



# ONE RULE FOR THEM, ONE RULE FOR US

## Integrity double standards in the European Parliament

This in-depth report is an update to the 2014 Transparency International EU study on the EU integrity system

Transparency International EU (TI EU) is a regional office of the global anti-corruption movement, Transparency International. Working closely with the International Secretariat in Berlin, Germany, TI EU leads the movement's EU-focused advocacy in close cooperation with over 100 national chapters worldwide, but particularly with the 23 chapters in EU Member States. TI EU's mission is to prevent and address corruption and promote integrity, transparency and accountability in EU institutions and in EU internal and external policies, programmes and legislation.

[www.transparency.eu](http://www.transparency.eu)

Authors:

Angels Giménez Bofarull, Leo Hoffmann-Axthelm,  
Matilde Manzi, Vitor Teixeira

Editor: Leo Hoffmann-Axthelm

Design: [www.beelzePub.com](http://www.beelzePub.com)

Photography:

© Cover photo: © Sebastien Pirlet / European Parliament is licensed under CC BY 2.0

Page 8: © Leo Hoffmann-Axthelm

Page 11: © Leo Hoffmann-Axthelm

Page 14: © roma1880 via Pixabay

Page 15: © European Parliament, licensed under CC BY 2.0

Page 16: © LeJC, licensed under CC BY-SA 3.0

Page 18: © Maarten van den Heuvel via Unsplash

Page 19: © European Parliament, licensed under CC BY 2.0

Page 21: © European Parliament, licensed under CC BY 2.0

Page 24: © Steven Lek, licensed under CC BY-SA 4.0

Page 25: © European Parliament, licensed under CC BY 2.0

Page 28: © OlInnu, licensed under CC BY-SA 3.0

Page 29: © Simon Shim via Unsplash

Page 32: © Gerd Altmann via Unsplash

Page 34: © Didier Weemaels via Unsplash

Page 37: © Michael Walter via Unsplash

Page 38: © CherryX, licensed under CC BY-SA 3.0

Page 42: © European Parliament, licensed under CC BY-NC-ND 2.0

Page 44: © JLogan, licensed under CC BY-SA 3.0

Page 46: © European Cyclists' Federation, licensed under CC BY 2.0

Page 47: © BP Miller via Unsplash

Page 50: © Miguel Discart

Page 52: © Nick Fewings via Unsplash

Page 54: © European Parliament, licensed under CC BY-NC-ND 2.0

# ACKNOWLEDGMENTS

---

Any mistakes are the responsibility of the authors alone and do not reflect the views of the members of the advisory group or any other persons consulted externally, either through interviews or our feedback and review process. Members of the advisory group do not bear responsibility for the final text.

Transparency International EU would like to thank everyone who contributed to all stages of the research and preparation of this report. In particular the Senior Advisory Committee composed of:

Mario Monti — Former EU Commissioner and former Prime Minister of Italy

Reinhard Priebe — Former Director, European Commission

Emilio de Capitani — Former Head of the Civil Liberties Committee Secretariat, European Parliament

Jean Paul Jacqué — Former Director in the Legal Service, Council of the EU

Alberto Alemanno — Professor of European Union Law & Policy, HEC Paris

Lisbeth Kirk Iversen — Founder, EU Observer

Monique Goyens — Director General, European Consumer Organisation (BEUC)

We would also like to thank the Editorial Committee from the Transparency International Secretariat

Every effort has been made to verify the accuracy of the information included in this report. All information was believed to be correct as of January 2021. Nevertheless, Transparency International EU cannot accept responsibility for the consequences of this information's use for other purposes or in other contexts.

This project was made possible with the support of:



**OPEN SOCIETY  
FOUNDATIONS**

*This publication reflects the views of the authors only. Project funders cannot be held responsible for any use that may be made of the information contained therein.*

# ONE RULE FOR THEM, ONE RULE FOR US

---

## Integrity double standards in the European Parliament

Acknowledgments.....	1
<b>EXECUTIVE SUMMARY.....</b>	<b>4</b>
<b>POLICY RECOMMENDATIONS.....</b>	<b>6</b>
<b>METHODOLOGY AND LACK OF COOPERATION.....</b>	<b>8</b>
<b>INTRODUCTION.....</b>	<b>10</b>
<b>ADMINISTRATIVE TRANSPARENCY.....</b>	<b>14</b>
Internal structure and functioning.....	15
Politicisation of recruitment .....	18
Access to documents .....	19

<b>LEGISLATIVE TRANSPARENCY</b>	<b>23</b>
Trilogue transparency between Commission, Parliament and Council	24
Lobby transparency	31
<b>ALLOWANCES FOR MEPS</b>	<b>34</b>
General Expenditure Allowance	35
Parliamentary Assistance Allowance	38
<b>ETHICS</b>	<b>41</b>
Reform of the Rules of Procedure	43
Revolving doors	44
Side-jobs	45
Conflicts of interest	47
Sanctions and the Advisory Committee	48
Rules for EP staff	51
Whistleblowing rules	51
Endnotes	57
List of abbreviations	65

# EXECUTIVE SUMMARY

---

The European Parliament is the EU institution closest to citizens. But this does not make its policies on transparency and integrity sufficient to ensure citizens' representatives are accountable.

This report is an in-depth review of Parliament's transparency in terms of administrative and legislative procedures, lobbying, and integrity rules governing conflicts of interest, revolving doors, side-jobs for MEPs and staff, as well as internal whistleblowing rules.

The study provides an update after Transparency International EU's 2014 assessment of the EU integrity system and comes as part of a three-part series encompassing the European Commission, the Council of the EU, and the European Parliament.

Unlike the Commission and Council, Parliament did not cooperate with our research team and refused staff interviews. This goes hand in hand with one of our findings: A lack of accountability of Parliament's central administrative decision-making organs – the Secretariat-General and the Vice-Presidents in the Bureau – towards the Plenary, composed of all Members of the European Parliament.

**Allowances and benefits:** One example of this **lack of transparency on administrative matters** is decisions about allowances and benefits, which include a generous allowance for a constituency office paid as a lump sum regardless of the existence of such an office, and without any audit requirements. Access to document requests on this are rejected with reference to the need to protect the institution's decision-making process, but due to the conflict of interest inherent to MEPs allocating public funds to themselves, greater public scrutiny must be afforded.

**Legislative transparency:** We note that the vast majority of documents produced by Parliament are made available proactively. However, the document

register and Parliament website remain unwieldy. We find the EP's Legislative Observatory is better than the document registers of any of the three institutions at displaying documents relevant to a legislative procedure. This should be improved upon with a speedy implementation of the joint legislative database which had first been agreed with the Commission and Council in 2016, but which is still under development.

**Trilogues:** Our case study 'Lost in Triangulation' comprehensively sheds light on this opaque and informal legislative procedure that has become the EU's 'new normal'. We underscore the urgency to make available four-column documents – which track negotiating progress between the co-legislators – during Trilogue meetings, as well as detailed information on upcoming meetings, to ensure that the EU legislative procedure conforms to legal standards on transparency and democratic participation as set out in the Treaties, in secondary legislation, and in case-law.

**Lobby transparency:** Recent improvements in lobby transparency are significant. Since 2019, MEPs entrusted with a specific institutional role have to publish their lobby meetings. This means Committee Chairpeople, rapporteurs and shadow rapporteurs – the latter have a leading role in the drafting of parliamentary reports – must publicly disclose lobby contacts. Unfortunately, implementation of this requirement is still incomplete, lobby meetings are not conditional upon registration with the EU Transparency Register, and meetings are not displayed on the pages of the relevant legislative procedure.

**Side-jobs:** Although there were improvements on the transparency of MEPs' side incomes, who are no longer allowed to moonlight as paid lobbyists while representing citizens, some descriptions of side gigs are too generic. An MEP making money as 'consultant', 'attorney' or 'freelancer' may or may

not have clients in the sector they are legislating on. These activities generate significant income, some earn more on the side than they do for their full-time job as MEP. We also note with concern that the detection of potential conflicts of interest does not reliably lead to MEPs being removed from a file, in spite of pressure from journalists and civil society. To avoid this, rapporteurs should undergo a specific conflict of interest check before being appointed to a legislative file.

Sanctions: Generally, sanctions for breaches of the Rules of Procedure or the Code of Conduct are rare, and mostly limited to misappropriation of allowances. While checks on this have increased, leading to funds being recovered by Parliament, an MEP promoting a financial product's compliance with a regulatory framework he himself shepherded through Parliament as rapporteur carried no consequences, even after failure to disclose his connection to the people selling said financial product.

Additional issues pose risks with regard to MEPs' integrity:

- ▶ There are no systematic checks of financial declarations;
- ▶ Existing whistleblowing protections for parliamentary assistants do not work in practice as their employment depends on the relationship of trust with their MEP;
- ▶ MEPs receive a transitional allowance, but do not have any corresponding cooling-off periods preventing them from directly moving on to use their insights and contacts in the private sector;

- ▶ Sanctions for breaches of the Rules of Procedure and Code of Conduct are very limited, as is transparency of any investigations into misconduct;
- ▶ The Advisory Committee on the conduct of Members is advisory only, meaning it cannot take the initiative to investigate breaches. It is composed of MEPs with many other priorities, who are generally overworked;
- ▶ Ultimately, decisions on sanctions fall to the President of the European Parliament, making the integrity standard upheld by the institution dependent on their willingness to enforce the rules.

The shortcomings identified in the integrity framework for MEPs pose a significant risk that the misconduct of individuals will lead to scandals that will adversely affect citizens' trust in the institution as well as in the EU as a whole.

The past five years have seen some significant improvements. However, some crucial information for citizens to hold their elected representatives to account is still exempt from transparency. Parliament should not hide behind its definition of the 'freedom of the mandate' to resist increased transparency on lobby meetings, or to report MEPs' attendance rates in Committee and Plenary meetings.

To fulfil its mission as the directly elected representative of citizens the EP must hold itself to a higher standard. This is particularly true for its role in holding other EU institutions to account and safeguarding the democratic legitimacy of the Union.

# POLICY RECOMMENDATIONS

---

## Administrative transparency

- ▶ The Bureau should be made formally accountable to the Plenary of the EP. Resolutions voted by the Plenary should be binding on the Bureau.
- ▶ Documents released through access to document requests should be made systematically available via the EP document register.
- ▶ Documents related to Bureau decision-making should be made proactively public, in particular as regards Secretary-General Notes.
- ▶ Complete the development of the joint legislative database with the Commission and the Council, based on the Legislative Observatory of the EP.
- ▶ Periodic “*passerelles*” for personnel from the Political Groups to become statutory members of the EP General Secretariat should be made open and transparent, in line with the principle of good administration.

## Trilogues

- ▶ Ensure Trilogues are compliant with Court rulings and revise the “Better Law-Making Interinstitutional Agreement” and the “Joint declaration on practical arrangements for the codecision procedure”.
- ▶ Create a joint legislative database with the Council and the Commission.
- ▶ Publish a road map for all planned Trilogues once they have been set, as well as agendas and participants prior to each Trilogue meeting and summaries after each meeting.
- ▶ Ensure publication of four-column-documents before each Trilogue meeting.

## Lobby transparency

- ▶ Establish a mandatory lobby register for the Parliament, Commission and Council, in which direct and indirect lobby activities are covered.
- ▶ Require that EU policy-makers, including MEPs, only accept meeting requests from registered lobbyists. Publication of such meetings should be mandatory. Published meetings must state which specific file or files were discussed and give the official names of organisations present, as registered in the Transparency Register.
- ▶ Published data should be available in a centralised website, available in a machine-readable format and linked to other relevant websites and datasets, such as the Legislative Observatory and the Transparency Register.

## Allowances for MEPs

- ▶ DG Finance should carry out an annual spot check of GEA expenditures for at least 15 per cent of MEPs.
- ▶ The Bureau should oblige MEPs to carry out an external audit of the GEA through mandatory earmarking of either the GEA or PAA for that purpose.
- ▶ The GEA should no longer be paid as a lump sum, new rules should more clearly stipulate that unused GEA funds must be paid back to Parliament.
- ▶ Parliament should publish more detailed information on the staffing arrangements of individual MEPs, including details of contracts (part-time or full-time, duration of the contract), as well as descriptions of the service provided regarding service providers.

