/party-positioning-to-elect-new-eu-ombudsman/ (last accessed on 13 January 2014)
36 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013. See http://www.ombudsman.europa.eu/en/activities/speech.faces/en/51597/html.bookmark, last accessed 19 December 2013
37 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013.
38 T. Vogel, 'No clear winner in European Ombudsman election', European Voice, (2 July 2013), available at http://www.europeanvoice.com/article/2013/july/no-clear-winner-in-european-ombudsman-election/77733.aspx (last accessed on 13 January 2014)
39 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013
40 I. Black, 'Prodi rebukes EU ombudsman for urging openness', The Guardian, (15 March 2000), available at http://www.theguardian.com/world/2000/mar/15/eu.politics (last accessed on 13 January 2014)
41 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013
42 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013

The office retains full autonomy to prioritise the complaints with which it deals, [43] and to launch own-initiative reports. Initiation of the latter in practice can stem both from legal officer level, within the secretariat, or indeed, at the prerogative of senior management or the Ombudsman him/herself. [44]

The follow-up of inquiries and subsequent changes to practices across EU institutions has been assessed as satisfactory by the Office,[45] though difficulties have been noted in the acceptance of recommendations by concerned institutions. (This aspect is analysed further in the sub-chapter on Investigations.) Nevertheless, respondents from the Ombudsman's office highlight the impact resulting from inquiries into the handling of infringement procedures by the European Commission, for example: here, though the Ombudsman is limited to deciding upon maladministration, opinions can be expressed regarding Commission assessments in concerned proceedings, where relevant. The extent of the Ombudsman's scrutiny in this regard was not expected by the Commission, and has prompted changes to working practices.[46]

The European Ombudsman enjoys a great deal of budgetary independence, with due respect to the powers of the budgetary authority: no disputes over resources were noted by staff of the European Ombudsman.[47]

43 Prioritisation of the handling of complaints, per se, is not undertaken, as they are dealt with in chronological order of receipt, in the first instance. However, complaints with prima facie urgency – e.g. where related to an application deadline, may be prioritised. Informally, where irreparable damage may occur from a delay in handling a situation, or where a complaint may demonstrate broader significance to the public, complaints may be dealt with more immediately. Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013

44 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013

45 See http://www.ombudsman.europa.eu/en/cases/followup.faces/en/12374/html.bookmark, last accessed 19 December 2013

46 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013

47 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013

TRANSPARENCY (LAW)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the European Ombudsman's office?

The role and the functions of the European Ombudsman are explicitly laid down in EU law, and include specific rules on the admissibility and processing of complaints. Rules allow for complaints to be classified as confidential, and restrict disclosure of confidential inquiry-related material, even to complainants. Nevertheless, safeguards ensure complainants can access their case-files and scrutinize their handling. The office is subject to general EU public access to documents rules, though these do not extend to inquiry-related material, where particular confidentiality exceptions apply. Institutional reporting obligations regarding operations and financial management are in place, but current legislation does not compel the Ombudsman to engage in public outreach activities. However the principle of administrative transparency is emphasised in several 'soft law' instruments, such as the European Code of Good Administrative Behaviour.

The role and mandate of the European Ombudsman are explicitly laid down in primary and secondary EU legislation,[48] and include specific rules on how the Ombudsman must exercise his/her duties, including the handling and admissibility of complaints submitted to him/her and the scope of the office's investigative powers.[49]

No legal provisions oblige the Ombudsman to publish proactively information on all complaints received: furthermore, complainants can request that their complaint be considered confidential. The Ombudsman also retains the power to classify complaints as confidential on his/her own initiative, in order to protect the interests of the complainant or a third party.[50] When summarising or reporting on confidential complaints, the identity of the complainant must similarly be protected. [51]

Specific confidentiality provisions also pertain to inquiries held by the Ombudsman, with the latter and his/her staff prohibited from divulging 'information or documents' obtained in the course of this work – in order, particularly, to protect classified material, personal data, and prevent harm to the complainant or any other party involved. [52]

The Ombudsman is, however, obliged to publish news of any adoption of annual and special reports in the *Official Journal* and to make available the 'full text of the documents'.[53] The Ombudsman is also expected to draft an annual report to the EP with regards to his/her activities, and the outcome of inquiries held.[54] Beyond this, the current legal framework does not confer additional obligations upon the Ombudsman to engage proactively in outreach or communications to the public.

Provisions on the processing of complaints impose a number of obligations upon the Ombudsman to ensure transparency specifically vis-à-vis complainants: the latter must be informed about the legal officer handling their file, and be notified on the admissibility of their complaint, and whether or not an inquiry is being opened subsequent to it.[55] Complainants must be provided with the opinion issued by the institution concerned by their complaint; however, opinions cannot contain information classified as confidential by the said institution. Furthermore, the latter can ask the Ombudsman to disclose all or part of its opinion to the complainant only, but must submit justifications in such a case.[56]Subject to these conditions, and with exception to 'evidence given in confidence' during an inquiry, complainants have the right to access their complaint file.[57]

The public has the right to request any documents held by the Ombudsman as provided by the EU Regulation regarding public access to documents (ATD)[58] to which it is subject, however, this does not pertain to inquiry-related documents. Nevertheless, requests for access to these latter documents can be made, provided that a complaint has not been classified as confidential by the complainant or the Ombudsman. Restrictions on access

48 Treaty on the Functioning of the European Union, art. 24 and 228 (TFEU), Charter of Fundamental Rights of the European Union, art. 43
49 See the European Parliament Rules of Procedures, Annex XI the Decision of the European Parliament on the regulations and general conditions governing the performance of the Ombudsman's duties(part A) and the Decision of the European Ombudsman adopting implementing provisions adopted on 8 July 2002 and amended by decisions of the Ombudsman of 5 April 2004 and 3 December 2008 (part B)
50 European Parliament Rules of Procedure (EP RoPs), Annex XI, part B art. 10(1)
51 EP RoPs, Annex XI, part B, art. 16(2)
52 EP RoPs, Annex XI, part A. art. 4(1). Nonetheless, the Ombudsman and his/her staff are obliged to report any information uncovered which suggests criminal activity, to the relevant authorities.
53 EP RoPs, Annex XI, part B art. 16(1)
54 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art 228(1) (TFEU), and EP RoPs, Annex XI, part B., art. 11(1)
55 EP RoPs, Annex XI, part B, arts. 2(2), 3(2), 4(2), 4(3), and Annex XI, part A. 2(9)
56 EP RoPs, Annex XI, part B., art. 4(5)
57 EP RoPs, Annex XI, part B, art. 13. This right can be exercised 'on the spot'.
58 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001)

apply to documents classified as confidential by an institution or national-level authority; to 'evidence given in confidence': to any document whose disclosure would undermine an on-going inquiry; and to any parts of an institution's opinion that it has indicated should only be disclosed to the complainant. In the latter instance, the party requesting access is to be informed of the institution's justification(s) for this restriction.[59] No appeal procedure is provided for, in the case that access to inquiry-related documents is refused in whole or in part, but reasons must be provided to the requestor to explain the refusal. [60]

In addition to these legal stipulations regarding the transparency of the European Ombudsman's specifically complaint-related work, the office is also bound by corresponding provisions on its administrative activities. For accounting and budget reporting, the Ombudsman's office is subject to the EU Financial Regulation[61], where the principle of transparency applies.[62] Accordingly, the Ombudsman's annual accounts and budgetary reports must be published in the *Official Journal of the European Union*.[63]

The conduct of the staff of the Ombudsman is also guided by the European Code of Good Administration Behaviour which emphasises the principle of transparency in dealings with the public.[64] EU public service principles, authored by the Ombudsman himself in 2012, further emphasise the principle, calling on all EU civil servants to remain willing to explain and justify their actions, and to maintain proper records 'and welcome public scrutiny' of their conduct.[65] Nonetheless, no specific provisions exist regarding the disclosure or publication of declarations of assets for the European Ombudsman or his/her staff, nor for any gifts, hospitality or invitations received.

59 EP RoPs, Annex XI, part A, art. 4a and EP RoPs, Annex XI, part B, art. 14(1), 14(2)
60 EP RoPs, Annex XI, part B, art. 14(6)
61 Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002, (EU Financial Regulation) art. 2(b)
62 EU Financial Regulation, art. 34 & 35
63 EU Financial Regulation, art. 34(2)
64 European Code of Good Administrative Behaviour (ECGAB), para. 5 pg. 10
65 Public service principles for the EU civil service, para. 5, available at http://www.ombudsman.europa.eu/en/resources/publicserviceprinciples.faces;jsessionid=40227EA52FCC96BC1241B1496221EA01 (last accessed on 16 January 2014)

TRANSPARENCY (PRACTICE)

To what extent is there transparency in the activities and decision-making processes of the European Ombudsman's office in practice?

The European Ombudsman's Office publishes comprehensive material regarding complaints and inquiries as well as information on outreach activities, making use of a wide-ranging website and social media channels. A register of cases, but not of complaints received, is made available. A detailed report is published annually, including figures and statistics related to the Office's performance. Multi-annual strategy and annual objectives are also published, while the draft and consolidated budget and accounts of the Office are made available in the *Official Journal.* The Ombudsman's office receives a small number of requests for public access to documents, which are generally handled swiftly and positively, and from early 2014, was to have a public document register in place. A declaration of the Ombudsman's interests is proactively published.

A large amount of formal information is made available by the European Ombudsman regarding the investigation of complaints received and the outcome of cases, though material examined during investigations is not proactively published. The Office does not publish a register of all complaints received, and thus no information is made public regarding those complaints for which no grounds for an inquiry have been found; however, in practice, notices are published when cases are opened where these are deemed to be of general interest to the public.[66] The Office maintains a public case register enabling users to search or follow-up closed and on-going cases from 2004 onwards: for each closed case published, the final decision (background of the complaint, subject, presented arguments for each allegation, assessment, conclusions) along with a closing summary are included. A searchable thematic digest of cases is also available.

In a separate section on its website, the Office publishes all the draft recommendations addressed to EU institutions during its inquiries. Dedicated sections also exist regarding the special reports addressed to the EP since 1996, own-initiative inquiries since 1998, and the follow-up to critical and further remarks addressed to EU institutions from 2006 onwards. The Office also publishes all the material related to its visits to EU agencies.

On its website, the Ombudsman makes available a range of information to assist EU citizens in making use of the office itself: alongside publication of the legal framework in which the Ombudsman operates, detailing the powers of the office,[67] an interactive complaint guide has been developed,[68] with guidance also provided on the range of channels available to citizens when seeking assistance from EU administrations.[69] Information is also provided on how to request information from the Ombudsman, and on how to report any dissatisfaction with the service provided by the latter.

Details of the Ombudsman's outreach activities are disseminated, with a calendar of activities, notices of meetings with third parties, and visits to institutions made available well in advance online. Speeches or presentations delivered by the Ombudsman at official engagements are also published, however reports are not systematically provided from third party meetings. The Ombudsman's office also makes extensive use of social media, with a dedicated staff member assigned to this portfolio. Respondents from the Office indicate that this form of public outreach, particularly to raise awareness of the existence and role of the Ombudsman, will be an increasing priority from 2014 onwards.[70]

Though not in place at the time of writing, a public register of documents had been developed by the European Ombudsman's Office and was to be released from early 2014. According to respondents, such a register is 'a compromise' that meets legal requirements while taking into account considerations of resource constraints and efficiency.[71] The Office will not proactively publish references to every document it holds, but will publish references to folders or groups of documents so that citizens can direct their requests more easily.

Regarding the handling of requests for public access to documents, the Office receives very few which fall under EU regulation 1049/2001 (i.e. are not related to inquiries).[72] Such requests amounted to 3 in 2011 and 1 in 2012: of these 2 were granted partial access, and 2 requestors were referred to documents already published. At the

66 Interviews with staff from the European Ombudsman's Office, 4 December 2013 (Ombudsman's staff interviews)
67 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, Title XI, Part B, arts. 2-5
68 See http://www.ombudsman.europa.eu/atyourservice/interactiveguide.faces, (last accessed on 16 December 2013)
69 See http://www.ombudsman.europa.eu/en/atyourservice/home.faces, (last accessed on 16 December 2013)
70 Ombudsman's staff interviews
71 Ombudsman's staff interviews
72 Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents

time of writing, no appeal procedure was in place to contest refusals for access. Respondents from the Office indicate that this had been the case given that the Ombudsman him/herself had previously signed off any decisions related to initial requests: as such, an appeal procedure could not credibly involve recourse to an objective, higher authority within the Office. At the time of writing, the Office was in the process of developing a new internal procedure, to remove the involvement of the Ombudsman in the consideration of initial requests, and allow for appeals to be made.[73]

Most of the requests for access to documents received by the office relate to case-related documents (21 requests in 2011, 38 in 2012[74]),[75] for which access may be granted subject to confidentiality provisions or where they do not prejudice an on-going inquiry.[76] In most cases, full access (2011: 10; 2012: 13) or full access to an anonymised version or partial access (2011: 11; 2012: 22), was granted.[77] Some of them (11) also concerned cases already published on the website. Only 7 requests were refused access for confidentiality reasons (2011: 3; 2012: 4). Of the total number of requests for case-related documents for the years 2011-2012, 7 of them were handled in more than 15 working days.