- ▶ Parliament should introduce more stringent compliance monitoring mechanisms to ensure that the local assistants' contractual schemes are not open to fraud and misuse.
- ▶ Parliament should publish in a timely fashion the number of times and dates an individual MEP claims this subsistence allowance. This attendance information and corresponding annual expenditure data should also be published in machine readable format.
- ▶ For the vetting of Commissioner-nominees, declarations of financial and other interests should be vetted by the Legal Affairs Committee, based on an assessment by the proposed Independent Ethics Body. Sufficient time, resources and independent expertise should be made available.
- ▶ Monitoring and sanction mechanisms should be strengthened.
- ▶ Intensify trainings for new staff and managers to increase the awareness of ethics rules, and further develop ethics guidance, including real-life examples on conflicts of interest.

## Ethics

- ▶ Introduce cooling-off rules for MEPs for as long as they receive a transitional allowance.
- ▶ Declarations of outside activities should be made available on the website in machine-readable format. Spot checks for veracity and completeness should be performed by parliamentary services.
- ▶ Appointments of rapporteurs should include a specific conflict of interest check by the Committee concerned with regard to the legislative file at hand.
- ▶ MEPs who declare generic activities such as 'consultant' or 'attorney' should make detailed declarations as regards the type of service provided and whether it relates to EU policy making.
- ▶ A revision of the EP's internal rules should bring current the whistleblower protections in line with the provisions of the 2019 directive, with special emphasis on protecting vulnerable staff classifications such as MEPs' accredited parliamentary assistants and interns.
- ▶ Anonymous reporting should be allowed, as it is in the Commission, and confidentiality should be properly guaranteed.

## Independent ethics body

- ▶ In the medium term, all the above monitoring, support functions and sanction mechanisms should be the remit of a well-resourced and independent EU ethics body common to all three EU institutions.

# METHODOLOGY AND LACK OF COOPERATION

---

In 2014, Transparency International EU published the first overall assessment of the EU's integrity system, based on the National Integrity System (NIS) assessments. This aimed to evaluate the strengths and weaknesses of the formal integrity framework of different institutions and then assess its use in practice with a view to making recommendations for improvement. The NIS framework looks at 13 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. Accordingly, the 2014 study – the EU Integrity System (EUIS) – analysed the 10 main EU bodies dealing with integrity, namely the European Parliament, the European Commission, the Council of the EU, the European Council, the Court of Justice of the EU, the European Court of Auditors, the European Anti-Fraud Office (OLAF), Europol, Eurojust and the European Ombudsman. This was intended as a base-line assessment, which we now complement with a more in-depth look at the main EU institutions.

In the intervening years, a number of reforms have been made within all three institutions, concerning transparency and ethics regulations. Debates on the *Spitzenkandidaten* process, the political nature of the Commission and the associated accountability relationships have evolved, and the focus on inadequate legislative transparency of the Council has intensified. It is therefore time to provide an update on the three main EU institutions.



The present report is one of three updated studies Transparency International EU is publishing in 2021, providing a deeper analysis of the transparency, accountability and integrity of the EU's three main institutions: the European Parliament, the European Commission and the Council of the EU. These studies focus on reforms of the few past years and make recommendations about how to improve the legitimacy of decision-making, focusing on transparent procedures, participative democracy, and an effective management of conflicts of interests.

The studies do not follow the methodological framework of the National Integrity System.<sup>1</sup> Instead they focus on the areas central to the analysis of transparency, integrity and accountability, zooming in on the reforms that have taken place and providing recommendations for further improvement. This is based on a review of the academic literature, desk research and interviews with policy-makers. Unfortunately, and in spite of our best efforts to win the cooperation of the European Parliament, including meetings and assurances exchanged with the cabinets of both the Secretary-General and then-President Antonio Tajani, the institution decided to decline our requests for interviews and barred parliamentary staff from talking to our researchers, referring us to the decision taken in 2014 under then-President Martin Schulz.

We were therefore denied the opportunity to speak to the Secretariat and civil service running the institution, including its specialised functions on transparency and integrity. This would seem to undermine parliamentary self-image as an

accessible, democratic institution with nothing to hide. We tried to compensate for this lack of cooperation by the Parliament with access to document requests, notably on internal procedures and MEP allowances, but with limited success. Instead, we interviewed a number of Members of the European Parliament and EU staff from the European Ombudsman's office.

Any mistakes are the responsibility of the authors alone and do not reflect the views of the people who have been consulted externally, either through interviews or our feedback and review process.

Transparency International EU would like to thank everyone who provided input, feedback and comment on this study, in particular our colleagues in the International Secretariat in Berlin and the members of the project's Advisory Group:

- ▶ Mario Monti — *Former EU Commissioner and former Prime Minister of Italy*
- ▶ Reinhard Priebe — *Former Director, European Commission*
- ▶ Emilio de Capitani — *Former Head of the Civil Liberties Committee Secretariat, European Parliament*
- ▶ Jean Paul Jacqu  — *Former Director in the Legal Service, Council of the EU*
- ▶ Alberto Alemanno — *Professor of European Union Law & Policy, HEC Paris*
- ▶ Lisbeth Kirk Iversen — *Founder, EU Observer*
- ▶ Monique Goyens — *Director General, European Consumer Organisation (BEUC)*

# INTRODUCTION

---

The European Parliament began life in 1951 as the Common Assembly of the European Coal and Steel Community, composed of national Members of Parliament. With the founding of the European Economic Community in 1958, the European Parliamentary Assembly was set up, and renamed as the European Parliament already in 1962. Quite separate from other, consultative and non-legislative bodies such as the North Atlantic Treaty Organization (NATO) Parliamentary Assembly or the Parliamentary Assembly of the Council of Europe (PACE), it developed over time into a proper supranational parliament, with its first direct elections held in 1979 – the year when Simone Veil was elected as the EP’s first female President.

The EU Treaties have established the European Parliament (EP) as one of seven European Union (EU) institutions. The European Parliament is one of the three legislative institutions, along with the European Commission and the Council of the EU. Together, the Council and Parliament are the EU’s co-legislators that adopt EU-wide legislation on the initiative of the European Commission.

To date, the EP remains the only directly elected EU body. The Council is indirectly elected, in that citizens only vote for one out of 27 governments and cannot vote for the Council Presidency, whereas the Commission is composed of Members nominated by each Member State, and its Presidency is voted for by the European Parliament upon a nomination by the European Council. This direct relationship to the European voter has many practical consequences for accountability, and has made the EP the main element for the reduction, over time, of the EU’s democratic deficit.

Beyond direct elections, the EP is the institution that is closest to voters in other ways, too. According to the Treaties, it must afford citizens the opportunity to address “a petition to the European Parliament on a matter which comes within the Union’s fields of activity and which affects him, her or it directly”,<sup>2</sup> which it does through its Petitions Committee. By virtue of its parliamentary nature – convening experts on topics in public debate, within Committees or in Plenary – it is also the natural public forum of the EU, integrating the views of national leaders, diverse civil society actors including non-governmental organisations, think tanks and academia, business and sectoral associations, trade unions and other social partners, company representatives and foreign dignitaries.

As more and more powers have been transferred to the European level, the legitimacy of decisions taken by the EU became a more pressing concern, compared to earlier times when national governments were able to sort things out amongst themselves in the Council, with the Parliament as a mere advisory body. The need for increased democratic legitimacy at the EU level, as well as Parliament’s own ability, time and again, to make its voice heard, have led to incessant increases in the powers of the European Parliament with each revision of the EU’s Treaties, and in the interpretation and application of the powers set out in the Treaties. Parliament also plays an important role in the appointment and election of many EU posts, including the Commission President, the College of Commissioners as a whole, the European Central Bank (ECB) President, Members of the European Court of Auditors, the European Ombudsman and many more positions across the EU’s institutions, agencies and other bodies.



A fragment of the Berlin Wall facing the European Parliament in Brussels

Today, most legislative procedures at the EU level give an equal weight to the Parliament and to the Council. Formerly known as the ‘co-decision procedure’, due to the need for both institutions to agree on a legislative text for an act to be adopted, the 2009 Lisbon Treaty renamed this procedure as ‘Ordinary Legislative Procedure’ (OLP). This reflects the fact that only some exceptions exist to Parliament’s co-decision – notably the ratification of international treaties negotiated by the EU, as well as topics requiring unanimity among national governments in the Council, i.e. taxation, defence and foreign policy.

In the rare cases when legislation is passed on those topics, the Treaties<sup>3</sup> foresee the so-called Consultation procedure. Here, the legislative

initiative still resides with the Commission, the Council decides, but the EP has to provide an opinion, in which it may suggest amendments, without being able to amend the proposal itself, however. There have been attempts by Parliament to stall such procedures by not providing an opinion at all, which the Court of Justice of the European Union (CJEU) struck down with reference to the obligation of sincere cooperation. Conversely, the Council may not adopt a decision without first receiving Parliament’s opinion.<sup>4</sup>

For the ratification of international treaties, including in the case of the Brexit withdrawal agreement under Article 50 of the Treaty on European Union (TEU) and EU enlargement decisions, the Consent procedure is used (formerly known as the assent procedure).<sup>5</sup> The EP may not amend these treaties, but it has the right of veto and can therefore set out its concerns or conditions for approval in advance. The occasional use of the veto<sup>6</sup> strengthens the EP’s prerogatives, leading to a better inclusion of the EP notably during the Brexit negotiations – with all Groups within the EP appointing coordinators and receiving regular briefings from EU Brexit negotiator Michel Barnier, in contrast to the British parliament, where the House of Commons first fought for the right to a “meaningful vote” on the ratification of a Brexit Withdrawal Agreement in the UK Supreme Court.

## A working parliament

The European Parliament is a ‘working parliament’, meaning it actively drafts amendments and legislation.<sup>7</sup> This is in contrast to many national parliaments in parliamentary democracies, where parliamentary majorities are required to form a stable government, the parliamentary assembly is called to play a more limited legislative role. Typically, draft legislation originates from the executive – as is the case in the EU, with the Commission having the legislative initiative – and receives the support of parliamentary factions by virtue of a more or less formalised coalition agreement. This usually means that the technical work of drafting legislation is outsourced to technocrats in ministries, limiting the role of parliament to minor modifications, and general oversight of the government.

Under such circumstances, coalition agreements and party discipline can reduce the salience of the constitutionally mandated function of parliaments, given that governing parties will typically vote in favour of any proposal from the government, and vote down proposals from the opposition. The EP, on the other hand, is organised into political groups mediated by European Political Parties, which in turn are formed from many different national parties that are much too diverse to reliably enforce voting along party lines, and transcended by the often diverging interests of national parties.<sup>8</sup> This means that majorities must usually be sought for every vote or legislative file, leading to a more active deliberation of arguments in favour or against various positions. While so far the European People's Party (EPP) Group and Progressive Alliance of Socialists and Democrats (S&D) Group have always held a majority between them, as of 2019, no two parties will be able to pass votes on their own, further strengthening the need to seek compromise across the EP's political groups.

The EP has growing but limited powers to drive the legislative agenda, meaning that, unlike normal parliaments, it does not have the right of initiative. It can only put forward legislative proposals on a few areas concerning *inter alia* its own organisation,<sup>9</sup> and since the Lisbon Treaty it can also initiate the process for treaty change. However, the European Commission retains an almost exclusive right of initiative for legislative proposals. Parliament can merely issue calls on the Commission to make a legislative proposal, via its non-binding 'own-initiative reports' (so-called INIs).<sup>10</sup>

While these INI reports are non-binding, the Commission has to justify when it chooses not to act on a proposal.<sup>11</sup> It has become more difficult for the Commission to turn down parliamentary initiatives since former President Juncker has repeatedly emphasised his allegiance to the EP, which 'elected' him via the so-called *Spitzenkandidat* process.<sup>12</sup> As a candidate for the Commission Presidency, Manfred Weber, leader of the EPP Group in the EP, stated that he would regard parliament's INI-reports as binding when it comes to producing legislative proposals as Commission President.

Upon her nomination for the role of Commission President by the European Council, Ursula von der Leyen stated her support for a right of initiative for the EP in her political guidelines.<sup>13</sup> Another example of the strengthening of the EP's agenda-setting role is its involvement in the development of the Commission's annual work programme, the modalities of which were decided between the two institutions in an agreement that is binding on the institutions, but does not have the force of law.<sup>14</sup> The debate on granting the EP the right of initiative on the occasion of the next Treaty change continues.

## Accountability of MEPs

The direct election of Members of European Parliament (MEPs) by citizens brings with it a very specific model of accountability. Parliament has the legitimacy to hold other institutions, bodies, and actors to account by virtue of its direct democratic legitimacy. At the same time, this legitimacy also stems from the relationship between parliamentarians and their voters. How well does parliamentarians' accountability towards voters function? To be able to form an opinion on their elected representatives, voters need public transparency about the activities of individual MEPs. Some of this information is available: MEP profiles on the EP website display prominently every Member's plenary speeches, number and content of legislative and other reports, parliamentary questions and more, giving an overview of the Member's activity. However, there is no data at all on their attendance rates, no easily accessible record of votes cast,<sup>15</sup> nor is there a requirement to publish meetings with lobbyists, except under specific circumstances.

Parliament defends the right to secretly meet with even unregistered lobbyists based on the rather extended interpretation of "free and independent mandate", as enshrined in the Act of 20 September 1976 concerning the election of the representatives of the Assembly by direct universal suffrage,<sup>16</sup> the Member's Statute<sup>17</sup> and the Parliament's Rules of Procedure (see section Lobby transparency).<sup>18</sup> It seems problematic to interpret this freedom

as a reason to resist greater transparency and undermine efforts to ensure all lobbyists register their activity.<sup>19</sup> To the extent this independent mandate is based on the direct democratic legitimacy conferred by EU voters, voters should also have access to the necessary data to make an informed choice when holding their MEPs to account via their electoral decisions.

After steadily declining since the first direct election of the EP in 1979, voter turnout increased overall for the first time in the 2019 election, with more than 50 per cent of voters taking part (up from 42 per cent in 2014), although turnout remained stable or even fell further in some countries. While the increase is encouraging, turnout is still worryingly low and research suggests voters continue to view EU elections as predominantly second-order,<sup>20</sup> meaning they present an opportunity to give indirect feedback to national parties, with EU election campaigns almost invariably dominated by domestic issues.

Unusually for a parliament, the EP cannot determine all of its rules. A series of fundamental determinations are made in the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU), which the Parliament itself cannot amend. The EP has the right to participate in the European Convention, which has the power to change the Treaties, pursuant to Article 48(3) TEU. But ultimately, treaties are

negotiated and adopted by the Member States. The most tangible, dramatic consequence is that the EP must have its primary seat in Strasbourg, while its Secretariat must be headquartered in Luxembourg. The Treaties also dictate that some decisions, e.g. the EU's budget, must be adopted in Strasbourg, where 12 plenaries per year must be held. One-day 'mini-plenaries' are held in Brussels. Plenary sittings can also be convened extraordinarily by a majority of MEPs, or even by outside institutions, i.e. the Commission or Council.<sup>21</sup>

### BOX 1: Parliamentary immunity

MEPs have immunity pursuant to the EU Treaties, specifying their right to travel freely across the EU, and 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".<sup>22</sup> Member States are required to offer MEPs the same level of protection as national MPs, leading to a divergence across EU states. Immunity does not extend to situations where an MEP is "found in the act of committing an offence"<sup>23</sup>, which would seem to severely limit immunity. The EP plenary has the right to waive the immunity of its members.<sup>24</sup>

# ADMINISTRATIVE TRANSPARENCY

---

Institutional openness, and transparency more specifically, as well as access to documents in particular, are among the foundational principles of the EU.<sup>25</sup> However, the EU Treaties introduce a distinction between administrative and legislative transparency. Article 15(3) TFEU specifically foresees a higher degree of transparency for any meetings and documents that are of a legislative nature, while limiting the transparency requirements for some institutions – the European Central Bank, European Investment Bank and Court of Justice of the European Union (CJEU) – to administrative documents held by them.<sup>26</sup> As the Access to Documents-Regulation CJEU case law<sup>27</sup> clarify, this distinction is intended to increase legislative transparency, rather than be used as an excuse to reduce administrative transparency.

Transparency is a key tool to ensure the proper functioning of public institutions, to help spot and manage conflicts of interest, safeguard the public interest, and prevent corruption. This necessarily includes administrative transparency on everything from the functioning, mandate and hierarchy of internal bodies, selection procedures for staff and leadership positions, transparency of the allocation of funds and awarding of contracts, as well as effective mechanisms to identify, manage or mitigate conflicts of interest or abuse of power.

This chapter will look into the EP's administrative transparency, including its internal setup and the transparency of internal (non-legislative) decision-making, with a dedicated section on the EP's approach to access to document-requests. The next chapter will look into legislative transparency more specifically. While also a part of administrative transparency, the various allowances for MEPs are also dealt with in a separate chapter.



The vast majority of parliamentary documents is proactively published, but this is not the case for administrative files

## INTERNAL STRUCTURE AND FUNCTIONING

The European Parliament is composed of an administrative arm staffed by permanent officials (the Secretariat), and a political arm composed of its Members, Members' staff and the Political Groups, which employ their own staff but also form part of the Parliament.

### EP Secretariat

The Secretariat is composed of permanent officials, selected, as a rule, by the European Personnel Selection Office (EPSO), a standardised procedure for the recruitment of EU staff. Other categories, such as temporary and contract agents, seconded staff (from Member States) and trainees, also form part of the Secretariat. They are the administrative backbone of the institution and should be politically neutral.

The Secretariat is subdivided into a number of Directorates-General (DGs), some dealing with internal or external policies, others focused on communications, building maintenance, visitor services and other logistics, spread over Brussels and Strasbourg, as well as administrative buildings in Luxembourg. With over 3,000 members of staff, the EP has a rather large administration for a Parliament. The size is in part due to the nature of the EP as a 'working parliament', which actually drafts amendments to legislation and therefore needs to retain very specific expertise.

The capacity of EP staff to provide briefings and substantive input to MEPs and Committees was increased with the introduction, in November 2013, of the European Parliamentary Research Service (EPRS). This could be described as an 'in-house think tank' and is again subdivided into thematic areas.

The policy Directorates broadly mirror the EP's Committees, ensuring that even with regular turnover of the Members of the European Parliament, institutional memory and expertise is retained. Each Committee is managed by a



President of the European Parliament David Sassoli (centre) with European Commission President Ursula von der Leyen and European Council President Charles Michel

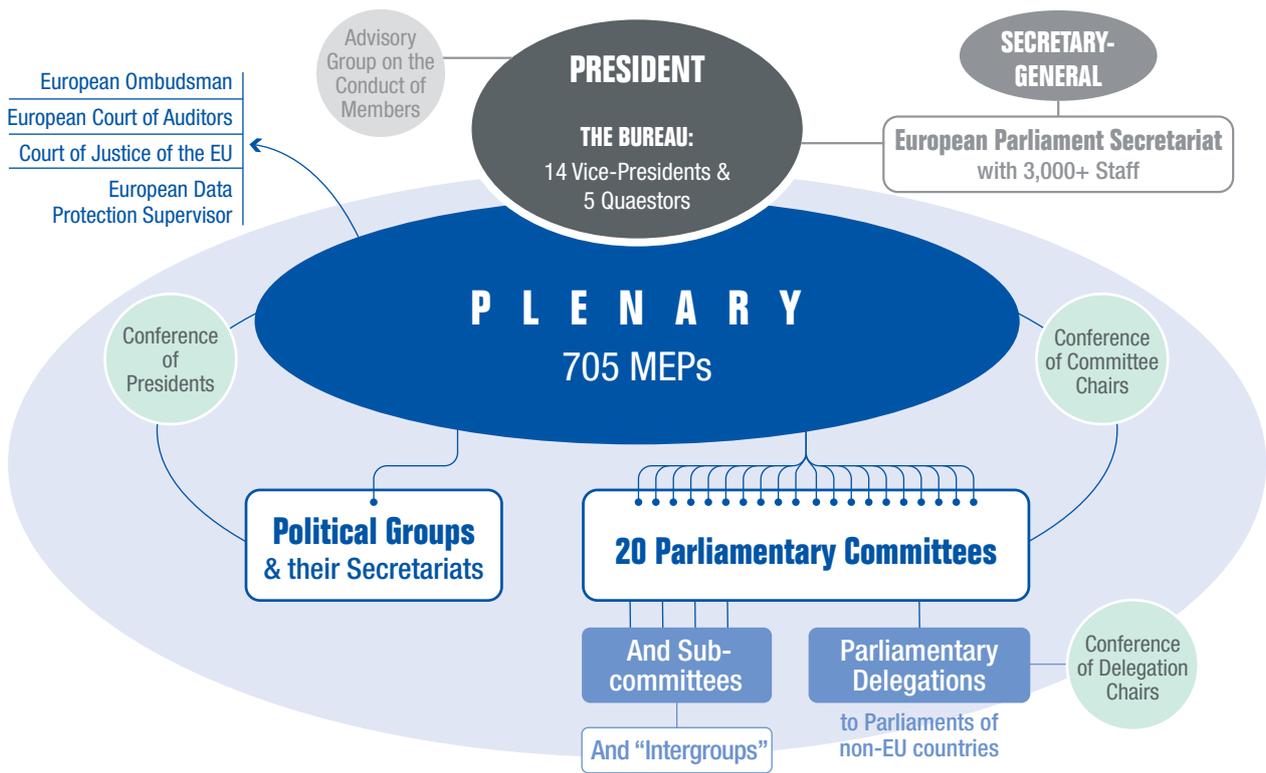
Committee Secretariat of around 10 staff, which works closely with the MEP elected as Committee Chair and their deputies, with most Political Groups able to appoint a Vice-Chair. The Groups will also appoint a coordinator, who follows the files in the Committee on behalf of the Group, with the support of staff from their Political Group (Committee Advisers) and their own assistants.<sup>28</sup>

The Secretariat is led by a Secretary-General. Since 2009 this post has been occupied by Klaus Welle, who was previously working for the political arm of the EP, as Secretary-General of the EPP's Political Group. The SG is formally accountable to, and elected by, the Bureau.

### The Bureau

The highest administrative decision-making organ of the EP is the Bureau (BUR). It is composed of the President of the European Parliament, all 14 Vice-Presidents (VPs) and five so-called Quaestors (without a vote). It is attended by the EP's Secretary-General. The number of VPs per Political Group reflects the share of votes in the plenary.

The Bureau may determine the "organisational and administrative decisions on matters concerning the internal organisation of Parliament, its Secretariat and its bodies",<sup>29</sup> implying far-reaching powers for the Bureau as administrative executive within



Internal organisation of the European Parliament

the EP. In practice, there appears to be limited oversight of the EP’s Secretariat and the SG in particular, due to several factors. Firstly, the SG has considerable agenda-setting powers,

usually preparing a menu of options for the Bureau to choose from. Secondly, it is not clear how far Bureau members probe the implications of these decisions, given that administrative decisions are not necessarily at the top of their agenda. Compounding this point, the two largest parliamentary groups have so far always held a majority of votes between them, meaning that agreement of other political groups was not required. Thirdly, the accountability of Bureau members to their own political groups is unclear or at least uneven. Every political group handles this relationship differently; ideally, Bureau members should discuss Bureau agenda items with MEPs from their Group before each Bureau meeting. Yet even in those Political Groups where such discussions of Bureau-topics are regularly held, regular MEPs’ interest in the Bureau’s administrative decisions is limited, leading to lack of oversight.

In practice, this leads to a lack of accountability of the Bureau. In some cases, MEPs vote in favour of specific decisions in plenary resolutions, without



Parliament is the EU institution most accessible for citizens

the Bureau instructing the EP administration to implement those decisions voted for by the Plenary of the EP. One example for the Bureau not faithfully implementing resolutions by the Plenary concerns the release of documents on the General Expenditure Allowance. On 28 April 2016, the Plenary called on the EP “to make available the agendas and feedback notes of the meetings of Committee coordinators, the Bureau and the Conference of Presidents, as well as, in principle, all documents referred to in these agendas, in accordance with the provisions of Regulation (EC) No 1049/2001, by publishing them on the Parliament’s website”.<sup>30</sup> This was a call that was repeated specifically in another EP resolution on 14 September 2017.<sup>31</sup> Agendas and minutes are proactively published,<sup>32</sup> but the substantive documents prepared for the meetings and referred to in the agendas are not.

## Conference of Presidents and Conference of Committee Chairs

While the Bureau is in charge of administrative decisions of the EP, the highest political decision-making organ is the Conference of Presidents, which is made up of the MEPs elected as leaders of their respective Political Groups, i.e. the chairpeople of the parliamentary factions, along with the President of Parliament and a representative of the non-attached MEPs (the so-called *non-inscrits* or NI), the latter chosen upon invitation of the President, but without the right to vote.