Respondents from the Ombudsman's Office indicate that they seek to ensure that complainants, at least, have full access to the documents maintained in a case-file, and therefore aim to maintain as few documents classified as confidential by EU institutions, as possible. As such, they ask any institutions concerned not to provide them with documents that the institutions themselves consider confidential and do not wish to be shared with the complainant. Should they require the Ombudsman to consider confidential material, the Ombudsman's Office seeks to consult the latter solely during site inspections to institutions, and thereby does not formally maintain the said material in case files.[78]

A multi-annual strategy for the mandate of each Ombudsman, which lays down priorities and objectives, along with Annual Management Plans, are made public.[79] A detailed annual report including various statistics on complaints, their handling, and key case studies is also published.[80] This report is presented annually by the Ombudsman and debated in the responsible EP committee.[81] As an EU body, the European Ombudsman also publishes its draft and consolidated budgets in the *Official Journal* of the EU,[82] and makes available information on all public procurement contracts it awards above a value of 25k EUR (from 2008 onwards), along with tender and award notices.[83] Its annual accounts and reporting on financial management are also published in line with EU financial rules.[84]

A declaration of the European Ombudsman's interests is published online,[85] using the format used by MEPs, and this is updated every year. Corresponding declarations by senior officials from the office are not maintained or published. No registers of gifts received by the Ombudsman of the office's staff are published. A detailed organigramme including the names and function of staff members is made available online.[86]

73 Ombudsman's staff interviews
74 Officially, the number of requests received in 2012 is 1819, including 1783 individual requests for the same document introduced by members of a motorcycle organisation. All these are here considered as a single 'collective' request for the clarity of the analysis.
75 The original documents and correspondence with the Ombudsman for requests introduced in 2011 and 2012 can be found at http://www.asktheeu.org/en/request/access_to_documents_requests_in_4#incoming-2723 (last accessed on 17 December 2013)
76 See http://www.ombudsman.europa.eu/resources/provisions.faces#hl13 (accessed on 16 December 2013)
77 Where partial access entails that parts were redacted for data protection purposes.
78 Ombudsman's staff interviews
79 See http://www.ombudsman.europa.eu/en/resources/strategy/amp.faces/en/49077/html.bookmark (last accessed on 17 December 2013)
80 http://www.ombudsman.europa.eu/en/resources/strategy/strategy.faces (last accessed on 16 December 2013). At the time of writing, the strategy of the new Ombudsman had not been published.
81 See the presentation of the Annual Report 2012 to the MEPs, http://www.ombudsman.europa.eu/en/activities/speech.faces/en/50283/html.bookmark (last accessed on 17 December 2013)
82 For the Draft budget 2014, see http://eur-lex.europa.eu/budget/data/DB2014/EN/SEC08.pdf (last accessed on 17 December 2013). For the consolidated budget 2013, see http://eur-lex.europa.eu/budget/data/D2013/EN/SEC08.pdf (last accessed on 17 December 2013)
83 See http://www.ombudsman.europa.eu/resources/contracts.faces, consulted on 16 December 2013
84 See the website of the EP Committee on Budgetary Control for further information: http://www.europarl.europa.eu/committees/en/cont/home.html (last accessed on 16 January 2014)
85 http://www.ombudsman.europa.eu/resources/financialinterests.faces. The administration does not verify the content further: Ombudsman's staff interviews.
86 See http://www.ombudsman.europa.eu/en/atyourservice/team.faces, (last accessed on 17 December 2013)

ACCOUNTABILITY (LAW)

To what extent are there provisions in place to ensure that the European Ombudsman's office has to report and be answerable for its actions?

The European Ombudsman is principally accountable to the European Parliament which elects, dismisses, debates and legislates on the Ombudsman and its activities. The Ombudsman also reports to the ECA regarding its budget implementation and financial management, with the EP granting a discharge over its final accounts. OLAF has full jurisdiction to investigate the Office in cases of suspected fraud or corruption.

The European Ombudsman is mainly answerable for its activity to the EP which elects the office-holder and can request their dismissal.[87] The grounds for dismissal as defined in law[88] give the EP a wide scope for interpretation. The CJEU is formally empowered to dismiss the Ombudsman's on the basis only of such an EP request.[89] The Ombudsman also submits its annual report on the conduct of its enquiries[90] and its 'activities as a whole' to the EP.[91] The Committee on Petitions drafts a report on this basis which is then submitted for debate within the committee.[92] The Ombudsman also reports to the EP on each inquiry and investigation it completes. The EP can request a hearing with the Ombudsman on any occasion.[93] In addition, by means of a special legislative procedure, the EP has the power to draft legislation on its own initiative regulating the Ombudsman's duties and performance. The EC and the Council are consulted for opinion and consent respectively.[94]

For budgetary and financial management, the Ombudsman's office is subject to external audits by the ECA,[95] and to the EP for discharge of its final accounts.[96] In this respect, the Ombudsman's office must duly cooperate in granting the ECA full access to its documents.[97] By virtue of the EU financial regulation, the Ombudsman's office also appoints an independent, internal audit function.[98] A summary of annually performed audits is sent to the EP and to the Council including recommendations and corrective actions taken.[99]

By definition, the Ombudsman's scope of action is limited by any on-going judicial proceeding based on the same reported facts. In such cases, the Ombudsman must directly close the inquiry concerned.[100] Accordingly, Ombudsman's activities do not interfere with national or European judicial activity but s/he can refer any relevant issue of a criminal nature to national authorities.[101]
As the Ombudsman's own decisions related to inquiries are not legally binding and do not produce legal effects, they cannot be challenged in front of the CJEU, nor can proceedings be brought against the Ombudsman for inaction. However, CJEU case law has established the principle that a complainant can sue the European Ombudsman for damages.[102]

The Ombudsman and its secretariat enjoy the privileges and immunities applicable to EU officials, with the possibility for immunity to be waived when required.[103] Nevertheless, in common with all EU bodies, the Ombudsman's office is subject to the investigation powers of OLAF, regarding any suspected fraudulent or corrupt actions by its personnel.[104] Accordingly, OLAF can request access to any type of information retained by the European Ombudsman when investigating.[105] The disciplinary proceedings and sanctions for officials suspected of misconduct (including fraud and/or corruption) are laid down in the EU Staff Regulations.[106] Although the Staff Regulations also oblige all Ombudsman personnel to report suspected misconduct, no specific internal provisions are in place regarding whistle blowing mechanisms and protection.

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87 Rules of Procedure of the European Parliament - 7th parliamentary term – March 2011 [2011] OJ L116/1, Title IX, rules 204, 206 (EP RoPs)
88 EP RoPs, Title XI, part A, art. 8: 'no longer fulfill the conditions' and 'serious misconduct'
89 TFEU, art. 228(2)
90 TFEU, art. 228(1) and (2). See also EP RoPs, Title IX, Rule 204
91 Ombudsman Decision, art. 11(1)
92 EP RoPs, Title IX, rule 205
93 EP RoPs, Title IX, rule 205
94 TFEU, art. 228(4)
95 EU Financial Regulation, art. 161
96 EU Financial Regulation, art. 165(2)
97 EU Financial Regulation, art. 161
98 EU Financial Regulation, art. 98(1) and 99(1) and 100(1)
99 EU Financial Regulation, art. 99(5)
100 EP RoPs, Annex XI, Part A, art. 2(7)
101 EP RoPs, Annex XI, Part A, art. 4(2)
102 Interviews with staff at the Ombudsman's office, 4 December 2013. See European Ombudsman vs. Frank Lamberts, Case T-209/00, 10 April 2002
103 Protocol on the Privileges and Immunities of the European Union, art. 18
104 Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-Fraud Office (OLAF), art. 1(3) (OLAF Regulation)
105 OLAF Regulation, art. 4(1)
106 For more information on this, please refer to the EC accountability (law) and integrity (law) reports.

ACCOUNTABILITY (PRACTICE)

To what extent does the European Ombudsman's office report and is answerable for its actions in practice?

European Parliamentary oversight of the European Ombudsman is being exercised, with regard to operational and financial matters. External audits are also taking place: no mismanagement has been identified in recent years, but concerns have been raised regarding operational performance and the timeliness of investigations. The possibilities for complaints to be made against the Ombudsman's office itself have been improved. Similarly, CJEU case law has established that citizens can seek damages from the Ombudsman related to the handling of their cases. OLAF investigations into the Ombudsman's office have been held in the past, without incident: related sanctions are being applied.

The legal mechanisms in place to ensure European Parliamentary oversight of the European Ombudsman are functioning, with the EP Committee on Petitions (PETI) receiving and debating the Ombudsman's annual reports and special reports, and the Ombudsman complying with invitations to appear before it. Amongst the issues raised in this regard, has been the need for the Ombudsman's office to improve its efforts to reach out to citizens, given that only 52% of the public considers the Ombudsman as the most important EU actor for promoting citizens' rights.[107]

The European Ombudsman is also complying with its reporting obligations to the EP, including responding to additional requests for information, with respect to the discharge of its annual accounts.[108] The Committee on Budgetary Control (CONT) is handling the discharge procedure supported by annual audits undertaken by the European Court of Auditors, while internal audits are being completed by the EP's internal auditor.[109]

While no significant weaknesses related to budget implementation were identified by the ECA nor the EP in the most recent discharge procedures[110] operational concerns have been raised. In the context of the discharge of the 2011 accounts, the EP called for a substantial improvement in the time taken by the Ombudsman to handle complaints,[111] and called for decisions on the admissibility of complaints to be performed within one month.[112] According to the EP, the average time necessary to close an inquiry is a further area in need of improvement, and it duly asked for measures to be implemented 'to make services more effective'.[113] A very marginal improvement in the rate of cases completed within 12 months has recently been recorded: 69% in 2012[114] compared with 66% in 2010[115] and 2011.[116] The rate of inquiries closed within 18 months reached 79% in 2012, while the target had been set at 90%.[117] The Office is developing a new case management system that is in part intended to allow for greater recording and scrutiny of 'who did what and when' in a particular case. It was expected, at the time of writing, to be in place by spring 2014.[118] Respondents at the Ombudsman's office also note that a centralised process for dealing with complaints falling outside the Ombudsman's mandate had a positive effect in this respect.[119]

Opportunities for complaints to be made against the Ombudsman itself have recently been reinforced. The Office introduced a mechanism in 2013 to allow complainants to express dissatisfaction with the service provided by the Ombudsman, with explanatory information provided on its website.[120] In addition, at the time of writing, two cases had been brought to the CJEU by complainants seeking damages resulting from the Ombudsman's handling of their complaint.[121] In the case that had been concluded at the time of writing, the court highlighted that 'in very exceptional circumstances a citizen may be able to demonstrate that the Ombudsman has made a manifest error in the performance of his duties likely to cause damage to the citizen concerned'.[122] In addition, a Commission

107 European Parliament, Committee on Petitions, Report on the annual report on the activities of the European Ombudsman 2012 (A7-0257/.2013), para. 7
108 See, for example, written questions to the European Ombudsman with replies, from the 2012 discharge procedure, available at http://www.europarl.europa.eu/committees/en/cont/publications.html?id=CONT00006#menuzone
The 2012 Annual Activity Report also note several of the requests made by the EP during the discharge procedure. See the Annual Activity Report, pp. 12-16 & Annexes
109 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013
110 European Court of Auditors, Annual Report on the Implementation of the Budget concerning the financial year 2012 (2013/C 331/01), Chapter 9, para. 16, Annual Report on the Implementation of the Budget concerning the financial year 2011, (2012/C344/01), Chapter 9 para. 29 and Annual Report on the implementation of the Budget concerning the financial year 2010, (2011/C326/01) Chapter 7 para. 31
111 European Parliament Resolution of 17 April 2013 with observations forming an integral part of the Decision on the discharge for implementation of the European Union general budget for the financial year 2011, Section VIII – European Ombudsman, COM(2012)0436, para. 10 (Discharge Resolution 2011)
112 Discharge Resolution 2011, para. 9
113 Discharge Resolution 2011, para. 11. This aspect has also been highlighted by the PETI Committee; see the Report on the annual report on the activities of the European Ombudsman 2012, para. 8
114 European Ombudsman, Annual Activity Report 2012, p. 6. The figure for 2013 is 73%.
115 European Ombudsman, Annual Report 2012, pg. 5
116 European Ombudsman, Annual Report 2011, pg. 10
117 Annual Activity Report 2012, pg. 6. The figure for 2013 is 81%.
118 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013
119 Annual Activity Report 2012, pg. 9
120 See http://www.ombudsman.europa.eu/en/atyourservice/dissatisfied.faces
121 European Ombudsman vs. Frank Lamberts, Case T-209/00, 10 April 2002; Case T-217/11 (pending).
122 European Ombudsman vs. Frank Lamberts, para. 54

official succeeded in obtaining damages against the Ombudsman (Case T-412/05, 24 September 2008). The European Data Protection Supervisor was also dealing with a complaint against the Ombudsman, at the time of writing.

Since the establishment of the office, no European Ombudsman has been required to report to the EP on suspected wrongdoing, or been subject to dismissal or a request to resign. Respondents at the Ombudsman's office indicate that OLAF investigations have been undertaken into personnel in the recent past, with appropriate sanctions enforced.[123] At the time of writing, no OLAF investigations were being conducted concerning the office.[124]

123 Interviews with staff from the Secretariat General of the Ombudsman, 4 December 2013

124 See Responses to the 2012 discharge questionnaire to the Ombudsman, available at http://www.europarl.europa.eu/document/activities/cont/201312/20131219ATT76564/20131219ATT76564EN.pdf (last accessed on 10 January 2014)

INTEGRITY (LAW)

To what extent are there provisions in place to ensure the integrity of the European Ombudsman's office?

EU primary and secondary law contain basic provisions to safeguard the integrity – and principally the independence – of the EU Ombudsman and include sanction measures for breaches of these obligations. Nevertheless, specific rules to ensure comprehensive implementation of these provisions are missing. The Ombudsman's staff are subject to obligations on integrity laid down in the EU Staff and Financial Regulations, along with specific operational restrictions, which are supplemented by internal ethics guidelines. However, no specific, internal rules on whistle-blowing are in place.

A number of safeguards are in place in both primary and secondary EU law to ensure the integrity of the European Ombudsman, and which focus predominantly on securing the independence of the office-holder. As such the EU Treaties prohibit the Ombudsman from taking instructions from external parties, including governments and EU institutions, and from engaging in any other paid or unpaid occupation while in office.[125] Secondary law requires candidates for the office to 'meet the conditions required for the exercise of the highest judicial office in their country or have acknowledged competence and experience to undertake the duties of Ombudsman', supplementing these professional requirements with an obligation to offer 'every guarantee of independence'.[126] Nominees must provide evidence to support these conditions and may be subject to hearings before the European Parliament,[127] however, no specific verification and assessment criteria are elaborated in law. Upon election, the Ombudsman is also required to give a solemn undertaking before the CJEU as a further guarantee of integrity, which also pertains to conduct after leaving office.[128]

The EP decision regulating the Ombudsman's performance also lays down specific integrity provisions with regard to confidentiality, with the Ombudsman and his/her staff prohibited from divulging information and documents obtained during their enquiries and in particular, any classified information.[129]

Beyond these provisions, no additional, detailed rules are in place to govern the ethical conduct of the Ombudsman, e.g. requirements to disclose personal interests or assets, or restrictions on the acceptance of gifts or hospitality, nor provisions laying down specific post-employment obligations. Similarly, procedural guidelines to monitor compliance by the Ombudsman with legal obligations have not been elaborated.

Sanction measures are nevertheless in place to ensure compliance with the legal obligations incumbent upon the Ombudsman who is subject to dismissal by the CJEU, upon the request of the EP, when in breach of the said rules.[130]

The integrity of the staff of the European Ombudsman is governed principally by obligations laid down in the EU Staff Regulations pertaining, *inter alia*, to the prevention of conflicts of interest and the duty to report misconduct/illegal activity,[131] and by the European Code of Good Administrative Behaviour.[132] (See the sub-chapter on European Commission integrity (law) for further details.) The Secretariat General of the Ombudsman has also adopted non-binding guidelines on ethics and good conduct for the Ombudsman's staff, which emphasise, *inter alia*, transparency, impartiality in procurement and staffing matters, and the need to proactively avoid conflicts of interest. While no dedicated internal rules on whistle blowing are in place, the ethical guidelines encourage the reporting of misconduct, and also include information on 'how to obtain advice on ethical issues' - with responsibility placed on personnel in 'management or leadership positions' to ensure application of the guidelines amongst their staff.[133] Internal rules do not, however, place specific ethics obligations upon senior managers.

125 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/47, art. 228(3), (TFEU)
126 European Parliament Rules of Procedures, Annex XI, Part A, art. 6(2) and art. 9 (EP RoPs)
127 EP RoPs, rule 204(2-3)
128 EP RoPs, Annex XI, Part A, art. 9(2). The Ombudsman must swear that s/he will 'he will perform his duties with complete independence and impartiality and that during and after his term of office he will respect the obligations arising therefrom, in particular his duty to behave with integrity and discretion as regards the acceptance, after he has ceased to hold office, of certain appointments or benefits.'
129 EP RoPs, Annex XI, Part A, art. 4(1)
130 EP RoPs, rule 206
131 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, principally, arts 11-26a (Staff Regulations);
132 See the European Code of Good Administrative Behaviour (ECGAB), pp. 8 - 9
133 Guidelines on ethics and good conduct for the Ombudsman's staff, 12 December 2012, provided to Transparency International EU Office during interviews with staff from the Secretariat General of the European Ombudsman, 4 December 2013

As an EU body, the financial management of the Secretariat General of the European Ombudsman is governed by the EU Financial Regulation, which includes provisions to prevent fraud, corruption and illegal activity.[134] (See the sub-chapter on European Commission integrity (law) for further details.)

134 Regulation 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union [2012] OJ L298/1, art 57 (Financial Regulation)

INTEGRITY (PRACTICE)

To what extent is the integrity of the European Ombudsman's office ensured in practice?

Although the European Ombudsman is not subject to a systematic pre-appointment integrity check, several proactive measures, beyond those prescribed in law, are being taken to safeguard his/her integrity when in office, but these are not formalised in a code of conduct or equivalent. The Secretariat General takes an informal approach with regard to ensuring staff compliance with integrity-related obligations, with ethics guidelines and *ad hoc* training in place. The system appears to be functioning, but concerns have been raised on the potential for discretionary treatment. Internal audits are being held. Similarly, mechanisms to identify and sanction misconduct are in place and appear to function.

While candidates for the post of European Ombudsman are subjected to hearings with the competent European Parliament committee, no systematic integrity checks, e.g. via the submission of a declaration of interests, appear to be undertaken in practice: furthermore, the Secretariat General plays no role in the assessment of candidates' eligibility.[135]

In the absence of detailed internal rules to safeguard the integrity of sitting European Ombudspersons, consideration has previously been given by the Secretariat General to proposing a code of conduct for the office-holder; however, this idea had ultimately not been pursued. Respondents from the Ombudsman's staff indicate that this would serve to formalise proactive measures that are already being taken by the Ombudsman to ensure compliance with integrity principles laid down in law. For example, the Ombudsman publishes an annual declaration of personal interests, based upon that completed by MEPs – however, the declaration is not subject to verification. Similarly, an internal system is in place to record any hospitality or gifts offered by the Ombudsman – with standard EU financial procedures also being adhered to in this regard: at the time of writing, it was foreseen that the system would be extended to record also gifts and hospitality received.[136]

In practice, senior management at the European Ombudsman have sought to ensure compliance by staff with their integrity-related obligations through informal means, rather than explicitly elaborated procedures, due to the small size of the organisation.[137] Staff are being supported via the introduction of guidelines on ethical conduct – disseminated via an internal intranet – and training on specific ethics themes: ethics training is not, however, delivered systematically. Respondents from the Ombudsman's staff note that while personnel are reasonably well-informed of their obligations, due to the nature of the mandate of the body, the absence of systematic integrity mechanisms – e.g. to request authorisation for external activities, or to enforce post-employment obligations – did invite the potential for unequal treatment. Nevertheless, significant shortcomings in current practice had reportedly not been experienced to date, with senior management considering the status quo to be adequate, given, for example, that individuals had reportedly recused themselves from cases in the past where they proactively identified a potential conflict of interest: this, despite the lack of a dedicated reporting system.[138]

Though respondents from the Secretariat General consider the risk of conflicts of interest in their work to be low, given its nature, the proximity of legal officers to complainants or EU officials in institutions subject to complaints – particularly where they may have previous professional experience in these institutions – is identified as an area of sensitivity. Respondents consider the risks to be mitigated in part by their minimal, personal contact with other EU civil servants resulting from the fact that the Ombudsman's office is located in Strasbourg rather than Brussels, and that previously, staff had been recruited on temporary contracts, largely from national-level ombudsman authorities, and directly through Ombudsman-specific competitions. The Secretariat General is however, now increasingly recruiting permanent officials based on EPSO[139] lists available to all EU institutions, but respondents from the Ombudsman's staff consider that pre-appointment conflicts of interest required under the EU Staff Regulations from 2014 will support the mitigation of any increased risks.[140]

Mechanisms to identify and sanction misconduct are being used: at least three OLAF investigations have been undertaken in recent years, involving a single individual. Cooperation during these investigations was deemed to be good; however, greater responsiveness from OLAF would have been welcomed by the Ombudsman's office. Indeed, one of the said investigations had been triggered by the Secretariat General which was unaware of an already on-going OLAF inquiry into the individual concerned. The latter was ultimately dismissed though not as a

135 Interviews with staff at the Secretariat General of the European Ombudsman, 4 December 2013 (Ombudsman's staff interviews)
136 Ombudsman's staff interviews, 4 December 2013
137 Ombudsman's staff interviews, 4 December 2013
138 Ombudsman's staff interviews, 4 December 2013
139 European Personnel Selection Office, the body responsible for coordinating the recruitment of EU civil servants
140 Ombudsman's staff interviews, 4 December 2013

direct result of these investigations.[141] No OLAF investigations were reported to be open at the time of writing.[142] An internal disciplinary board has been convened on one occasion, according to respondents: the function had to be outsourced to the ECA given that the small size of the Secretariat General of the Ombudsman made it impossible to appoint a sufficient number of qualified members internally. The outsourcing also had the advantage of demonstrating that the proceedings were impartial.[143]

Internal audits into financial management at the Secretariat General are being undertaken by the internal auditor of the European Parliament, with a recent audit held in order to develop procedures to deal with the handling of sensitive posts – in particular, senior management. No specific ethics-related audits had been undertaken at the time of writing, but fraud-related issues were considered within annual staff surveys.[144]

141 Ombudsman's staff interviews, 4 December 2013
142 Replies to the 2012 discharge questionnaire to the European Ombudsman, available at http://www.europarl.europa.eu/document/activities/cont/201312/20131219ATT76564/20131219ATT76564EN.pdf (last accessed on 14 January 2014)
143 Ombudsman's staff interviews, 4 December 2013
144 Ombudsman's staff interviews, 4 December 2013

RESOURCES

To what extent does the European Ombudsman have adequate resources to achieve its goal in practice?

The Secretariat General of the European Ombudsman has seen limited growth in its budget in recent years. Human resources have remained stable since 2010, but the body is subject to a 5% cut in staff up to 2018. While the number of complaints received has decreased over time, concerns have been raised regarding the capacity to deal with the increasing number of enquiries opened, their increasing complexity, and the time needed to close them. The Ombudsman's services are taking measures to address this situation, with efforts already delivering some improvements. To preserve investigative and outreach capacities, future staff reductions will need to be borne by support functions and potentially offset by further investment in technology.