The Conference of Presidents (CoP) meets approximately twice per month and is mainly known for its power to set the agenda for plenary sessions, upon a proposal prepared by the Secretaries-General of the Political Groups, in the week before the plenaries are held. The CoP’s duties include important organisational matters such as the creation and allocation of seats in Committees, Committees of Inquiry and Delegations, as well as authorising own-initiative reports (INIs), informally known as parliamentary resolutions.<sup>33</sup>

It is responsible for relations with other institutions, including designating Parliament’s delegations for participation in inter-institutional negotiations.

Among other things, it is also in charge of “organising structured consultation with European civil society on major topics”, which is to be implemented by a VP who is asked to report back to the CoP on such consultations. The CoP “shall endeavour to reach a consensus”, but votes can be taken with each Group chairperson having a voting weight equal to the vote share of their Political Group.<sup>34</sup>

In addition to the Conference of Presidents, two more bodies take on horizontal tasks regarding the organisation of parliamentary work: the Conference of Committee Chairs (CCC) – consisting of all chairpeople of the Committees, as well as the Conference of Delegation Chairs, the analogous body for EP Delegations. The CCC coordinates the allocation of legislative and other files to Committees (usually with a Committee in the lead and other Committees consulted for opinion, as appropriate). These decisions can be of major political importance, and lead to power struggles between Committees and Political Groups, depending on what group holds the Chairperson of the envisaged Committees.

## Political Groups

Groups of at least 20 MEPs from at least seven Member States may form Political Groups together. This is important for MEPs’ access to speaking time, additional resources (e.g. a dedicated secretariat for every Group, including political advisors focusing on the work of MEPs on the various Committees), and access to important roles such as Committee and Delegation Chairmanships, the distribution of other posts such as Vice-Presidents and the allocation of roles as rapporteurs and shadow-rapporteurs, which designates MEPs as leading representatives of Parliament on specific legislative files.

Political Group staff are not permanent parliamentary officials; however, they fall under the EU Staff Regulation and have institutional email addresses. Nonetheless, the EP does not consider their documents to be EP documents in the sense of any obligation to list such documents on the register of documents, nor do they fall under the scope of the access to document regulation.

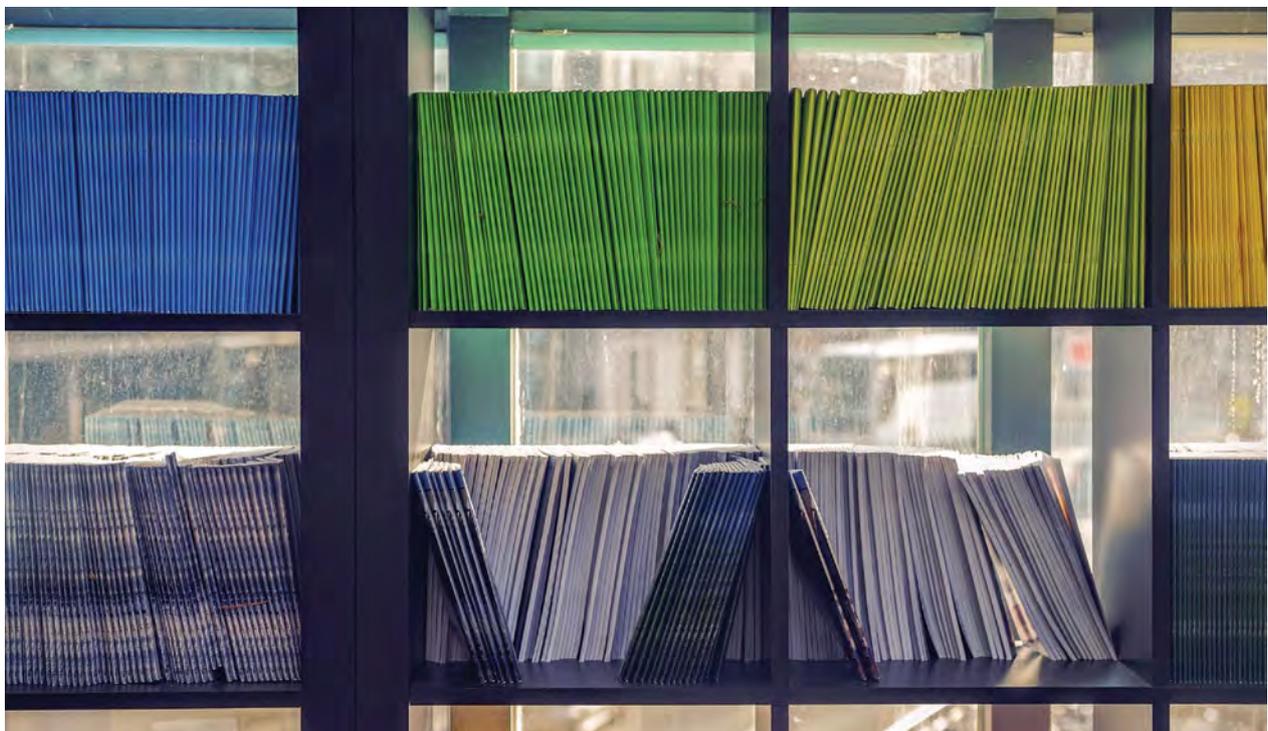
European Parties, often referred to as European party families, are organisationally separate from Political Groups. Party personnel are not EP staff, although the funding for both European parties as well as European political foundations comes from the EU budget.

## POLITICISATION OF RECRUITMENT

Parliament is clearly a highly political institution, where people's representatives deliberate and find compromise through majority vote. While the nature of debates and decisions is political, the decision-making process requires reliance on procedures and staff that are neutral and do not tip the balance in favour or against one political group or another. According to some MEPs we spoke to, the two largest groups in Parliament have, however, over the years ensured that leading positions have been filled with personnel previously working for their political group or party.

Article 234 of Parliament's Rules of Procedure obliges the Secretary-General to undertake his or her duties with "absolute impartiality". This is very strong wording, and difficult to reconcile with the fact that not only the SG, but the majority of Director-General positions, stem from the two large parliamentary groups,<sup>35</sup> which may imply specific party-political loyalties. Until July 2019, the two largest parliamentary groups have consistently held a majority of positions within the Bureau, ensuring their power over such appointment procedures. Dozens of officials from Political Groups were appointed to the EP's administrative staff over the years via a practice called *'passerelle'*. Concerns can be raised about the legitimacy of this practice, which avoids a public competition as required by law<sup>36</sup> and would also seem to be incompatible with the principle of good administration.<sup>37</sup>

Our interviews with MEPs suggest that this situation does have an impact, even when it comes to enforcing the rules incumbent upon MEPs. Since the 2019 EP election, three political groups are required to form an absolute majority in the Bureau, which may in the medium-to-long term lead to



Too many high-level officials appear to be selected due to their political colours

fewer political senior positions, or to a diversification of the number of political groups from which these positions are recruited.

A letter from the EP staff committee, which represents EP staff, goes further in lamenting “the increasing politicization and manipulation” of “senior appointment procedures”. The letter continues to note that if “access to the most senior jobs in our institution derives from shady, backroom deals, political machinations and fast-tracking of favoured individuals who have the right political colours or influential mentors, we demotivate scores of capable colleagues”.<sup>38</sup> In a 15 April 2019 hearing of the Budgetary Control and Legal Affairs committees, another representative of the EP Staff Committee alleges that the allocation of Director-General posts, Director posts, as well as “positions further down the line end up in shady, package deals”, regularly.<sup>39</sup> It is further alleged that, for over 75 per cent of senior level appointments, the outcomes are widely known before the selection procedure, with the appointment of members from the President’s cabinet or individuals well-connected with the main political groups or the highest administrative ranks.

This is said to lead to a massive loss of confidence in the selection procedure and demotivates staff, who, according to internal surveys, allegedly feel excluded from career progression and are managed by senior managers who have not undergone a meritocratic selection procedure. The staff committee representative notes that, while some of the appointees may still be good managers, the manner of their appointment limits their independence, as their career progression may go hand-in-hand with the requirement of loyalty or political favours.<sup>40</sup> Finally, in the public committee hearing, the staff committee alleges that external publication of posts is used to side-step requirements of professional experience, noting they “cannot recall any instance of an externally appointed candidate [who] was not already a staff member”, albeit at lower level than required for the intended senior post. It is further alleged that positions are only posted in the Official Journal and not widely advertised, limiting the number of candidates, and that interviews are not conducted according to best practices.

An independent study prepared for the committee on budgetary control also notes that “there is no doubt that significant problems continue to occur, in the context of [senior level officials’] appointments, with regard to implementation of the Staff Regulations and more general rules of EU administration law”.<sup>41</sup> Parliament had commissioned this study in the wake of its sharp criticism of the procedure for the appointment of Martin Selmayr as Secretary-General of the European Commission,<sup>42</sup> conversely creating heightened interest in the way senior staff are selected in Parliament. It seems clear to us that urgent action is needed to bring hiring practices at the EP, in particular for management positions, into line with the requirements of applicable law, in particular the EU Staff Regulations and EU Treaty in principles on good governance and an open and accountable administration.

## ACCESS TO DOCUMENTS

A number of documents have to be published proactively by the EP, including agendas, minutes, texts adopted, amendments from committee and plenary meetings, plenary attendance lists, MEP declarations of interest and lists of their accredited assistants.<sup>43</sup> While legislative documents must be registered as soon as they are tabled,<sup>44</sup> the



It has been particularly difficult to release internal notes on parliamentary administration and expenses

EP Secretary-General has discretion over the registration of administrative documents (i.e. all non-legislative documents).<sup>45</sup>

The EP administers a large website that got a recent makeover in 2018 and is available in all 24 official languages of the EU. The website has a focus on news and current developments from the EP, including large quantities of Committee, plenary and press conference recordings. The Legislative Observatory gathers information on legislative files, although going through it requires some expertise (see the chapter on 'Legislative transparency'). Nevertheless, the legislative observatory brings together documents on a single legislative file, including documents from the Commission and sometimes the Council. This is currently a best practice which we would like to see adopted for the proposed joint legislative database to be developed by the Commission, Parliament and Council.<sup>46</sup> The EP website also brings together documents that have to be published proactively, such as annual reports, the EP's budget, legislative files, its Rules of Procedure, EP policies e.g. on harassment, as well as summaries of rules governing MEPs' salaries, expenses and allowances (see chapter on 'MEP allowances').

Documents can be searched via a register,<sup>47</sup> which as of 2019 contained 750,000 documents, and over four million taking account of translations.<sup>48</sup> There is also a standardised interface for the petitioning of unpublished documents, via access to document-requests. In addition to a keyword search, documents can be searched by type, including a category grouping documents disclosed via access to document-requests (denoted as "in the framework of Regulation (EC) No 1049/2001"). However, this section does not appear to be automatically updated, as the number of documents is much lower than those disclosed on a yearly basis via document requests (see below). Spot checks showed that specific documents disclosed on Asktheeu.org in 2020 were not displayed, either. Publication of documents released pursuant to an access request should be automated to ensure consistency.

## Access to Documents Regulation

Like many national legal systems, the EU has 'freedom of information' provisions obliging institutions to publish specific documents and enabling members of the public to petition the release of documents held by the institutions, including a detailed process with specified timelines within which the institutions must respond. In the case of the EU, access to documents (*not* information) is a Treaty-based right.<sup>49</sup> The details have been codified since 2001, in Regulation No 1049/2001. This regulation binds primarily the main EU institutions – Commission, Council and Parliament, but all other EU bodies also have to adopt their own transparency policies in accordance with the same regulation and, importantly, with the exceptions to access stipulated therein.

The regulation sets deadlines by which an answer has to be provided (15 working days, which can be extended by the institution), and lists the exceptions that allow requests to be rejected. The EP notes in its latest report that about 20 per cent of requests in 2018 related to "all documents containing information on" a subject, a process which the EP describes as "usually quite time-consuming".<sup>50</sup> In our experience, even for very specific requests, responses usually did not come on time when the EP rejected the request, presumably due to the need to draft the legal justification for a rejection.

The number of access to document requests received by the EP has been steadily between 400 and 500 over the years 2014-18. However, it appears most document requests are made for previously published documents, in stark contrast to the Commission and Council. It seems likely that a greater share of documents is public to begin with, due to the legislative nature of much of the EP's work. Nevertheless, it also means many users are not finding what they are looking for.