From 2010 to 2013, the budget available to the Secretariat General of the European Ombudsman grew constantly but at a low rate, from to 9.3m EUR in 2010 to 9.7m EUR in 2013.[145] Almost 78% (7.6m EUR) of this budget is dedicated to salaries, pensions and missions expenses and 16% goes to building maintenance, equipment and administrative expenses.[146] Over the same period, the number of staff posts (excluding contractual staff and trainees) remained stable (63 in 2010 to 67 in 2013 and 2014) while a reduction of 3 full time posts by 2018 is anticipated to meet a 5% cut in human resources required by all EU bodies. A noticeable evolution lies in the increasing use of permanent staff in recent years: at the end of 2010, 48 out of 63 posts in the Ombudsman's office were temporary. By the end of 2013, only 28 out of 67 posts were still temporary, and this trend is set to continue in 2014.[147]

From 2010 to 2012, the number of complaints falling within the mandate of the Ombudsman remained stable (around 740): these have been decreasing since a peak in 2004 (930).[148] A corresponding trend pertains also to complaints falling outside the Ombudsman's mandate.[149] However, the number of complaints giving rise to the opening of inquiries substantially rose in 2012 (465) compared to 2011 (382) (+18%) and 2010 (335) (+27%).[150] The number of inquiries closed in 2012, meanwhile, amounted to 390 as compared with 318 in 2011 and 326 in 2010,[151] with the Ombudsman failing to meet self-imposed targets for the time taken to close inquiries.[152]

Respondents from the Ombudsman's staff indicate that despite the fall in complaints received, the increase in the number of cases opened, and their increasing complexity, presents difficulties in concluding inquiries swiftly. As such, the average time necessary to close a case has grown over time (11 months in 2012, 10 months in 2011 and 9 months in 2010).[153] This trend has been highlighted by the European Parliament, which has called for the rate of closed cases and the average time necessary to close them to be 'substantially improved'.[154]

To address these concerns, the Secretariat General initiated a reorganisation of its structure in 2012,[155] which is reported to have delivered efficiency gains with regard to the closing of pending inquiries of more than 24 months.[156] The reorganisation has also enhanced the decision-making process for the admissibility of complaints,[157] as requested by the discharge authority.[158] In addition, a new case management system is being developed, to be launched in early 2014, which is expected to enhance the way complaints are handled in order to meet performance targets.[159] Nevertheless, meeting these targets in the face of the required staff cuts up to 2018 will put pressure on existing resources, with the burden most certainly being borne by support services, so as to preserve the Ombudsman's investigative capacity but also to continue developing its efforts to reach out to EU citizens;[160] the latter having been called for by the European Parliament.[161] Further productivity gains may

145 Comparison of budget revenues from 2010 to 2013. See eur-lex.europa.eu/budget/www/index-en.htm, (last accessed on 07 January 2014)
146 2013 EU General Budget, Section VIII European Ombudsman, Title I and II. Percentages calculated based on included figures.
147 Comparison between establishment plans from 2010 to 2014.
148 Annual Report 2012, p. 19
149 Annual Report 2012, p. 19
150 Annual Report 2011, p. 25
151 Annual Report 2011, p. 25
152 The number of cases closed within 18 months equated to 79% of pending cases, while a target of 90% had been set. See Annual Activity Report 2012, pp. 8-9
153 Interviews with staff from the Secretariat General of the European Ombudsman, 4 December 2013.
154 European Parliament resolution of 17 April 2013 with observations forming an integral part of the Decision on the discharge for implementation of the European Union general budget for the financial year 2011, Section VIII – European Ombudsman (COM (2012)0436), para. 9 (Discharge Resolution 2011)
155 2012 Discharge questionnaire to the Ombudsman, question 4; and Annual Activity Report 2012, p. 4
156 Annual Activity Report 2012, p. 9
157 Annual Activity Report 2012, p. 6. See the Key Performance Indicator n°2; the proportion of cases in which the admissibility decision is taken within one month reached 85% against a target of 90%. Regarding cases where an inquiry is then opened, the figure equals 70%.
158 Discharge Resolution 2011, para. 9
159 Interviews with staff from the Secretariat General of the European Ombudsman, 4 December 2013. For targets, see the Annual Management Plan 2013, p. 11
160 Interviews with staff from the Secretariat General of the European Ombudsman, 4 December 2013
161 Report on the annual report on the activities of the European Ombudsman 2012, para. 7

therefore be dependent upon significant increases in the resources available to the Secretariat General to invest in IT, for example.

No significant concerns regarding the capacity or resources of the Ombudsman were identified by the European Parliament in the most recent discharge procedures, aside from a relatively low rate of budgetary execution (89.65% in 2010) compared to other EU bodies in 2010,[162] which was addressed in the following financial year.[163]

162 European Parliament resolution of 10 May 2012 with observations forming an integral part of the decision on the discharge for implementation of the European Union general budget for the financial year 2010, Section VIII – European Ombudsman, COM(2011)0473, para. 2

163 EP resolution on the discharge of 17 April 2013 – Section VIII – European Ombudsman, para. 4

PROMOTING GOOD PRACTICE

To what extent is the European Ombudsman's office active and effective in raising awareness within government and the public about standards of ethical behaviour?

The Ombudsman is actively investigating complaints of maladministration, privileging friendly solutions between parties (rather than escalating to the level of critical remarks or recommendations) for reasons of efficiency and to optimise impact on improving administrative practice. The outcomes of cases are being disseminated to promote good practice, and the Ombudsman is undertaking own-initiative inquiries to tackle systemic problems in EU administrations. The Office is also being consulted on draft legislation to ensure good administrative practice, though this is not envisaged in law. The Ombudsman has developed a set of public service principles which have been widely promoted amongst the EU administration, and is increasing its public communication activities through various media channels. However, much of the published material is only available in English.

In law, the Ombudsman is competent to receive complaints for maladministration related to the activities of all EU institutions with the exception of the CJEU, when the latter is 'acting in its judicial role'.[164] In practice, in 2012, most of the inquiries opened concerned the EC (52.7%) and EPSO (16.8%), as well as EU agencies (12.5% in 2012).[165] This trend is consistent with figures from 2011,[166] and reflects the fact that most complaints received by the Ombudsman relate to these actors. Indeed, this is seen as a result of the fact that these are the EU-level administrations most actively engaging with the general public or businesses and associations, and thus, does not suggest that the Ombudsman does not investigate other EU institutions or bodies. Moreover, the Ombudsman's own initiative inquiries into 'what appear to be systemic problems in the institutions' also reflect this reality.[167]

Before closing a case by addressing critical remarks or recommendation to an institution/body (via the delivery of a reasoned decision or report), the Ombudsman often prefers to find a so-called 'friendly solution'. This was the case for 80 complaints in 2012,[168] and 84 complaints in 2011.[169] According to respondents from the Secretariat General of the European Ombudsman, this is a way to alleviate the procedural burden and allow a quicker handling of the complaint: significantly, it also allows for a less adversarial approach and the possibility for the Ombudsman to resolve a complaint and more directly promote good practice.[170]

The Ombudsman publishes material and informs the general public about the inquiries it feels are of particular, general interest, though only in English.[171] For a more detailed overview of the material it publishes, please refer to the transparency (practice) report. The Office also follows up on the remarks and the recommendations it has previously addressed to concerned EU institutions and publishes these results annually, though again, these are only available in English.[172]

So as to enhance good administrative practice where possible, respondents from the Secretariat General reported that the Ombudsman is consulted, to a limited extent, during the drafting of new legislation (e.g. with regard to the revision of the EU Staff Regulations) on specific, relevant provisions (e.g. on internal whistle-blowing) despite this role not being enshrined in law. In addition, the Ombudsman informs EU administrations, on an *ad hoc* basis, on how to engage with the public on specific issues (e.g. when responding to unsuccessful tenderers in a public procurement procedure).[173] With the help of press releases, the Ombudsman endorses a proactive role in calling for more transparency from, and control of, EU institutions.[174] More systematically, the Office promotes the European Code of Good Administrative Behaviour (ECGAB)[175] and encourages EU institutions and bodies to refer to it in their relations with the public and advertise it on their website.[176] The Office also refers explicitly to these principles in addition to relevant EU rules and implementing rules when assessing instances of maladministration.[177]

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164 Treaty on the Functioning of the European Union (Consolidated version 2012) [2012] OJ C326/13, art 228(1) (TFEU)
165 Annual Activity Report 2012, pg. 25
166 Annual activity Report 2011, pg. 25
167 Annual Activity Report 2012, pg. 15: i.e. in 2012, 5 such inquiries were opened: 3 against EPSO, one against ENISA and one against the EC. 8 others own initiative inquiries were opened in 2012 on basis of visits to EU agencies.
168 Annual Activity Report 2012, pg. 29
169 Annual Activity Report 2011, pg. 28
170 Interviews with staff from the Secretariat General of the European Ombudsman's office, 4 December 2013. (Ombudsman's staff interviews)
171 Ombudsman's staff interviews
172 See http://www.ombudsman.europa.eu/cases/followups.faces, consulted on 12 December 2013
173 Ombudsman's staff interviews
174 See http://www.ombudsman.europa.eu/en/press/release.faces/en/52764/html.bookmark,(last accessed on 13 December 2013)
175 The European Code of Good Administrative Behaviour, 2013 (ECGAB)
176 For instance, the Ombudsman took the opportunity of visits to EU agencies to remind them about the ECGAB. See the Report of the European Ombudsman following his visit to Europol, paras. 13-14 http://www.ombudsman.europa.eu/de/activities/visitreport.faces/de/49145/html.bookmark, (last accessed on 11 December 2013)
177 See the case with Frontex http://www.ombudsman.europa.eu/en/cases/summary.faces/en/51954/html.bookmark

The European Ombudsman actively promotes a common set of public service principles[178] applicable to all EU officials with the view to 'making clear certain fundamental values, which the behaviour of EU civil servants should reflect'. These principles were drafted on basis of a consultation process in 2012 encouraging citizens and organisations to contribute, [179] and were included in the last version of the ECGAB.[180]

The Ombudsman is also keen to engage directly with citizens and deliver educational content on the role (and limitations) of the office (e.g. via video clips produced in all EU languages; an interactive guide to complaints on its website; the online publication of summaries of best practice ('star') cases, *inter alia*).[181] Both the current Ombudsman and her predecessor have placed particular importance on engaging in public communication, prioritising the issue within the Secretariat General.[182] A staff member was recruited specifically for social media activities, and further expansion of the team was expected in line with increased priorities. Further streamlining of the annual report, to increase accessibility was also foreseen, at the time of writing.[183]

178 See http://www.ombudsman.europa.eu/en/resources/publicserviceprinciples.faces, (last accessed on 14 December 2013). These principles include: commitment, integrity, objectivity, respect and transparency
179 See http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/10111/html.bookmark, (last accessed on 14 December 2013)
180 ECGAB, , pp. 8-11
181 See http://www.ombudsman.europa.eu, (last accessed on 12 December 2013)
182 'Visibility and impact' were the two main aspects underlined by the current Ombudsman during the election process. See http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fTEXT%2bIM-PRESS%2b20130617IPR12349%2b0%2bDOC%2bXML%2bV0%2f%2fEN&language=EN, (last accessed 19 December 2013)
183 Ombudsman's staff interviews

INVESTIGATING COMPLAINTS FROM THE PUBLIC

To what extent is the European Ombudsman's office active and effective in dealing with complaints from the public?

The initial processing of complaints received by the European Ombudsman is functioning well, with the Ombudsman making proactive efforts to deliver further improvements and support the submission of more eligible complaints. An increasing number of enquiries are being opened and closed, and the Ombudsman is making use of all the investigative powers at his/her disposal. The Ombudsman is also conducting own-initiative reports. The implementation by EU institutions of critical remarks issued by the Ombudsman is satisfactory while the level of acceptance of recommendations (for serious cases) less so. The Office rarely has to make use of special reports regarding instances of non-cooperation. As noted above, concerns exist on the increasing time taken to conclude inquiries, and the impact that future resource cuts may have in this regard.

In 2012, over 22 000 individuals contacted the European Ombudsman, with the latter able to deal with most concerns (89%) by offering advice or specific information. 2442 complaints were received, with 70% of these falling outside of the mandate of the European Ombudsman, and duly transferred to a competent body – e.g. a national level ombudsman. Respondents from the Ombudsman's staff indicate that capacities to deal with the initial processing of incoming complaints (whether falling within or without the mandate of the office) are robust, irrespective of the language of the complaint.[184]

The European Ombudsman has nevertheless been proactive in trying to ensure that citizens address the correct type of complaints to him/her, and that they duly receive the appropriate form of redress, by developing an interactive guide for complaints, available online, and via increased communications activities on citizens' rights and the role of the Ombudsman.[185] [186] This has resulted in a drop in the number of total complaints received for four years in a row and in the number of complaints falling outside the mandate. The impact of this decrease is reflected in the fact that a greater number of inquiries (465) were opened and closed (390) in 2012, representing increases on the previous year. Yet, while improved internal procedures have allowed for speedier processing of extra-mandate complaints, the average time for the conclusion of an inquiry, has grown: a direct result of the higher case-load, but due also to the increased complexity of complaints received.[187] The European Parliament has called for improvements in the time taken to close cases, but has raised no concerns on the quality of treatment given by the Ombudsman to complaints received.[188] The Secretariat General of the Ombudsman is addressing the matter, in part through the introduction of a new, automated case management system,[189] but resource cuts up to 2018 do present additional pressure to meet such demands.

Besides inquiries opened on the basis of complaints introduced by EU citizens, the Ombudsman opened 15 inquiries on its own-initiative and closed 10 in 2012.[190] Of those 15 inquiries, 8 were related to visits the Ombudsman proactively paid to EU agencies,[191] resulting in a substantial increase in this form of inquiry as compared to previous years. Five of these inquiries were opened to address systemic issues of concern pertaining to the EU administration, and not necessarily related to specific complaints.[192] These cases reflect the Ombudsman's proactive approach to delivering improvements in practices throughout institutions, and result from concerns identified by legal officers from within the Secretariat General, the senior management, or indeed, the Ombudsman him/herself: however, respondents from the latter's staff indicate that media reports or information from anonymous whistle-blowers rarely prompt such action.[193] [194]

The decisions, recommendations and/or remarks of the European Ombudsman are not legally binding and 'do not create enforceable rights or obligations for the complainant or for the institution concerned'.[195] Nevertheless,

184 Interviews with staff from the Secretariat General of the European Ombudsman, 4 December 2013 (Ombudsman's staff interviews)
185 European Ombudsman, 'Annual Report 2012', [2013], pg. 5 (AR 2012), and Ombudsman's staff interviews
186 Indeed, 32% of the public consider that the right to complaint to the European Ombudsman is one of the three most important rights as EU citizen. See Special Eurobarometer, 'the European Ombudsman', Conducted by TNS Opinion & Social at the request of the European Parliament and the European Ombudsman, April 2011, pg. 24
187 AR 2012, pg. 5 and Ombudsman's staff interviews
188 European Parliament resolution of 17 April 2013 with observations forming an integral part of the Decision on the discharge for implementation of the European Union general budget for the financial year 2011, Section VIII – European Ombudsman (COM (2012)0436), para. 9 (Discharge Resolution 2011)
189 Ombudsman's staff interviews
190 Annual Activity Report 2012, pg. 18
191 AR 2012, pg. 15
192 AR 2012, pg. 15
193 Ombudsman's staff interviews
194 Ombudsman's staff interviews
195 AR 2012, pg. 17

according to respondents from the Ombudsman's staff, use is made of all the investigative powers available (e.g. access to classified information, inspection, visits on the spot, hearings, etc.) to fulfil the office's role. They report that EU institutions have a good record of cooperation with the Office in general: non-cooperation is infrequent, with delays in responses to requests from the Ombudsman often constituting the most usual form of any intransigence. In practice, the Ombudsman seeks to resolve any such obstruction in an informal manner, with the aim to deliver the most optimal outcome for the complainant.[196] In rare, extreme cases, when the effects of maladministration are considered as very serious and when the concerned institution fails to cooperate with the Office, the Ombudsman makes use of 'special report' to the EP's attention,[197] with the view to debate the substance at the political level. Only one special report was drafted by the Office in 2012.[198] At a less serious stage, the Ombudsman makes use of "critical remarks" and "draft recommendations" to concerned institutions.[199]

Overall, the Office assessed the follow-up of its critical and further remarks addressed in 2011 to be satisfying in 84% of concerned cases, higher than the 2010 figure of 68%.[200] Taking out the EC and the European Personnel Selection Office (EPSO) from the figures (together in receipt of 81% of remarks addressed in 2011), the result stands at 97.5% of cases. Draft recommendations, on the contrary, are implemented at a slower pace. In 2012, the Ombudsman issued 17 of them and closed 9 cases where the concerned institutions accepted them fully or partially.[201] At the end of the year, '14 draft recommendations were still under consideration, including two made in 2011 and 12 in 2012'.[202]

Those figures demonstrate that the role of the Ombudsman is broadly taken seriously by EU institutions and the Ombudsman is able to resolve most cases. However, considering that draft recommendations are addressed where 'the maladministration is particularly serious or has general implications',[203] the delays in accepting them demonstrate a degree of resistance amongst EU institutions. . At the top come the right to move freely in the EU and the right to good administration.[204] Over the years, the number of requests considered as complaints (regardless being within or outside the mandate) felt[205], but according to the Office, this is the direct effect of efforts made to inform citizens on what they can expect from the Ombudsman's services.[206] The Office also aims at enhancing its presence on social media in the short term so as to enable citizens to know more about their rights and about the Ombudsman's role.[207]

196 Ombudsman's staff interviews
197 European Parliament Rules of Procedures (EP RoPs), Annex XI, part B, art. 8(4), 11(2) and 16(1)
198 Regarding a case where the EC failed to comply with its obligation under an infringement procedure. See the AR 2012, pg. 35
199 For more details, refer to pp. 32 to 34 of the AR 2012
200 AR 2012, pg. 33. See also the Follow-up to critical and further remarks – How the EU institutions responded to the Ombudsman's recommendation in 2011, http://www.ombudsman.europa.eu/en/cases/followup.faces/en/12374/html.bookmark, last accessed on 19 December 2013
201 AR 2012, pg. 34
202 AR 2012, pg. 34
203 Ombudsman's decision, art. 8(1)
204 Special Eurobarometer, 'the European Ombudsman', Conducted by TNS Opinion & Social at the request of the European Parliament and the European Ombudsman, April 2011, pg. 24
205 AR 2012, pg. 19
206 AR 2012, pg. 5
207 Ombudsman's staff interviews

THE ENVIRONMENT OF THE EU INSTITUTIONS: THE MEDIA, CIVIL SOCIETY AND BUSINESSES

At the core of this study is the analysis of the integrity system of the main European Union (EU) institutions and bodies. However, these EU institutions and bodies do not stand and function in a void. Their integrity is challenged, watched and fostered by outside actors who operate within the wider environment surrounding the institutions, and central among these are the media, civil society and the private corporate sector. Looking at the roles that these actors play in the environment allows a better understanding of some of the challenges that the institutional integrity system faces and that are summarised in the previous section of this report.

In a national integrity system, civil society, economic actors and the media have mostly evolved alongside the institutional system. In traditional nation states, they clearly constitute integral parts of the societal and economic reality that creates or prevents corruption risks, that allows self-regulated integrity or that requires institutional and legislative anti-corruption measures. But the EU's founders did not design the Union in the image of a traditional liberal-democratic state. Rather, they designed it as a supranational entity that would 'integrate' its member states over time and would transfer certain functions and powers to supranational and intergovernmental institutions and bodies at the European level. Consequent to both this design and this integration process, traditional governmental functions (such as legislation and the implementation of legislation, for example) remain spread over several institutions, while the debate about division of labour and competences continue both between EU institutions as well as between the EU- and the national level. The environment that has grown around the EU institutions is understandably, therefore, less clear-cut than one could observe in a national integrity system, and has effectively been shaped by two fundamental conditions.
First, the European Union is a multi-level, multi-cultural and multi-lingual political and economic system with diverse national environments regarding media, civil society and businesses. All these diverse national realities are also the direct and indirect environment(s) of the EU's integrity system – direct because Members of the European Parliament, ministers in the Council of the European Union and all other officials with close links to specific national constituencies are strongly influenced by their contacts with these national environments; indirect because the EU institutions need to interact with these diverse societal and economic actors when regulating or financing their activities and when changing the conditions under which they can function all across the European Union. Consequently, the diversity of and weaknesses in national integrity systems and cultures across the EU[1] are key challenges also for the European level.

Second, the European Union is a supranational organisation with the core of its business and most of its officials based in Brussels, Luxembourg and, in particular during European Parliament plenary sessions, in Strasbourg. This geographical concentration of supranational power has created an environment that is often described as the "Brussels bubble", a term also used to describe too close relations between public and private actors in this sphere.[2] Besides the institutions, the bubble encompasses Brussels-based media organisations, as well as trade and interest associations (representing geographical, economic or societal interests), public affairs and public relations agencies, law firms, NGOs, think tanks and similar actors, all of which are interacting with the Union's institutional sphere in this common space through public debates, direct lobbying, litigation or public procurement. Within this bubble, English and EU specific terminology rarely used in non-EU contexts[3] dominate the discourse, creating a barrier for outsiders to understand effectively or challenge how Brussels operates.

The relevance of the Brussels bubble as being the core of the environment of the EU institutions can be seen in the so-called 'EU Transparency Register',[4] which gathered just above 6000 registrants at the end of 2013.[5] For early 2013, 2095 out of 5494 registrants in this register (38%) were found to have a Brussels address.[6] The effects of this bubble can also be observed in requests for access to documents, with 21.85%[7] of all requests to the European Commission and 33%[8] of such requests to the Council of the EU coming from Belgium – i.e. from inside or near the bubble.

1 See Transparency International (2012), 'Money, Politics, Power: Corruption Risks in Europe', http://www.transparency.org/enis/report
2 See ALTER-EU (2010), 'Bursting the Brussels Bubble', http://www.alter-eu.org/sites/default/files/documents/bursting-the-brussels-bubble.pdf
3 http://ec.europa.eu/translation/english/guidelines/documents/misused_english_terminology_eu_publications_en.pdf
4 http://ec.europa.eu/transparencyregister/info/homePage.do
5 http://ec.europa.eu/transparency/docs/reg/new_statistiques_en.pdf
6 J. Greenwood & J. Dreger (2013), 'The Transparency Register: A European vanguard of strong lobby regulation?'; Interest Groups & Advocacy 2013/2, 139–162; Table 2.
7 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0515:FIN:En:PDF (pg.3)
8 http://www.consilium.europa.eu/media/2063344/web_en_access_to_doc_2013.pdf (pg. 11)

The latter shows the difficulty for organisations and individuals in the wider environment to make use of core accountability mechanisms vis-à-vis the EU's institutional sphere. Overall, this creates an environment with a strong centre-periphery divide. This divide is mirrored in the media, civil society and private corporate sector that form the major part of the environment of the EU system, with those within the bubble being best placed to positively or negatively influence the integrity of EU institutions while at the same time being 'part of the system'. The concentration and close proximity of all these actors within the bubble does also run the risk of creating a 'cosiness' which may reduce criticism and make it harder to hold the institutions to account. Below, each of these actors and its relation to the system is considered in brief.

The Media

There are very few genuine European media that could be considered authoritative in the same way a leading national newspaper or TV channel would be seen as dominating public opinion and political discourse. The media environment around the European Union's institutional system is mainly shaped by the composition of the Brussels press corps, that is in particular those journalists representing international, EU-level or national media accredited with EU institutions. Accreditation to EU institutions is granted in cooperation with the *International Press Association* (IPA-API),[9] which ensures a certain degree of self-regulation.

EU-level media include, for example, *Agence Europe* (news agency) and *Euronews* (TV), both partially EU-funded, as well as the *European Voice* and *New Europe* (weekly newspapers), *EurActiv* and *EU Observer* (free online) or journalistic information services such as *Europolitics* (pay-walled online), all with mixed funding from advertising, non-journalistic project work, subscriptions and other support.[10] International media such as *Reuters* (news agency) or the *Financial Times* (newspaper) and EU correspondents of national media complement the press corps. The coverage of political developments at European level is influenced by the reality that national media often have just one or two journalists per outlet in Brussels, and depending on the outlet, these journalists have varying capacity for investigative work and access to EU decision-makers[11]. Altogether, about 1000 journalists from about 550 outlets were accredited in 2013,[12] the majority of which were classified as German, British or European/international outlets.[13]

By investigating potential corruption cases and by highlighting stories around EU integrity issues such as the 'revolving door', EU media can help to hold the EU institutions to account. The greatest challenge in this regard is the lack of policy-specific and investigative journalism at European level. Most journalists tend to be generalists and may not be as acute to changes in policy positions that may have resulted from corrupt influence, as they may be less aware than their policy-specific counterparts of the detailed positions of certain (interest) groups. Meanwhile, a 2012 European Parliament study attributed the lack of investigative journalism conducted by journalists from the Brussels press corps to overly close relations between those journalists and the EU institutions as well as to a lack of resources, and also to the fact that investigative journalists in media headquarters outside Brussels may not work closely enough with their colleagues in Brussels to find the right stories.[14] Nevertheless, investigative journalism led to the 'cash-for-amendments' scandal in 2011 that resulted in the first ever European Parliament Code of Conduct,[15] and played a role in the fall of the Santer Commission in 1999.[16] Meanwhile, corruption and integrity-related stories from alleged fraud in EU public procurement,[17] to cases of EU revolving door appointments,[18] and opaque lobbying practices in Brussels,[19] regularly receive coverage in European media and create reactions and change within the institutional system, highlighting the importance of the media to the EU's integrity.