Almost half of non-public documents requested concerned Trilogue negotiations,<sup>51</sup> a focus that reportedly grew significantly following the *De Capitani v European Parliament* Court ruling, with the EP beginning to release all four-column documents requested (see case study on Trilogues under Legislative Transparency).<sup>52</sup>

Year	2014	2015	2016	2017	2018
Number of documents requested	532	747	802	725	591
Number of requests	401	444	499	452	498
Number of requests for previously unpublished documents	45	107	136	84	113
Number of rejected requests	8	44	23	30	17

Documents can be requested directly via a form on the EP website, although a postal address is required, something the Ombudsman in 2014 criticised as outdated.<sup>53</sup> Indeed, the regulation has not been updated since 2001, although ample case-law from the CJEU has made it more difficult for institutions to exclude entire categories of documents from disclosure, requiring more nuanced reasons for refusals, based on the individual document.<sup>54</sup> In addition, European Ombudswoman Emily O'Reilly has taken a very active role over recent years, advocating for institutional transparency, including by escalating the number of cases opened in response to denied access to document (ATD) requests.

The ATD-Regulation applies to all EU bodies, meaning that good knowledge of the EU's structure is required to know what institution to address. The transparency advocates Access Info have created a portal, Asktheeu.org, which allows the filing of ATD requests with all EU institutions, and allows the public to track requests, including the institutions' answers and documents provided.

Parliament's Rules of Procedure spell out the details of the application of the ATD-Regulation in Article 122. It lays out the procedure and definitions to be used by Parliament when dealing with access to document requests, in line with the regulation. However, it also excludes important documents from the scope of the regulation, by reducing the scope of what constitutes a 'Parliament document'.<sup>55</sup> Accordingly, documents drawn up by officials of political groups only become parliament documents once they have been tabled in an official parliamentary procedure. The same holds true for documents drawn up by MEPs according to the Statute of Members of the European Parliament.<sup>56</sup> However, the Statute and the Rules of Procedure

have the legal weight of a Parliament Decision and should therefore not trump the ATD-Regulation. Indeed, staff members of political groups are directly employed by the EP, so it is difficult to see why their documents are excluded from the ATD-Regulation, which binds all EU institutions.

In practice, the EP's disclosure of documents has been unsatisfactory. In particular, notes from the Secretary-General (SG), as well as documents relating to MEP allowances, have been difficult to obtain. Since significant administrative decisions taken by the Bureau are often based on such notes from the SG, this reduces scrutiny of the Bureau's decision-making process. However, Article 122(5) of the EP's rules of procedure specify that the Bureau shall designate an authority in charge of requests, which, pursuant to Bureau decision of 28 November 2001,<sup>57</sup> is the EP's Secretary-General. There is no exception for notes written on the authority of the Secretary-General, meaning that the staff making



The Parliament's new logo, introduced in 2015

judgement calls on the release of SG notes also report directly to the Secretary-General. Reportedly, the Parliament has released only one out of 22 Notes from the Secretary-General requested by *EU Observer* journalists in 2018.<sup>58</sup> Notes requested by Transparency International during the research for this study were also not released. The justification usually used for not releasing SG notes is the claim that disclosure would “seriously undermine” the EP’s decision-making process.

Another example is illustrative. Documents on the options for a reform of the type of expenses for which MEPs may use their General Expenditure Allowance (GEA) were also not disclosed in 2018. At the time, the Secretary-General noted that, if the options were released, this would allow a comparison with the ultimate decision taken.<sup>59</sup> That is correct. Such a comparison is necessary to hold the EP to account; especially when it comes to MEPs deciding on the possible use of tax-payers’ money for their own expenditure. If there is insufficient transparency not only on the expenditures, but also on the process by which MEPs allocate money to themselves, then the process can be characterised as self-serving.

In its recurring resolutions on access to documents, the EP Plenary itself has made a number of proposals that have not yet been implemented. The majority of MEPs urged the Commission to create an ambitious plan of action regarding transparency and public access to documents and urged the Council to publish documents from working groups. The Parliament also called on itself, or on bodies within its own institution, “to make available the agendas and feedback notes of the meetings of Committee coordinators, the Bureau and the Conference of Presidents, as well

as, in principle, all documents referred to in these agendas, in accordance with the provisions of Regulation (EC) No 1049/2001, by publishing them on the Parliament’s website”,<sup>60</sup> a point reiterated in a resolution of 14 September 2017.<sup>61</sup> As noted above, the documents referred to in agendas are not being made readily available. The resolution further called for amendments to the ATD-regulation – a reference to the fact that 2008 and 2011 proposals by the Commission are stalled in the Council.

## RECOMMENDATIONS

- ▶ The Bureau should be made formally accountable to the Plenary of the EP. Resolutions voted by the Plenary should be binding on the Bureau.
- ▶ Documents released through access to document requests should be made systematically available via the EP document register.
- ▶ Documents related to Bureau decision-making should be made proactively public, in particular as regards Secretary-General Notes.
- ▶ Complete the development of the joint legislative database with the Commission and the Council, based on the Legislative Observatory of the EP.
- ▶ Periodic “passerelles” for personnel from the Political Groups to become statutory members of the EP General Secretariat should be made open and transparent, in line with the principle of good administration.

# LEGISLATIVE TRANSPARENCY

---

Transparency of the legislative process constitutes a core element of the any representative democracy. At Union level, EU citizens are directly represented by the European Parliament and have a right to participate in the democratic life of the Union.<sup>62</sup> . According to the Treaties, all institutions, bodies, offices, and agencies shall conduct their work as openly as possible<sup>63</sup> and this is particularly true for legislative processes.

The ordinary legislative procedure (OLP) is the default procedure whereby the co-legislators (European Parliament and Council of the European Union) negotiate, amend and finally adopt a given legislative file.<sup>64</sup> It sets out high standards on legislative transparency, requiring the publication of the Parliament's position at each stage of the procedure, as well as the publication of all amendments by MEPs or political groups before they are voted on. Positions and amendments by both the European Parliament and the Council must be published in all official languages during the first, second and third readings, which can be tracked in the EP's 'legislative observatory'<sup>65</sup> and, with considerably more effort, in the Council's document register.

These are important features to increase the transparency of the process, as the complexity of the procedure is considerable. In a nutshell, OLP means: The Commission sends a legislative proposal to Parliament, the Conference of Presidents assigns the proposal to the responsible Committee(s). The Committee then appoints one or more rapporteurs, who is in charge of drafting the EP's version of the law (called a legislative report). In practice, the political group coordinators of the assigned Committee(s) decide upon which group will handle the report. The selected group proposes a rapporteur from among its Committee members, while the other political groups each

appoint shadow rapporteurs, who will be the point-people following that file on behalf of the group, also developing the group's position in conjunction with the group's political advisors. The selection process of rapporteurs is up to the Political Groups and may include criteria such as loyalty to the group line. Criteria for selection of rapporteurs in the European People's Party Group reportedly prioritise this over "other criteria" such as "expertise" and "preparedness", and notes MEPs who act against the party line "should not be appointed Rapporteur, Shadow Rapporteur or nominated for other positions for a certain period of time."<sup>66</sup>

The rapporteur is responsible for drawing up a first draft position, incorporating (or not) proposed amendments from the various political groups and MEPs. Further amendments can then be voted on in committee, before presenting the report for a final vote for adoption in committee. It then goes to the Plenary for a debate and vote. Once approved, the legislative report becomes Parliament's first reading position and is sent to the Council.

Once Council receives the EP's first reading position, they may amend it based on the compromises negotiated by the Council Presidency and send it back to the EP as the Council's first reading position.

Parliament then begins its second reading, where it can either approve the Council's position (in which case it becomes law), reject it (striking down the legislative process), or amend it.

If the Council does not approve Parliament's second reading amendments, as a last resort, a Conciliation Committee composed of both institutions will be responsible for presenting a joint text that must be adopted by both the EP and the Council in a third reading.



Trilogue negotiations usually take place at parliamentary or Council premises

## LOST IN TRIANGULATION: TRILOGUE TRANSPARENCY BETWEEN COMMISSION, PARLIAMENT AND COUNCIL

Since the Amsterdam Treaty in 1999 introduced the possibility of reaching a final agreement at any stage of the ordinary legislative procedure, the co-legislators have sought to accelerate the procedure by conducting negotiations in a more flexible and informal way.<sup>67</sup> Trilateral informal negotiations with the co-legislators and the Commission are called ‘Trilogues’ and can take place before the first reading of the OLP after the adoption of each institution’s negotiating mandate, or in the ‘early second reading’.<sup>68</sup> This surely facilitates the search for a compromise, but this case study will take a look on its impact on transparency.

Trilogues are informal meetings between representatives of the European Parliament, Council of the EU, and the European Commission. The co-legislators negotiate compromises based on their respective mandates (positions), agreeing language paragraph by paragraph – including deletions,

additions, or changes to the paragraphs of a proposed law. The Commission, which at this point has typically consulted stakeholders over multiple years, conducted impact assessments, gathered and reconciled the views of all Directorates-General involved, will mainly mediate between the co-legislators given that the original legislative proposal represents the Commission’s preferred option.<sup>69</sup>

Trilogues are not mentioned in the EU Treaties and are not formalised as part of the OLP. Nevertheless, Trilogues have become the ‘new normal’ in EU law-making.<sup>70</sup> The number of Trilogues per area varies greatly across Committees. For instance, the Committee on Budgets or Employment and Social Affairs needs an average of eight Trilogue meetings per dossier, while the Committee on Agriculture and Rural Development averages one Trilogue meeting per dossier.<sup>71</sup> During the 2014-19 parliamentary term, the institutions conducted 1,185 Trilogues

on 346 legislative files,<sup>72</sup> that is an average of 3-4 meetings per file. This was also the first parliamentary term with no conciliation committee (the last resort), meaning no legislation reached the third reading stage.<sup>73</sup> 99 per cent of legislation was adopted at first reading or early second reading, thanks to the use of Trilogues.

This also means that the co-legislators are under no obligation to automatically apply the above mentioned guarantees within the formal process (positions and amendments published in all official languages during the first, second and third readings in the EP's 'legislative observatory'). Moreover, the efficiency of Trilogues may come at the cost of the quality of the legislation, given that transparency and accountability are not a goal in themselves, but rather are intended to ensure that legislation is passed in line with the interests of the citizens the institutions serve. We must ask to what extent Trilogues are legitimate, and how they can be reconciled with the Treaty-based transparency standard for legislative procedures.

Along with the European Ombudsman and many others, Transparency International has long identified the practice of Trilogues as a major transparency impediment that can only be overcome if the same transparency standard applying to the legislative process is honoured

for Trilogues as well.<sup>74</sup> We will highlight the most pressing points in the following.

## A play for time

The emergence of Trilogues is usually justified with reference to efficiency considerations in the OLP, in particular the process of negotiations between the institutions.<sup>75</sup> However, as the number and intensity of Trilogues has ballooned, their efficiency has been called into question. Trilogues during the first parliamentary reading are not necessarily quicker, since only the second and third readings include clear deadlines dictated by the Treaties.

Contrary to this, when Trilogues are used before the first reading, legislation may be stalled by a lack of agreement. At this stage, the EP and Council can convene technical or political meetings without time pressure given the lack of deadlines and rules regarding when or for how long Trilogues may take place. After the first reading positions are adopted, strict time limits apply for each further round of interinstitutional approval, or rejection, of the other institution's amendments.