Civil Society

The evolution of an EU-wide and EU-related civil society has partially been the societal reaction to the existence and relevance of the EU institutions, but it is also the result of active financial and regulatory intervention by the EU institutions themselves, in particular the European Commission. Understood narrowly as NGOs, just above 1550 civil society organisations were registered in the EU's Transparency Register at the end of 2013, which would represent about 70% of the estimated total number of NGOs at European level or with an office in Brussels.[20]

9 cf. http://ec.europa.eu/dgs/communication/services/accreditation/perm_en.htm.
10 cf. European Parliament study (2012), 'Deterrence of fraud with EU funds through investigative journalists', Annex I http://www.europarl.europa.eu/document/activities/cont/201210/20121002ATT52809/20121002ATT52809EN.pdf
11 cf. http://blogs.lse.ac.uk/eurocrisispress/2013/11/19/a-shrinking-brussels-press-corps-could-put-investigative-eu-journalism-at-risk/
12 http://garethharding.com/the-myth-of-the-shrinking-eu-press-corps/
13 http://insideeuropeblog.wordpress.com/2013/09/04/getting-the-right-numbers-whos-covering-brussels/
14 European Parliament study (2012), 'Deterrence of fraud with EU funds through investigative journalists', pp. 75-77
15 http://euobserver.com/political/114313
16 European Parliament study (2012), 'Deterrence of fraud with EU funds through investigative journalists', pg. 105
17 http://www.europeanvoice.com/article/imported/police-raid-commission-offices-as-part-of-fraud-probe/75341.aspx
18 http://blogs.wsj.com/brussels/2014/02/21/as-revolving-door-spins-eu-antitrust-lawyer-joins-apple/
19 http://www.ft.com/intl/cms/s/0/74271926-dd9f-11e2-a756-00144feab7de.html#axzz2uBciDxKB
20 cf. Greenwood & Dreger (2013), pp. 147-149.

Critical accounts of European civil society organisations have highlighted that, due to the lack of functioning links to local or national constituents or overly long chains of delegation, the accountability of these organisations to individual or collective members is often low.[21] With 1.4 billion EUR provided to 3000 CSOs (not just in Brussels) in 2009 by the European Commission and most EU-level citizens groups receiving some form of EU funding, questions regarding the independence of EU CSOs have been raised repeatedly.[22] In the absence of a European NGO status, EU civil society organisations' activities also have to be organised under a variety of legal conditions. Many Brussels-based civil society organisations are set up under Belgian law, while their members and partners across Europe function in different legal conditions, which can render cooperation, shared project budgets and more straightforward accountability chains difficult.

Nevertheless, European civil society organisations and coalitions have shown that they can have a positive role in supporting the EU integrity system by publicly questioning unethical lobbying practices (e.g. *ALTER-EU*), confronting conflicts of interests through complaints to the European Ombudsman (e.g. *Corporate Europe Observatory*) challenging refusals of access to documents through EU court cases (e.g. *Access Info Europe*), uncovering and investigating flows in EU funds (e.g. *Farmsubsidy.org*), or indeed, questioning EU party financing rules (e.g. *Transparency International*).

With the first successful European Citizens' Initiative - the only formal element of direct democracy at European level - having secured the necessary 1 million signatures and its organisers having been formally heard by the European Parliament and Commission,[23] a new role and channel for civil society to challenge integrity risks and support the fight against corruption has emerged. Although the Commission's official response to this first successful initiative has been criticised for lacking ambition[24] - no new legislation is planned, for example – the process has generated a large amount of discussion and attention regarding the potential for civic input in EU decision-making.

The Private Corporate Sector

Within the EU bubble, the EU-specific private corporate sector manifests itself in three broadly distinguishable groups: one being those engaged in lobbying the EU in the wider sense – whether on their own behalf, or on behalf of representatives/clients; the second being the service sector that provides the European Union with logistical and intellectual support, in domains such as IT or professional services, the organisation of conferences, public outreach campaigns or studies; and the third being corporations affected by the EU's anti-trust regulation. All three fields highlight the need for EU private sector integrity to support overall EU integrity.

Lobbying of legislative and administrative decisions has received the largest attention in public debates about the integrity of the European Union system. At the end of 2013, more than 700 consultancies, law firms and self-employed lobbyists as well as about 3000 in-house lobbyists and trade/professional associations were registered in the EU's Transparency Register. The integrity of lobby consultancies, such as those represented by the *European Public Affairs Consultancies' Association* (EPACA), of individual or in-house lobbyists, such as those represented by the *Society of European Public Affairs Professionals* (SEAP), alongside that of major business associations such as Business Europe and of law firms involved not just in judicial matters but also in lobbying, have been under particular public scrutiny in recent years. In the absence of mandatory lobby regulation, those organisations are bound by the ethics rules of the voluntary EU Transparency Register as well as their own codes of conduct (e.g. through EPACA and SEAP). Law firms in particular have received criticism for their refusal to register themselves and thus to be subject to lobby-related ethics rules.

With regard to public tendering processes, companies inside and outside Brussels are relevant actors. In particular where less tangible tasks such as communications are outsourced by EU institutions and bodies because they cannot or do not want to undertake these tasks themselves, safeguarding the integrity of the relationships between EU institutions and private business is crucial. There is very little (regular) public scrutiny of these processes except for information services provided by EU tender specialists,[25] but anecdotal evidence around the market of EU communication services indicates the sensitivity of outsourced services and of the related commercial conflicts that arise;[26] it also shows the limited number of actors that repeatedly win tenders in this particular market[27] and has led to discussions about the quality and accuracy of public procurement processes in this field.[28]

The European Commission's quasi-judicial role in deciding upon company mergers or acting against collusion, to enforce EU anti-trust regulation, creates another particular interaction between this institution and the private

21 cf. Kohler-Koch, Beate (2010), 'Civil society and EU democracy: 'astroturf' representation?'; Journal of European Public Policy 17.1; 100-116.
22 cf. Sanchez Salgado, Rosa (2014), 'Rebalancing EU Interest Representation? Associative Democracy and EU Funding of Civil Society Organizations'; Journal of Common Market Studies 52.2; 337-353.
23 http://www.europarl.europa.eu/news/en/news-room/content/20140217STO36262/html/Interview-Water-is-not-a-commodity-it-is-a-part-of-our-heritage
24 Right2Water.eu, 'Commission lacks ambition in replying to first European Citizens' Initiative', (19 March 2014), [Press release], available at http://www.right2water.eu/news/press-release-commission-lacks-ambition-replying-first-european-citizens%E2%80%99-initiative
25 e.g. http://bruselska-spojka.cz
26 http://www.neurope.eu/article/making-most-mostra
27 http://www.lacomeuropeenne.fr/2012/06/08/transparence-sur-les-principaux-budgets-des-agences-de-communication-aupres-de-la-commission-europeenne/
28 See http://www.jonworth.eu/some-weird-parallel-eu-communications-universe/ (incl. Comments).

corporate sector in the EU environment. The Commission has far-reaching powers to request information from companies to assess the market situation[29] and a wide scope of powers to investigate alleged infringements.[30] Its decisions in this field affect very specific and often very large market transactions involving companies in a potential monopoly or cartel situation, and its work in this regard remains vulnerable to being undermined in a number of ways. For example, 'revolving door' employment cases of anti-trust lawyers moving between the European Commission and private corporations have been observed and subject to media criticism.[31] Meanwhile, in the case of the *NYSE/Deutsche Börse* merger in 2012, the Commission suspected that the companies affected had distributed leaked documents as part of a wider lobbying campaign to influence the outcome of the decision-making.[32] In addition, through their lawyers, companies affected by competition law decisions have also made very extensive use of the right to access to EU documents, both in number and in size of the requests, to gain advantage in on-going or future proceedings. This has led to considerable burden on the administration dealing with access to EU documents.[33] With the interests at stake potentially very high, so too are the risks to the integrity system, revealing the significance of the sector to ensuring the institutions remain free of corruption and that they are functioning with a corresponding level of public service.

29 Joint General Court cases T-458/09 and T-171/10 Slovak Telekom v Commission, as summarised in: CJEU Annual Report 2012, pg. 124.
30 Ibid, pg. 125
31 cf. footnote [17]; http://blogs.wsj.com/brussels/2014/02/21/as-revolving-door-spins-eu-antitrust-lawyer-joins-apple/
32 Minutes of the European Commission college meeting of 1 February 2012, PV(2012)1988 final, pg. 8
33 cf. Report from the Commission on the application in 2009 of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents, pg. 8

ABOUT THE EUIS

Definitions

The focus of this report is the EU integrity system (EUIS) – defined here as the key institutions and actors in the EU governance system that have a role to play in preventing and addressing corruption and promoting integrity. Corruption is understood as 'the abuse of entrusted power for private gain'; while integrity is defined as 'behaviours and actions consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions, that create a barrier to corruption'.[1]

Aim

This report seeks to evaluate EU institutions and actors both with regard to their internal corruption and integrity risks, and to their roles in combating corruption across the system as a whole. It is intended to be a base-line assessment, rather than an in-depth analysis of each institution, drawing out best practice and areas of concern, and highlighting the inter-linkages between institutions. In so doing, the assessment aims to highlight key strengths and weaknesses, and ultimately make recommendations for policy and legislative reform. It therefore provides a foundation for evidence-based advocacy to strengthen anti-corruption safeguards at the EU-level.

Transparency International's previous Europe-wide research has revealed where corruption risks lie at the national level and hinted at potential problems at the EU-level, but it has not pointed to specific weak points in the latter. While acknowledging the differences between the national and EU levels, this study seeks to pay attention to similar risks related, for example, to lobbying, conflicts of interest, access to information, and whistle-blowing, amongst others.

Methodology

The approach used to analyse the EUIS is based upon the National Integrity System (NIS) concept developed and promoted by Transparency International, and used in over 70 countries since 2001. The NIS framework takes a comprehensive view of all relevant institutions in a state that have a role to play in preventing corruption, and of the relationships between them. It assumes that when all parts of the NIS are functioning well, they support each other to ensure wider anti-corruption safeguards are effective. Integrity shortfalls in a single part could therefore pose risks to the system as a whole.

The NIS is typically considered to be made up of thirteen key functions in a state's governance structure: the legislative; executive; judiciary; public sector; electoral management body; ombudsman; law enforcement agencies; supreme audit institution; anti-corruption agencies; political parties; media; civil society; and business. Variations may exist from country to country, and Transparency International allows scope to adapt the approach to the specific characteristics of a state.

The EUIS is the first attempt to apply the NIS approach to the supranational level. The reality of the structure of the EU's governance – which has developed through compromises between competing national interests, the gradual codification of residual practices and norms, and not least, internal institutional power plays – means traditional state functions are frequently shared, combined, blurred or, at worst, absent. As such, directly applying the NIS approach to the EU would have resulted in overlapping analyses of institutions where functions – particularly executive and legislative responsibilities – are spread across two or more EU actors. This report therefore assesses individual EU institutions and actors rather than evaluating specific governance functions.

The following institutions and actors (hereafter, 'institutions') are assessed in this EUIS report:

'Core' institutions	'Control' institutions
European Parliament; European Council Council of the European Union European Commission	Court of Justice of the European Union European Court of Auditors European Anti-Fraud Office (OLAF) Law Enforcement Agencies: Europol (European Police Office) & Eurojust (EU's Judicial Cooperation Unit) European Ombudsman

1 Transparency International (2009), The Anti-Corruption Plain Language Guide, pp. 14, 24

As elections to the European Parliament are managed at the national level, no electoral management body exists at the EU-level and this element is therefore not featured in the EUIS, despite typically being addressed in an NIS. European Political Parties are covered under the European Parliament in the current EUIS due to the lack of an independent status at European level and their close financial, political and administrative dependence on the European Parliament.