Not adopting a first reading position while Trilogues are ongoing has therefore become a tactic to stall legislation indefinitely.<sup>76</sup> The legislation on public



Press releases and press conferences are still the main transparency tool for Trilogue negotiations

country-by-country reporting on taxes paid by multinational companies in the EU is a well-known example of the Council not adopting a first reading position for many years.<sup>77</sup> 32 legislative files that underwent Trilogues in 2014-19 were not concluded due to lacking agreement.<sup>78</sup> Indeed, the annual Commission Work Programme includes many pieces of proposed legislation that are withdrawn every year, due to lack of follow-up from one of the two co-legislators.<sup>79</sup>

## Negotiating mandates

Before a Trilogue begins, the Council working parties relevant for the proposal will review the text. Depending on how politically contentious the file is, this may also be discussed at the Committee of Permanent Representatives (Coreper, French for *Comité des Représentants Permanents*) or at ministerial level. Since July 2020, the Council will systematically *publish* its General Approach – which is formally distinct from the Council’s first reading position, but still represents an amended version of the legislative proposal that all 27 Member States were able to agree on. However, negotiations on this will be held in secret within Council working parties, with progress reports and other documents not published. In particular, amendments suggested by individual governments will not be published, and in most cases the Council will not even record, within those non-public documents, the identity of Governments expressing their position. This way, citizens cannot find out whether their own government was in favour of the proposal, and what elements of the proposal their government supported or undermined, creating a clear accountability gap.<sup>80</sup>

In the meantime, and in contrast to the Council’s closed-door approach, the parliamentary rapporteur will have negotiated a mandate adopted by public vote in the EP Committee(s) in charge of the file. This is an amended version of the proposal that serves as the EP’s negotiating position. All political groups and MEPs wishing to make amendments have to publish those, and subject each amendment to a public vote, so that the public can know which MEP supported what elements of the proposal. Additionally, the rapporteur may have sought plenary endorsement for this position, although the plenary must refer the file back to Committee to enable Trilogues, as an adoption by

the plenary would establish a formal first reading position by Parliament and thereby prevent Trilogue negotiations.<sup>81</sup>

These mandates serve the *political* Trilogues that involve negotiations between high-level representatives of the institutions: MEPs, Ambassadors or (rarely) Ministers and the Commissioner. They are often characterised by lengthy negotiations based on a political exchange of views rather than the hands-on drafting of compromise paragraphs.<sup>82</sup> Before or in parallel to political Trilogues, policy experts from the three institutions will meet to discuss the *technicalities* of the proposal. Those technical meetings are often composed of a smaller number of civil servants, who will iron out language based on the political discussions.<sup>83</sup>

As Trilogues are generally informal and no clear rules exist, there is also no agreed upon taxonomy of ‘technical’ and ‘political’ Trilogues, and the expertise rapporteurs and Council Presidency negotiators bring to the table can vary vastly across the files and characters involved. Some MEPs are happy to leave the bulk of negotiations to advisers from their Political Group or Committee Secretariat representatives, while others insist on following every detail of a negotiation themselves. Similarly, smaller Member States may draw more actively on the support of the Council Secretariat.

## Four-column documents

The outcome of Trilogue negotiations is tracked in a four-column document: the first three columns reflecting each institutions’ position and the fourth column containing the current compromise proposal under negotiation. This joint document is not an official legislative document, but the fourth, compromise column it contains becomes the version that the institutions will adopt in their respective steps under the OLP.<sup>84</sup> A common ‘Trilogue editor’ has been developed by the institutions to facilitate keeping track of these lengthy four-column documents via a common file and interface. This also means that all four-column tables are now properly recorded as legislative documents, meaning they will be published at the latest after the conclusion of the legislative procedure.

Before political Trilogues begin, the four-column document will often be categorised according to a traffic light system: green for the articles where the institutions are already in agreement or where there were no changes to the original Commission proposal; orange/yellow for issues that can be expected to be resolved during technical meetings; and red for issues where positions are very far apart and should therefore be discussed at political level.

## BOX 2: De Capitani v European Parliament

As mentioned above, the EU Treaties and secondary law are very clear about the need to publish legislative documents. And indeed, following a lengthy legal dispute, in the *De Capitani v European Parliament* judgment the General Court of the EU ruled that the EP was obliged to give access the four-column documents resulting from Trilogue negotiations.<sup>85</sup> The Court reasoned that Trilogue documents are part of the EU legislative process and thus, need to be made accessible to the public in line with the OLP.<sup>86</sup>

This was a major breakthrough when it comes to bringing Trilogue negotiations in line with the requirements of legislative transparency. However even following the judgment, the EP continues to treat four-column documents as ‘public’, but not in fact published. Citizens still need to file individual access to document requests. Nevertheless, following the ruling, the Parliament saw a spike in access to document requests and began handing over all four-column documents requested, whereas the Council released 87 per cent of requested four-column documents.<sup>87</sup>

The EP meanwhile piled criticism on the Council, noting that there is no coherent approach between the co-legislators, with no improvements in the “information flow” from the Council.<sup>88</sup> The Council Secretariat did make the case for a new ‘milestone approach’ which would allow the publication of four-column documents at specified moments during Trilogues,<sup>89</sup> while protecting the ‘space to think’ within the confines set by the Court’s ruling.<sup>90</sup> However, Member States watered down the proposals and the milestone approach was no longer mentioned in 2020.<sup>91</sup>

During Trilogues, the co-legislators explain their views on the Commission proposal and explore ways to ensure their amendments are accepted, or find mutually acceptable compromises. The rapporteur and Council Presidency have some discretion, but still need the approval by both institutions in accordance with their respective procedures.<sup>92</sup> It is not uncommon for the Council to tweak its position at Coreper level in between Trilogue meetings, whereas the final legislation is adopted in Council by qualified majority vote (QMV) comprising 55 per cent of Member States representing 65 per cent of the EU population,<sup>93</sup> a method of counting that balances the one-country-one-vote principle with the fact that more populous Member States can expect a stronger weighting of their position. The Commission needs to endorse the result of the negotiation to enable Council adoption by majority vote – otherwise, unanimity is required in the Council.<sup>94</sup>

The EP on the other hand needs only a simple majority of votes to amend or adopt the Commission’s proposal at first reading, while in the second reading it would need an absolute majority of its constituent members to reject or amend the Council’s position. If Parliament cannot muster this absolute majority, the Council version of the act adopted at first reading becomes law.<sup>95</sup> We should, however, note that the lower threshold in the first reading is intended to be used for files where agreement was readily found, with higher thresholds for files that were subjected to a more complicated institutional back-and-forth. In this sense, Trilogues can also be described as a circumvention of the higher democratic threshold required for all legislative acts under the OLP that would not otherwise have found agreement at first reading.

## Recent improvements

The majority of studies reviewed have identified the lack of rules on Trilogues as a serious threat to the democratic legitimacy of the decision-making process. Whilst Trilogues have reduced the complexity of the OLP and introduced a more flexible way of reaching agreements, experience shows that the way in which Trilogues are conducted raises concerns about the transparency of the procedure. In our 2014 study on the EU integrity system,<sup>96</sup> Transparency International



Informal practices surrounding Trilogues are subject to frequent change

considered Trilogues as a ‘blind spot’ in the EU law-making process and identified the risk for undemocratic decision-making that Trilogues could bring to the OLP. This risk was also raised a year later by the European Ombudsman, who questioned the very balance between the efficiency of issuing laws at early stages and the lack of transparency.<sup>97</sup> A speedier process requires a greater level of transparency, but the contrary is true about the current use of Trilogues. In a four-year process of inquiries, the Ombudsman asked the co-legislators to open up Trilogues by making available proactively and in a joint database, the information on dates, agendas, successive versions of the four-column documents, final compromises, notes and participants.<sup>98</sup>

Since our 2014 study, improvements of Trilogues have come mainly through the revisions of the 2016 EP’s Rules of Procedure,<sup>99</sup> establishing a standardised composition of the team negotiating on behalf of the Parliament.<sup>100</sup> Previously, the composition of negotiating teams diverged across Committees, making Trilogues less predictable and even leading to complaints that MEPs or Political Groups felt left in the dark. Now, the negotiating team reports back to the committee responsible after each Trilogue, and the provisional outcome

of negotiations are subjected to a committee vote and published before being tabled in Plenary.<sup>101</sup> Nevertheless, the latest four-column documents are not made generally available to all MEPs, let alone the public.

Another important change concerns the negotiating mandate. Before 2016, the EP rules of procedure enabled the committee responsible to adopt its negotiating mandate prior to the drafting and publication of the committee report,<sup>102</sup> meaning that the negotiating mandate would not necessarily be made public. The revision means that Parliament can only enter into negotiations once the committee’s legislative report has been adopted, and thereby published.<sup>103</sup> The new rules also specify that a decision to enter into Trilogue negotiations must be announced at the next plenary, where political groups may request a vote on whether such negotiations should start.<sup>104</sup> If a majority in the Plenary opposes the start of Trilogue negotiations, the legislative report will be adopted as a regular first reading position at the next plenary.

Until recently, the Council, too, was able to adopt negotiating mandates for Trilogues without making them public, by agreement in Coreper, instead of adoption of a General Approach in the Council.<sup>105</sup> This is because all legislative activity in the Council must, by virtue of the Treaties, be public,<sup>106</sup> whereas at the level of preparatory bodies, all documents on ongoing legislative deliberations are issued as non-public LIMITÉ documents, in spite of EU law specifying that “documents drawn up or received in the course of a legislative procedure shall be made directly accessible” via an online register.<sup>107</sup> While the documents produced in the course of negotiations within the Council working parties and Coreper will still not be made public, the Council in July 2020 agreed to change this practice and systematically publish its negotiating position, whether this is adopted at the level of the Council or Coreper.<sup>108</sup> It is notable that this change is not reflected in the Council’s rules of procedure, nor are the changes pursuant to the De Capitani judgment. In spite of repeated proposals,<sup>109</sup> the Council fears opening up negotiations on its rules of procedure due to the politicised disagreements this may generate, though procedural changes would in principle require a simple majority.<sup>110</sup>

The Finnish Council Presidency in 2019 began publishing Trilogue meetings scheduled for the upcoming week. This practice was continued by the Croatian and German Council Presidencies in 2020. However, the practice by the German Presidency merely involves posting a screenshot of the Trilogues for the current week on Twitter, usually on Tuesdays. This means that users in search of Trilogues have to scroll through hundreds of Twitter posts to identify the right post, which may not be there if no Trilogues are scheduled that week. They will also not be able to search the post or previous posts, as the information is in a screenshot rather than in searchable text, and the information will already be outdated for Trilogues held on a Monday.<sup>111</sup> The relevant social media account changes with each Presidency, so every six months. Reportedly, this practice began in 2019 but is based on a July 2020 Coreper decision,<sup>112</sup> though this does not reference Trilogue meetings dates or the need to publish those, and does not therefore constitute a commitment or a reliable practice.

However, one of the main shortcomings when it comes to Trilogue transparency remains the lack of information on negotiating progress as Trilogues



Trilogue negotiations are informal meetings, but can involve upwards of 100 officials from the three institutions

are ongoing, which can only be achieved if four-column documents are regularly published. These documents contain the proposed compromise language which the institutions are negotiating over. Some files require dozens of Trilogues before a final agreement is reached. This is the sort of contentious files where public scrutiny is required, to hold both Parliament and the Council to account. Without access to information on the progress of negotiations, it is difficult for stakeholders and citizens to follow the process.

## Next steps

The 2016 Interinstitutional Agreement on Better Law-Making was not initiated as a way to regulate Trilogues, but the institutions did agree they would “streamline the legislative process”, improve transparency,<sup>113</sup> and exchange information on internal negotiations taking place throughout the OLP.<sup>114</sup>

The interinstitutional agreement further recognises the need to “improve communication to the public during the whole legislative cycle”,<sup>115</sup> and proposes to take measure “with a view to establishing a joint database on the state of play of legislative files”.<sup>116</sup> This database could be another breakthrough for legislative transparency, especially if it includes a dedicated web page for each legislative proposal as in the case of the EP’s legislative observatory. This would enable the public to much better track the documents available from the side of the Council. To date, it appears negotiations on the joint legislative database are ongoing, centred on the question whether the European Parliament (based on its legislative observatory) or the Commission’s Publications Office are entrusted with the development of the database.

As part of the future joint legislative database, the institutions should systematically publish information on when Trilogues are taking place, setting out a calendar with forthcoming Trilogue dates where available, including agendas and summaries of each Trilogue meeting, as also suggested by the Ombudsman.<sup>117</sup> It should also regularly publish up-to-date four-column documents before a final agreement is reached. This is a precondition to allow citizens, journalists and interest representatives – be this non-governmental organisations (NGOs) or corporate lobbyists – to provide input to the procedure without having to

rely on leaked information or privileged access, and is therefore a basic requirement of participative democracy.

The urgent implementation of the joint legislative database has also been endorsed by a coalition of ten EU Member States – Belgium, Denmark, Estonia, Finland, Ireland, Latvia, Luxembourg, Slovenia, Sweden and the Netherlands. In a January 2020 non-paper they additionally make a series of proposals to improve transparency and accountability of Trilogues, including to “increase openness in Trilogue negotiations by systematic publication of legislative milestone documents of the Council”, and to publish, in advance, dates and annotated agendas of Trilogue meetings, as well as Trilogue outcomes.<sup>118</sup> The group recently grew from six to ten Member States, raising the prospect that more Council members will come around to embracing transparency and accountability.