Of the seven official institutions of the EU, this study does not look at the European Central Bank (ECB). In order to ensure completion of the report in early 2014, and to ensure each institution was subject to a sufficiently comprehensive analysis, the number of research targets had to be limited, While preparatory research work was undertaken on the ECB, it was eventually decided not to include the institution in the present study given the fact that central banks do not traditionally feature in the methodology for national integrity system assessments. Recognition of the expanding supervisory role of the ECB means that TI-EU may consider a future assessment of the institution in the context of a wider focus on the integrity of Eurozone governance.

Importantly, the research done for this EUIS assessment has been placed on the period since the Lisbon Treaty came into force in 2009. Moreover, assessment is limited to analysis of the EU-level system, and not national institutions or actors – aside from those individuals exercising functions within EU institutions, such as a minister from a member state participating in the Council. Therefore, the EUIS does not extend to assessment of national level integrity safeguards or law, where these may overlap with some areas of the study. (It is important to note that the study does not, therefore, look specifically at corruption risks in the management of EU funds where these are managed jointly with member states.) Similar difficulties in comparing up to 28 different legal frameworks, as well as the challenge of neatly defining EU media, civil society and business, meant the latter have not been considered as individual actors in this EUIS: they are however considered within the section on the EU institutional environment.

Each institution has been assessed against several indicators:

Independence: the extent to which an institution can act without undue interference from other actors and can decide its own leadership and actions.	**Transparency**: the ability of the public to watch the decision-making and actions of an institution, in particular those aspects where there are potential corruption risks.	**Accountability**: the extent to which an institution and the persons or sub-units representing it 'are held responsible for executing their powers properly'.[2]
Integrity: the level to which behaviours and actions within an institution are 'consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions, that create a barrier to corruption'.[3]	**Resources**: the means available for an institution to fulfil its function(s), in particular with a view to ensuring integrity of the overall system.	**Role**: the scope of involvement of an institution in supporting the integrity of the overall system or the broadening and deepening of anti-corruption policies and measures.

For each institution, assessment has been made of both the relevant legal and policy frameworks – the 'rules' – in place, as well as actual practice within an institution. In this way, the analysis can draw out discrepancies, as well as identifying where integrity safeguards exist through convention. This assessment of 'law' and 'practice' is specifically divided for the independence, transparency, accountability, and integrity indicators, but not for resources and role, given that strict legal stipulations/rules may not specifically apply in these latter areas, meaning a single, integrated assessment has been undertaken for these indicators. The systemic relationships between institutions, with regard to safeguarding integrity, are revealed by assessment of the independence and accountability indicators, in particular. The transparency indicator, in addition, allows us to see how well the public (including the media or civil society) have the means to ensure the integrity and accountability of individual institutions but also of the functioning of inter-institutional oversight relations, (see conceptual map in Figure 1, below). The specific roles of the institution to safeguard integrity in the EU system, and combat corruption more broadly, have also been assessed.

2 Transparency International (2009), The Anti-Corruption Plain Language Guide, pg. 2
3 Ibid., pg.24

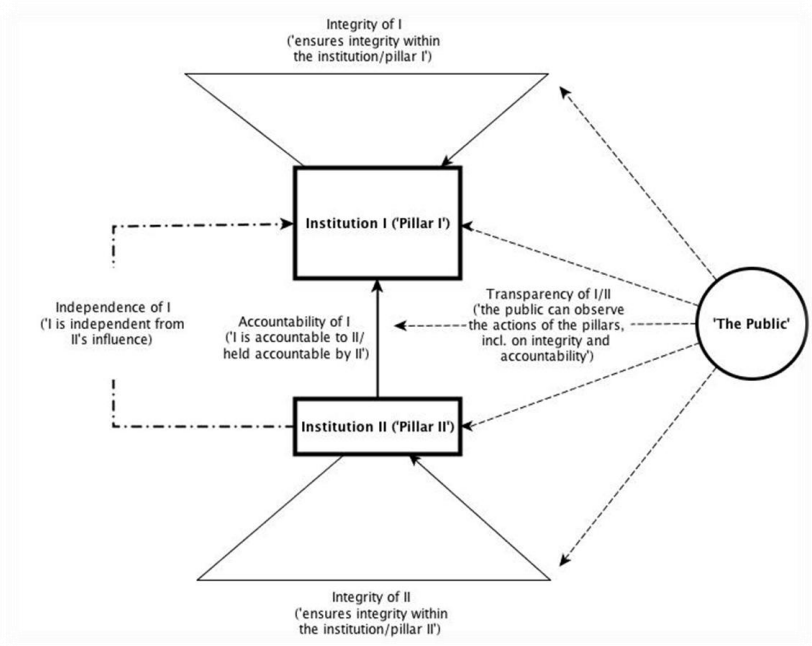


Figure 1: Concept of relations between institutions in the EU integrity system

Consultation with the institutions

A consultative approach towards the institutions under assessment has been central to the study. This is to ensure the information collected is as accurate as possible, and also in view of the advocacy to be conducted further to the publication of this report: the latter duly requiring direct engagement with the said institutions.

In the study's preparatory stages, the research team sought to inform each institution of the work to be undertaken, and establish cooperation prior to the research phase proper. Efforts were made to include current or former members or staff of the institutions on the project Advisory Group (see Annex 1), with due authorisation from each respective institution: however, it was emphasised that these individuals would be acting in a personal capacity and not as representatives of the latter.

The Secretaries General or equivalent of each institution were contacted in order to arrange research interviews with staff/members of the institution (see below for further information); each was also provided with background information on the study. While the research team put forward a list of potential interviewees, each institution was invited to indicate those individuals it considered best placed to act as interviewees. This approach ensured that interviews were conducted with the full authorisation of each institution concerned, and in order to identify the most appropriate interlocutors. Further to the interviews, all institutions were provided with the opportunity to review those draft sections of the report containing material from the interviews, to ensure accuracy and avoid the misrepresentation of interviewees. All interviewees were offered the opportunity to speak on the basis of anonymity.

Throughout all phases of the study to date, the research team have maintained open lines of communication with the institutions concerned by the report. Cooperation with the research team was provided by all institutions except the European Parliament (more information on this can be found below, under 'Interviews').

The research phase

Research for the study was carried out from June 2013 until February 2014. This was comprised of:
a) desk research, gathering relevant legal and policy texts (e.g. EU regulations, internal rules of procedure), institutional reports (e.g. audit or budgetary discharge reports), and secondary sources (e.g. academic studies, reports from media, think-tanks, civil society).
b) Research interviews with members and officials of the institutions being assessed, principally to validate findings from the desk research phase and gather knowledge on institutional practice.

Access to documents

Throughout the study, formal requests were regularly made to institutions to obtain documents of relevance to the research where these were not already publicly available: documents requested ranged from the rules governing the external activities and acceptance of gifts by Commission staff, to provisions governing OLAF investigations at

the European Parliament. All requests were made under the rules allowing for public access to EU documents, which apply broadly to all institutions assessed in the study, [4](for information on how the scope of these rules applies to each institution, please refer to the respective chapters on 'Transparency (Law)').

To support the assessment of the transparency of each institution and how the aforementioned rules are being applied in practice, a single, common request was also made to each institution in July 2013, to obtain a detailed list of all the public access to documents requests each had received in 2011 and 2012, including information on how each initial request was handled, and also how any subsequent appeals against these initial decisions were dealt with. This request was made jointly by the Transparency International EU Office in cooperation with Access Info Europe, via the AsktheEU.org website.[5] Where an overview record was not available, copies of the files related to each individual request received in the 2011-2012 period were requested.

The exercise revealed significant differences in how systematically public access to documents requests are being handled and processed by institutions, in part due to the wide differences in the frequency and volume of requests handled by each institution per year: over 6000 in the case of the Commission, and just 5 in the case of the Court of Justice (where only administrative documents are subject to the EU's general rules on public access). The results of this exercise are summarised in the tables featured in Annex 4, with detailed analysis provided in the chapters on individual institutions.

(The graphs note, for each institution, both the absolute number of initial requests and of appeals to initial decisions received in each year, along with indication of the responses issued to them. Initial requests for documents may result in full access being granted; partial access (e.g. with redaction of personal data); or access being refused. An appeal against an initial decision may result in full access being granted; extended access being granted – e.g. where only partial access was initially allowed; or a confirmation of the initial decision.)

Ultimately, in response to the exercise conducted by TI-EU and Access Info Europe, access to the documents requested was granted by all the institutions contacted. Meetings were held jointly with the European Commission, Parliament and Council, and separately with OLAF, to refine the request and ensure that data could be extracted from the relevant institutional databases without the release of confidential or personal data. The European Ombudsman exceeded obligations under current EU provisions, and requested additional time to gather the specific data requested and indeed, used our enquiry to help enhance its own internal system for recording access to document requests. Only one institution – the European Court of Auditors – did not undertake specific recording and registration of requests received. After appeal, the files related to individual requests were provided in lieu of an overview record.

Interviews

As part of the research, each institution was approached to secure interviews with key members and officials of the institution, to validate initial findings from desk research and get a clearer picture of actual internal practices used to combat corruption and promote integrity. This element of the EUIS corresponds to the consultative approach at the heart of the NIS approach, as well as contributing to the accuracy and quality of work done. Interviews were held from September 2013 to January 2014: details can be found in annex to the report.

All institutions except the European Parliament agreed to the organisation of interviews. Good cooperation was demonstrated by the European Commission, European Court of Auditors, European Ombudsman, OLAF, and Europol and Eurojust, where interviews were held with the Secretary General or equivalent head of the administration, and at least five other staff members, including from senior management. One representative was interviewed at the Court of Justice and from the General Secretariat of the Council, who responded to further information via email correspondence. Interviews were also held with one MEP from the EP Committee on Budgetary Control and the assistant to the then Chair of the EP Advisory Committee on the conduct of MEPs.

However, despite repeated attempts to secure agreement from the Secretary General of the Parliament to interview him and other staff, and direct appeal to the EP's President and Bureau, the EP refused, as an institution, to allow research interviews. The research team also offered the EP the opportunity to review research findings in lieu of interviews; however no specific response to this offer was received. This lack of cooperation from the European Parliament reveals serious concerns about the transparency and accountability of the institution and a worrying distrust of the role of civil society in contributing to the integrity of European parliamentarians and the administration supporting them. That the institution representing Europe's citizens was the only one reluctant to participate in this study is of additional concern, and undermines its Treaty obligations to work openly and be supported by an open administration. When public trust in the EU is at an all-time low, and *Euroscepticism* is increasing, it is alarming to see that the EP recognises neither the value of cooperating with civil society, nor its non-legislative role in contributing to efforts to enhance the integrity of the EU system.[6]

4 Made under EC Regulation 1049/2001 on public access to European Parliament, Council and Commission documents, or under equivalent rules applying the principles of this regulation at individual institutions.
5 Information on all requests can be found at http://www.asktheeu.org/en/user/access_info_europe_and_transpare
6 See European Commission (2013), Standard Eurobarometer 79 Spring 2013 – Public opinion in the European Union.

ANNEX 1

ADVISORY GROUP

An Advisory Group of experts, each with in-depth knowledge and several years of professional experience in and around the EU institutions, was established to oversee the EUIS project and guide the research team. The Group comprises current and former representatives of a number of EU institutions, and individuals from civil society, the media, and private interests. Members met on three occasions during the research phase, to support on-going work, and the findings and recommendations in this report were subsequently reviewed by the Group. This review does not constitute authorship of the report, and TI-EU remains solely responsible for its final contents.

The members of the Advisory Group

(All members sat on the Advisory Group in their personal capacities and not as representatives of their former/current institution or organisation.)