The lack of harmonised rules governing Trilogues is a key challenge for legislative transparency in practice, and has normalised holding legislative negotiations in secret.<sup>119</sup> Article 15(2) TFEU sets out that “[t]he European Parliament shall meet in public, as shall the Council when considering and voting on a draft legislative act”. It would be absurd if an obligation binding both institutions were not to apply when the institutions consider legislation jointly.

Citizens and stakeholders have a right to a high level of transparency on legislative processes and documents, something that is currently circumvented through the use of Trilogues. The lack of transparency creates uncertainty on the progress of legislative files, as well as on the trade-offs that led to the final compromise. Finally, it constitutes an unfair advantage for powerful private interests that can afford to hire a team of professional lobbyists who provide this information, while other interest groups will be denied a level playing field. This also risks the quality and legitimacy of policy outcomes.

As Transparency International and many other transparency watchdogs noted time and again, it is concerning, to say the least, that the obvious

treaty-based requirement<sup>120</sup> to proactively publish legislative documents is not applied to Trilogues, a situation that continues to this day. If the CJEU has decided that the limited exceptions from the ATD-Regulation are not applicable to four-column documents, then there is no basis in EU law for withholding those documents from public view in the first place, as the exceptions that may prevent publication of legislative documents are the very same exceptions that may be used to reject access to document requests. Therefore, four-column documents should be proactively published except under very narrow, rare circumstances.

In the words of the CJEU, “the expression of public opinion in relation to a particular provisional legislative proposal or agreement agreed in the course of a Trilogue and reflected in the fourth column of a Trilogue table forms an integral part of the exercise of EU citizens’ democratic rights” even more so when “such agreements are generally subsequently adopted without substantial amendment by the co-legislators”.<sup>121</sup> Thus, Trilogue negotiations should be open and accessible to the public, by making four-column documents available proactively.

## RECOMMENDATIONS

- ▶ Ensure Trilogues are compliant with Court rulings and revise the “Better Law-Making Interinstitutional Agreement” and the “Joint declaration on practical arrangements for the codecision procedure”
- ▶ Create a joint legislative database with the Council and the Commission
- ▶ Publish a road map for all planned Trilogues once they have been set, as well as agendas and participants prior to each Trilogue meeting and summaries after each meeting.
- ▶ Ensure publication of four-column-documents before each Trilogue meeting.

## LOBBY TRANSPARENCY

A special Eurobarometer on corruption was published in December 2017, revealing that almost three quarters of Europeans (72%) believed corruption to be present in the local, regional, and national public institutions. It is equally worrying that the majority of Europeans believe that bribery and the abuse of positions of power for personal gain are widespread within political parties (56%) and among politicians at national, regional, or local level (53%). Unfortunately, the survey did not ask about the EU level. From political candidates running on a promise to “drain the swamp” to citizens protesting against free trade agreements citing the influence of large corporations, popular discontent with the influence of special interests is rising.

When properly regulated, lobbying is an essential part of a healthy democracy, closely related to universal values such as freedom of speech and the right of petition to government. It allows for citizens and interest groups to present their views on public decisions that may come to affect them, as enshrined in Article 10(3) TEU. According to a 2013 survey of 600 European parliamentarians and officials, 89 per cent agreed that “ethical and transparent lobbying helps policy development”.<sup>122</sup> Contributions by lobbyists to the legislative process provide officials with technical information, supporting data and examples of best practice. By providing channels for the input of expertise on increasingly technical issues to legislators, lobbying is crucial for the development of policies that are fit for purpose.

### The Transparency Register

The EU’s Joint Transparency Register, as revised in 2014, requires comprehensive information from all registrants. This includes basic data such as the name of the organisation, its legal status, the name of the natural person bearing ultimate responsibility, general aims of the organisation and fields of interest. In addition, organisations are required to disclose the number of people working in lobbying

activities, whether part-time or full-time, up-to-date financial data on costs related to lobbying, the organisation’s memberships in associations, or its clients in the case of public affairs consultancies, companies that lobby on behalf of clients. Finally, the register publishes the names of all employees currently holding an access badge to the European Parliament.

In spite of the comprehensive definitions, disclosure requirements and a clear code of conduct,<sup>123</sup> the transparency register remains voluntary. This means that lobbyists can simply decide not to disclose their efforts. There are incentives to register – this is a requirement to request access badges to the Parliament’s premises. However, lobbyists can be granted temporary access directly by any MEP.

Upon a 2014 initiative by the Juncker Commission, the three main EU institutions engaged in negotiations on a mandatory transparency register, which could lead to a dramatic improvement in the transparency of lobbying activities targeting the EU institutions. Parliament has called for the creation of a mandatory register for lobbyists in 2008, 2011 and 2014, specifically inviting the Commission “to submit, by the end of 2016, a legislative proposal for the establishment of a mandatory register on the basis of Article 352 TFEU”.<sup>124</sup>

Although the Commission did submit a proposal for a mandatory lobby register in September 2016, this came in the form of an inter-institutional agreement, which only binds the three institutions but is not universally applicable or enforceable by the Courts in the way that EU law is. The European Parliament had called for a fully-fledged legislative proposal instead of a new interinstitutional agreement, although it remained a point of contention whether the EU treaties provide a legal base for this.<sup>125</sup> Article 298 TFEU empowers the co-legislators to adopt regulations to ensure the “support of an open, efficient and independent European administration”, which, in combination with the above-stated principles of openness and transparency, may include legislation on public access to information on lobbyists’ activities vis-à-vis EU policy-makers.

## The ‘Legislative Footprint’

In December 2016, a revision of the EP’s Rules of Procedure (RoP) included a call on MEPs to voluntarily adopt the practice of only meeting registered interest representatives, as well as to voluntarily produce a ‘legislative footprint’: a document annexed to legislative reports, which would contain a list of meetings held with interest representatives leading up to the adoption of the legislative file.<sup>126</sup>

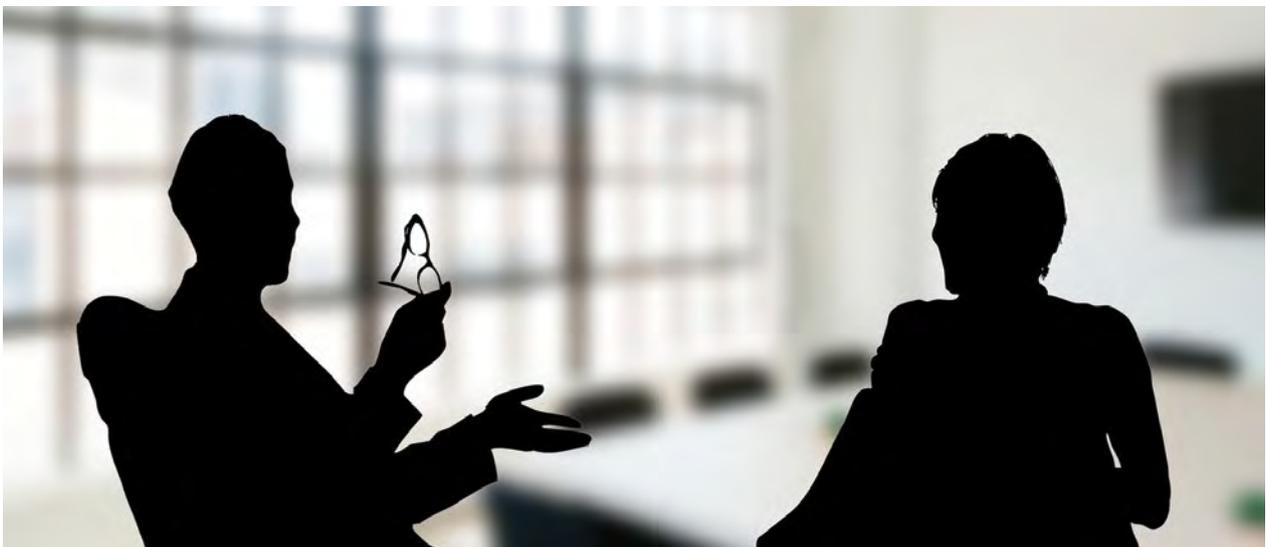
In September 2017, Parliament further adopted a resolution on transparency, accountability, and integrity in the EU institutions.<sup>127</sup> This called on the expansion of the practice of only meeting registered lobbyists to Secretaries-General, Directors-General and Secretaries-General of political groups. Unfortunately, in a note to the Bureau published after multiple unsuccessful access to document requests, the EP does not appear to have acted on this request.<sup>128</sup>

However, a first breakthrough on mandatory transparency regarding important meetings with lobbyists was achieved in January 2019. With the entry into force of new Rules of Procedure, rapporteurs, shadow rapporteurs and committee chairs are now obliged to disclose any meetings they have with interest representatives in the context of their role as (shadow) rapporteur or committee chair.<sup>129</sup> This represents a major step forward, as it is the first ever mandatory mechanism on lobby transparency for the European Parliament.

This obligation extends only to ‘scheduled meetings’, and to the files in which MEPs hold a rapporteur role, or which pertain to the committee that the MEP chairs. Lobby transparency remains voluntary for meetings concerning any other file, meaning that much of the lobbying targeting the European Parliament will remain in the shadows.

The mandatory legislative footprint, i.e. the requirement on rapporteurs, shadow rapporteurs and committee chairs to publish meetings held in the context of legislative files, does not prevent MEPs from meeting unregistered lobbyists. This considerably weakens the effectiveness of the mechanism, since we may know the name of the organisations lobbying policy-makers, but if these are not registered, we may still be completely in the dark as to whose interest they represent, or the scale of their lobbying activities. This is particularly difficult to say in the case of lobby firms or communication consultancies, which work on behalf of a large number of clients.

The Bureau and the Parliament’s administration had shown very limited enthusiasm for the voluntary legislative footprint, pointing out that Members were free to disclose their lobby meetings on their personal websites.<sup>130</sup> This changed with the latest revision of the rules of procedure, which saw the implementation of a parliamentary IT system for the publication of lobby meetings directly on every MEPs’ parliamentary web page, allowing to publish the information in a centralised and standardised manner.



Lobbying is an important element of participative democracy, as long as it is duly regulated and conducted in the open

The system was operational as of the beginning of the new mandate in July 2019, meaning that insufficient time has passed to accurately determine the effectiveness of the system as a whole. At the time of writing, more than 10,000 lobby meetings had nevertheless been disclosed, although only 44 per cent of MEPs had begun logging meetings.

Transparency varies greatly by group, given that many MEPs have decided to simply publish all meetings, whereas others limit publication to meetings held in their capacity as rapporteur or Committee Chairperson. It is next to impossible to know which meetings MEPs are having in their role as rapporteur or shadow rapporteur on a specific file, as the meetings database is not linked up with the EP's legislative observatory. For Committee Chairs, the obligation to publish meetings can be tracked more easily, though two Committee Chairs have published no meetings as of September 2020 – the heads of the Constitutional Affairs and Petitions Committees.<sup>131</sup>

In a next step, and as part of negotiations on a mandatory transparency register, all MEPs should have to publish their lobby meetings and only meet registered lobbyists. Topics discussed at meetings should also be described in more detail than the currently very common 'general exchange of views'. It also remains to be seen how a lack of compliance may be sanctioned, in view of the limited tools available to deter any wrong-doing (see chapter on Ethics).

Further ways to facilitate take-up would be a link between the transparency register and the lobby meetings, minimising the reporting burden on the

users. With an entirely manual system, the burden on the user increases dramatically. Entries on the legislative dossiers being discussed at the lobby meetings are free text rather than a drop-down menu with the various files under consideration or committees of relevance. In other words, it is not possible to pool information on lobby meetings regarding a specific file, as information will be introduced in the system in a disparate manner. The tool might undergo future alterations and improvements, but currently is unlikely to provide a comprehensive overview of lobbying activities.

## RECOMMENDATIONS

- ▶ Establish a mandatory lobby register for the Parliament, Commission and Council, in which direct and indirect lobby activities are covered.
- ▶ Require that EU policy-makers, including MEPs, only accept meeting requests from registered lobbyists. Publication of such meetings should be mandatory. Published meetings must state which specific file or files were discussed and give the official names of organisations present, as registered in the Transparency Register.
- ▶ Published data should be available in a centralised website, available in a machine-readable format and linked to other relevant websites and datasets, such as the legislative Observatory and the Transparency Register.