- Professor Deirdre Curtin (Director of the Amsterdam Centre for European Law and Governance at the University of Amsterdam)
- Mr Nikiforos Diamandouros (European Ombudsman, 2003-2013) – *from November 2013*
- Mr Carl Dolan (Director, Transparency International EU Office) [Chair] – *from September 2013*
- Mr Maarten Engwirda, (Member, European Court of Auditors, 1996-2010)
- Mr Jonathan Faull (Director General for Internal Market, European Commission)
- Ms Heather Grabbe (Director of the Open Society European Policy Institute)
- Ms Julia Harrison (Senior Managing Director, FTI Consulting)
- Ms Lisbeth Kirk (Editor-in-Chief, EU Observer)
- Ms Jana Mittermaier (Director, Transparency International EU Office, 2008-2013) [Chair] – *until August 2013*
- Mr Berend van Baak (Deputy Director General Human Resources, Budget and Organisation, European Central Bank, 2005-2010)
- Ms Nynke Weinreich (Managing Director, Adessium Foundation)

ANNEX 2

LIST OF INTERVIEWEES

Listed in date order

European Commission Secretariat General – 25 September 2013 (Brussels)

- Secretary General
- Deputy Secretary General for Directorates B, D
- Head of Unit, Public service ethics
- Assistant to the Secretary General

European Commission Directorate General for Human Resources – 10 October 2013 (Brussels)

- Director for HR Core Processes 1: Career
- Director of the Investigation and Disciplinary Office (IDOC)
- Head of Unit, Administrative Enquiries IDOC
- Head of Unit, Ethics, Rights and Obligations

European Commission Internal Audit Service – 15 October 2013 (Brussels)

- Director General
- Director
- Director
- Head of Unit

Europol – 6 November 2013 (The Hague)

- Director
- Deputy Director in charge of the Governance Department
- Officials dealing with transparency, financial (accounting, verifying, procurement, audits) and recruitment issues

Eurojust – 7 November 2013 (The Hague)

- Administrative Director
- Senior Advisor to the Administrative Director & internal auditor
- Head of Human Resources
- Head of Legal Services
- Legal Secretary to the College and Head of the College Secretariat
- Assistant to the Data Protection Supervisor

European Parliament – (Brussels)

- Member of the Committee on Budgetary Control (14 November 2013)
- Assistant to Chair of the Advisory Committee on the Code of Conduct for MEPs (10 December 2013)

European Court of Auditors – 18 November 2013 (Luxembourg)

- Member of the Court
- Secretary General
- Director for Human Resources
- Principal Auditor
- Internal Auditor
- Chair of the Staff Committee
- Member of the Staff Committee Board
- Head of Private Office of Court Member

Court of Justice of the European Union – 19 November 2013 (Luxembourg)

- Legal Advisor for administrative matters

European Ombudsman – 4 December 2013 (Strasbourg)

- Secretary General
- Director; Directorate A
- Head of Cabinet of the Ombudsman
- Head of Unit, Administration and Personnel
- Head of the Registry
- Chair of the Staff Committee

OLAF – 5 December 2013 (Brussels)

- Director General
- Director of Investigations
- Director of Policy
- Head of Unit, Human Resources
- Deputy Head of Unit, Fraud Prevention
- Internal Auditor

Council of the European Union – 12 December 2013 (Brussels)

- Head of Unit, Document Access and Legislative Transparency

OLAF Supervisory Committee - 20 January 2014 (Brussels)

- Chair of the Supervisory Committee
- Head of the Secretariat of the Supervisory Committee
- Legal Officers from the Supervisory Committee Secretariat

ANNEX 3

POST-EMPLOYMENT OBLIGATIONS BY INSTITUTION

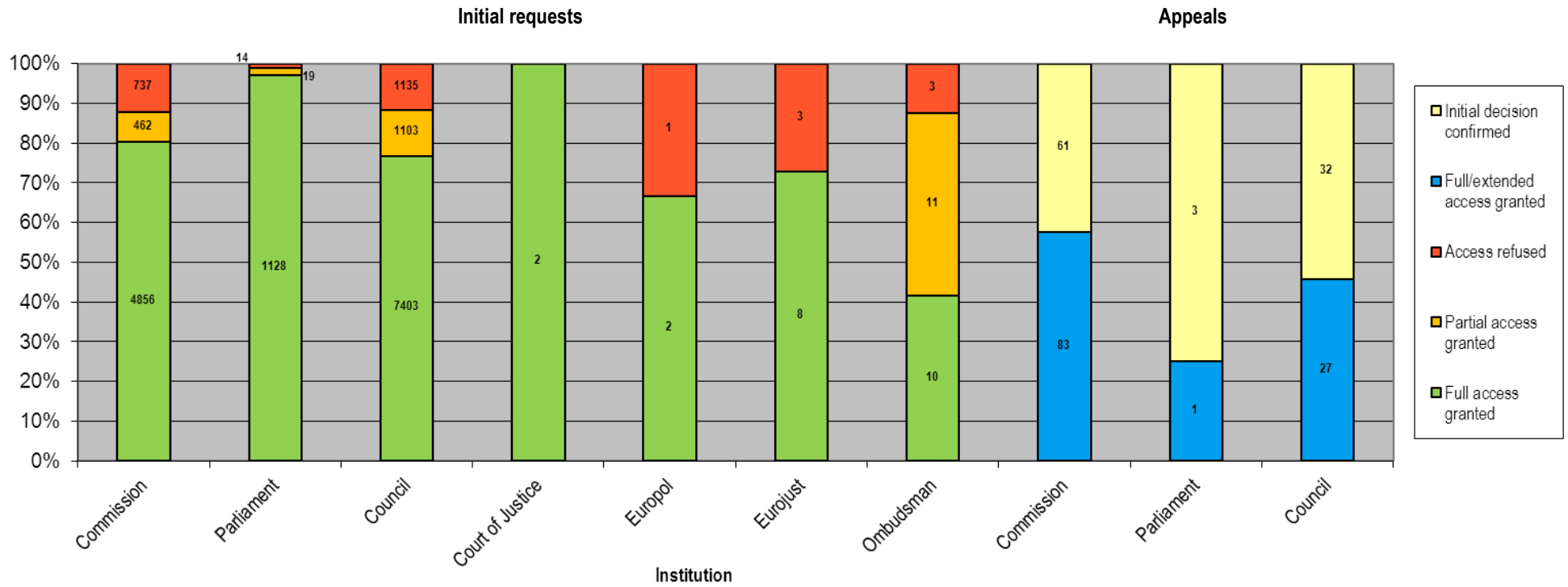
INSTITUTION	WHO	COOLING OFF PERIOD[1]	DURATION (MONTHS)	MUST INFORM INSTITUTION OF PROPOSED NEW WORK	FOR HOW LONG AFTER LEAVING INSTITUTION (MONTHS)	CAN INST'N PROHIBIT NEW WORK?
EP	MEPs	✗	N/A	✗	N/A	✗
	Assistants[2]	✗	N/A	✓	24	✓
	Local assistants (employed in MEP's home country)	✗	N/A	✗	N/A	✗
European Council	President	✗	N/A	✗	N/A	✗
	Members	✗	N/A	✗	N/A	✗
Council	Ministers	✗	N/A	✗	N/A	✗
	National official	✗	N/A	✗	N/A	✗
European Commision	Commissioner	✓	18	✓	18	✗
(Applies to all institutions)	Special Advisors	✗	N/A	✗	N/A	✗
(Applies to all institutions)	Permanent staff member (Official)	✗	N/A	✓	24	✓
(Applies to all institutions)	Senior officials	✓	12	✓	24	✓
(Applies to all institutions)	Fixed-term staff (Temporary agents)	✗	N/A	✓	24	✓
(Applies to all institutions)	Fixed-term staff (Contract agents)[3]	✗	N/A	✗	N/A	✗
(Applies to all institutions)	Seconded National Experts (SNEs)[4]	✗	N/A	✗	N/A	✗
CJEU	Members[5]	✓[6]	36	✗	N/A	✗
	Referendaires[7] (staff in the private offices of Court members)	✗	N/A	✗	N/A	✗
ECA	Member[8]	✗	N/A	✓	36	✓
OLAF	Director General	✓	12	✓	24	✓
Europol	Management Board Members	✗	N/A	✗	N/A	✗
	National Liaison Officers	✗	N/A	✗	N/A	✗

1 Period during which an individual is prohibited from engaging in lobbying or advocacy vis-à-vis staff of their former institution for their business, clients or employers on matters for which they were responsible during their time at the institution.
2 Rules only apply if they serve for 5 years.
3 At the Commission, obligations applying to officials also apply to contract agents if they had access to 'sensitive information'
4 At the Council, former SNEs must inform the Council General Secretariat for 3 years after secondment, of any duties or tasks which could raise a conflict of interest in relation to the tasks carried out during secondment.
5 After office, they cannot be in any way involved in pending or concluded cases which they handled while at the CJEU.
6 After office, they cannot represent parties, in either written or oral pleadings, in cases before the EU judiciary.
7 After office, they cannot be in any way involved in pending or concluded cases which they or their Member handled while at the CJEU.
8 ECA members are alone in the EUIS in having an obligation to complete a declaration of interest when *leaving* office.

INSTITUTION	WHO	COOLING OFF PERIOD[1]	DURATION (MONTHS)	MUST INFORM INSTITUTION OF PROPOSED NEW WORK	FOR HOW LONG AFTER LEAVING INSTITUTION (MONTHS)	CAN INST'N PROHIBIT NEW WORK?
Eurojust	President/National Members	✘	N/A	✘	N/A	✘
European Ombudsman	European Ombudsman	✘	N/A	✘	N/A	✘

ANNEX 4

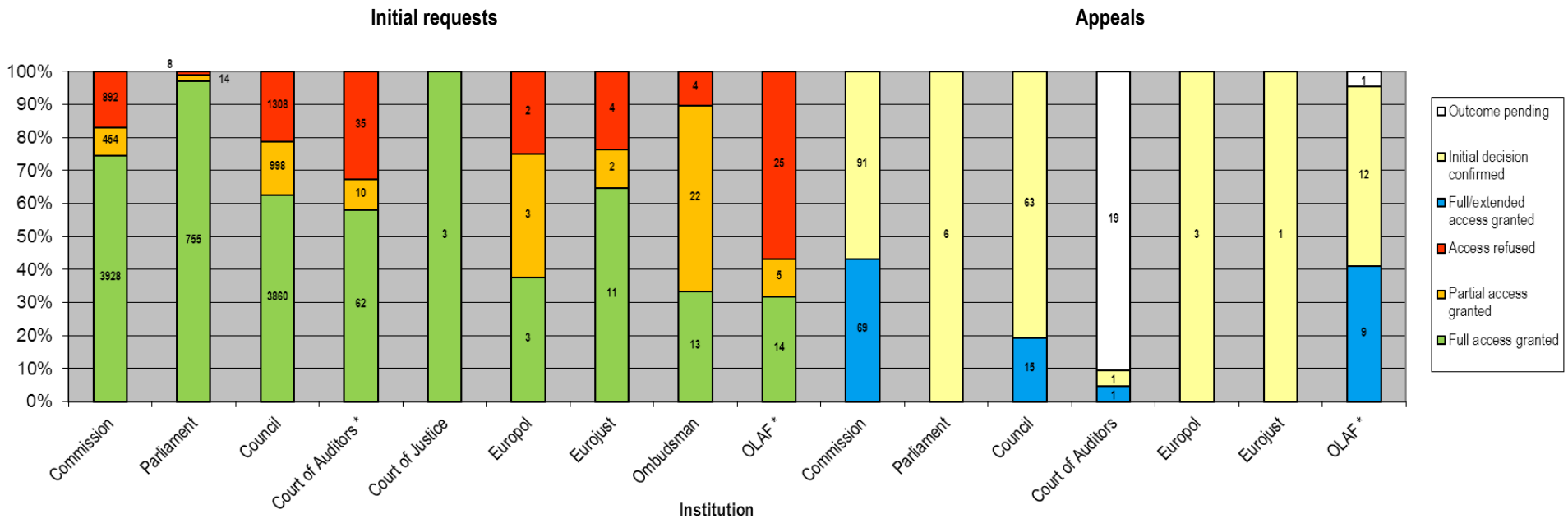
ACCESS TO DOCUMENTS REQUESTS BY INSTITUTION - 2011



(Absolute number of requests indicated on chart. For European Parliament, Council and Europol, number of *documents* requested is indicated. For European Commission, figures relate only to requests dealt with under EC Regulation 1049/2001.)

(NB: Data for the European Court of Auditors and OLAF from 2011 was not made available.)

ACCESS TO DOCUMENTS REQUESTS BY INSTITUTION - 2012



(* Pertaining to requests received from July 2012 to June 2013)

(Absolute number of requests indicated on chart. For European Parliament, Council and Europol, number of *documents* requested is indicated.
For European Commission, figures relate only to requests dealt with under EC Regulation 1049/2001.)

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