# ALLOWANCES FOR MEPs

This chapter evaluates the transparency, openness and financial accountability of European Parliament spending, with a particular focus on the MEP allowance regime. A general overview of available spending and budget data for the European Parliament will be followed by a detailed assessment of the transparency and accountability of the four primary budget lines that MEPs can spend within the course of their respective legislative mandates.

It should be noted that there has not been sufficient control of the use of allowances for years: neither systematic auditing, nor random controls were seriously made. Too often the institution reacted to individual cases when press reports build pressure, as we set out below. This does not provide fair, independent controls on a regular basis, although

efforts to recover misspent funds have intensified in recent years.

Most of the EU institutional annual accounts are published within the context of the budget discharge procedure. This is an annual process that sees the Parliament formally close the annual budget cycle for all EU institutions and agencies. For its own spending information there is the overall EU budget appropriation figures, the published annual fiscal accounts, audit reports and reports on budgetary and financial management. Although this budget and spending information is publicly available, much of it is not in open source machine readable format. For instance, the Parliament's overall balance sheet is a scanned PDF file that is only available in one official language (French).<sup>132</sup> It also requires a degree of prior technical knowledge to fully appreciate what the different reports and accounts mean.

Although many documents are available, there are other practical barriers for citizens trying to ascertain this information. Budget and spending data are not centralised and instead are spread across different parliamentary websites. Many of the pertinent documents related to expenditure information are located in sub-sections of the Budgetary Control Committee site under 'Discharge Procedure'. Policy-makers, as well as staff members, also expressed difficulties in locating and understanding the relevant documentation. In the Parliament's report on *Estimates of Revenue and Expenditure for the Financial Year 2017*, MEPs explicitly called for a proposal from the Parliament's Secretary-General to present online the "budget to the general public in appropriate detail and in an intelligible and user-friendly manner on the website of the Parliament in order to enable all citizens to develop a better understanding of Parliament's activities, priorities and corresponding spending patterns."<sup>133</sup> Unfortunately, this was not acted upon



Decisions on MEP allowances rest with MEPs themselves

and MEPs therefore called for this proposal again in the report on revenue and expenditure in 2018.<sup>134</sup>

The four main allowances provided to MEPs to aid them in carrying out activities related to their legislative mandate are the General Expenditure Allowance (GEA), the Parliamentary Assistance Allowance (PAA), the Travel Allowance and the daily Subsistence Allowance. Due to repeated case of abuse of the PAA and the complete lack of financial controls on the GEA, this section will focus on these two allowances.

Transparency and accountability of MEP allowances are important from an anti-fraud perspective, as well as for good governance, efficiency, and reputational considerations. Parliamentary allowance scandals have, in countries where they occurred, gravely affected the reputation of the political class as a whole. The GEA in particular is an area of concern, given that irregularities are difficult to spot and constitute a grave reputational risk for the Parliament. This sentiment was also expressed in the 2018 discharge report related to Parliament's administrative expenditure, where MEPs recognised that any spending errors could have a highly negative impact on the institution.<sup>135</sup> MEPs have also highlighted problems with the existing allowance regime in numerous parliamentary reports, mostly originating from the Budget and Budgetary Control committee.<sup>136</sup> The adopted texts all reaffirm this concern over a lack of both transparency and financial accountability of how MEPs are spending EU funds.

The Parliament's Bureau adopts internal parliamentary rules and is solely responsible for implementing the financial conditions of the Members' Statute. In 2008, the Bureau adopted the implementing measures for the Statute for Members of the European Parliament,<sup>137</sup> which supplements and clarifies the broad provisions of the Statute. The Statute also provides clarification on what costs these allowances cannot be used to cover. For example, Article 43 includes the prohibition of MEPs' funding contracts with immediate family members. Article 62 stipulates that all of these allowances must not cover personal expenses, fund grants of a political nature and that any unused amounts must be paid back to the Parliament.

The transfer of allowance payments by Parliament vary. The travel allowance and Parliamentary Assistance Allowance (PAA, see below for more information) are reimbursed at cost by the Parliament, within a maximum budget amount, upon the submission of the requisite documentation by the MEP. The GEA and subsistence allowance, however, are currently paid as a set lump sum amount.

## GENERAL EXPENDITURE ALLOWANCE

The General Expenditure Allowance (GEA) is meant for office expenses related to MEPs' parliamentary activities – normally for a local MEP office in their constituency, given that MEPs are already provided with an office in Brussels and Strasbourg. In 2019, the GEA amounts to €4,513 per month/per MEP. While this used to be transferred to a bank account of the MEPs' choosing, including their own personal accounts by default, since 2019, MEPs are required to set up a separate bank account for the GEA, potentially increasing accountability for unspent funds. The lump-sum payment does not differentiate depending on location and market prices. In a special report from 1998, the European Court of Auditors also noted that the scale for the flat-rate GEA allowance "is not based on any precise figures for the various expenses covered and takes no account of overheads that may be reimbursed".<sup>138</sup> This remains the case.

Article 28 of the Implementing Measures specifically stipulates that the GEA is intended to cover expenses related to the running of office costs in their Member State, such as office management and running costs, cost of purchasing or renting office equipment and IT purchase and phone bills.<sup>139</sup> In addition to the provisions of the corresponding Implementing Measures, DG Finance has drawn up, and the Bureau has adopted, internal guidelines for the defrayal of expenses of the GEA.<sup>140</sup> They specify, for example, the types of office maintenance costs, equipment or administrative costs that can be covered by this allowance.

The Parliament has only published an overall annual budget appropriation and expenditure figure related to the General Expenditure Allowance. There is no transparency of actual spending data related to individual Members. In November 2015, we initiated a series of access to document requests for information and data related to the spending of the GEA by all MEPs for the fiscal year 2014. The Vice-President charged with access to document requests confirmed that the Parliament “does not hold any documents concerning the details on how the allowance is spent by each Member”.<sup>141</sup>

In 2015, responding to a question related to the GEA by the Budgetary Control Committee, the Parliament’s Secretary-General confirmed that 98 per cent of all MEPs in 2014, including departing ones from the last mandate, “used the full amount in that year. The amount of funds left unused amounted to EUR 83,205 and concerned 6 MEPs”.<sup>142</sup>

In the few past years MEPs have voted, on several occasions, to increase the transparency of the GEA. In 2016, Parliament expressed its support for “full transparency regarding the GEA in order to allow European citizens to have an insight into the general expenditure of the Members of the European Parliament.”<sup>143</sup> The 2018 budget estimate report, also adopted in 2017, reiterated “the appeal for greater transparency regarding the GEA”.<sup>144</sup> However, in the Parliament’s discharge report that was voted on in April 2017, MEPs opposed greater transparency of spending data related to the GEA. Of the 637 MEPs who voted, 55 per cent voted against a plenary amendment stating that “Members should publish, on an annual basis, an overview of their expenditures by category (communication costs, office rental, office supplies...)”.<sup>145</sup> These voting results are at odds with previously adopted texts calling for transparency.

Some MEPs have already decided to partially address this lack of institutional transparency in the Parliament. Following the 2009 Westminster scandal, which uncovered UK Members of Parliament abusing their allowances, British delegations in the Parliament began submitting their GEA expenses for external professional audits on a

periodic basis. Every UK MEP delegation published these audit reports, such as the Conservative<sup>146</sup> and Labour<sup>147</sup> delegations, before Brexit.

A 2017 review by a group of investigative journalists<sup>148</sup> gave a first comprehensive overview. 249 of the then 751 MEPs said they have no offices, refused to reveal their exact addresses, or gave addresses that could not be found. If they are receiving over €4,300 per month for office-related expenses, but may not have an office, it begs the question what precisely they are spending this allowance on. The journalists also discovered that other MEPs who do have offices were renting from themselves, from family members or from political parties.

On 27 April 2017, the EP passed a resolution calling on the Bureau to improve the definition of eligible expenditures under the GEA. An *ad hoc* working group was set up in June 2017. Its report was not made available, even after numerous access to document requests, but a broad majority of 540 MEPs passed more resolutions on 25 October 2017 and on 18 April 2018, calling for three changes to the GEA: the creation of a separate bank account for the GEA; the requirement to keep receipts; and the return of unspent money at the end of the mandate. However, the Bureau decided to implement only the separate bank account, in a narrow split (8 to 6), with eight MEPs voting down the plenary resolution passed by 540 colleagues. While Bureau votes are generally secret, with only the outcome of the vote made public, journalists and campaigners compiled the voting behaviour based on leaked information.<sup>149</sup>

The EP refused multiple access to document requests on the release of the working group’s report. Given that in this working group, and in the Bureau itself, MEPs were in effect deciding about the accountability of an allowance they themselves receive, the Ombudsman noted “an overriding public interest” in the disclosure of those documents and formally decided that Parliament’s refusal constituted a case of maladministration.<sup>150</sup> The President of Parliament at the time answered in a letter that the EP “respectfully disagrees”.<sup>151</sup>

The Parliament does not have any financial management controls in place for the GEA, which, as of 2017, constituted an annual EU budget line of €39,886,000.<sup>152</sup> They do not hold any documents, as they do not require submission of any expenditure documents from individual Members. No internal audit checks are carried out in terms of how the GEA is spent. This situation has continued for years, despite clear rules outlining what these allowances can and cannot be used for. The Secretary-General has stated that a control system of the GEA would “necessitate the creation of 40 to 75 new posts in the area of financial management, depending on the degree of control required, as controls of small sum expenditure is highly human resource intensive and could be considered as falling under the category of excessive cost of control following evaluation under Articles 31(3) and 33 of the Financial Regulation.”<sup>153</sup>

In December 2016, the Bureau was reminded of previous parliamentary reports’ demands for transparency or controls of the GEA. The then-President, and several Vice Presidents, spoke out against such measures. The President at the time concluded the general expenditure allowance is “a flat-rate sum and that the Bureau has time and again declined to agree on the defrayal of that allowance being made on the basis of supporting documents, as this would require an important increase in human and administrative resources at a time when the Secretariat-General of the Parliament is forced to carry out staff cuts.”<sup>154</sup>

In the discharge vote of April 2017, MEPs voted down amendments suggesting that unspent money from the GEA should be returned to the Parliament.<sup>155</sup> However, this allowance does not constitute an additional salary and there are rules and guidelines in place about how it should be spent. It therefore follows that any money not spent for the intended purposes would have to be returned to Parliament. To not to do so would be in violation of Article 62(2) of the Implementing Measures that stipulates that the “sums paid pursuant to these implementing measures reserved exclusively for the funding of activities linked to the exercise of a Member’s mandate and may not be



MEPs do not have to provide receipts for their GEA expenditure

used to cover personal expenses.... Members shall pay back any unused amounts to Parliament.”

The GEA itself can be used to conclude service provider contracts to carry out these audits. Some MEPs already do this. The Bureau could also decide to require a certain level of external financial control of the GEA, including via spot checks, or earmark a portion of these allowances for the sole purpose of ensuring an audit. There is precedent of earmarking portions of allowances, as evidenced by Bureau Notice No. 2/2015, which requires the “earmarking of at least 25% of the parliamentary assistance allowance to cover expenditure of accredited assistants”.<sup>156</sup>

Following changes to EP Rules of Procedure in January 2019,<sup>157</sup> MEPs’ may voluntarily publish information on their use of the General Expenditure Allowance. Article 11a (4) RoP stipulates that the Bureau shall provide the infrastructure for voluntary disclosures of audits or other confirmations that their use of the GEA complies with the rules.

## PARLIAMENTARY ASSISTANCE ALLOWANCE

The Parliamentary Assistance Allowance (PAA) is used by MEPs to pay personnel costs and consists of a maximum of €24,943 monthly per MEP as of 2019.<sup>158</sup> Like other allowances, the use of the PAA is governed by the Members' Statute, Implementing Measures and corresponding guidelines provided to Members by the EP.

There are four main categories of staff under this allowance. Accredited Parliamentary Assistants (APAs) are based in one of the official places of work for the Parliament (Brussels, Strasbourg, or Luxembourg) and get a direct contract with the Parliament. These APAs are recruited at the discretion of MEPs but are bound to the rights and obligations of the EU Staff Regulation.<sup>159</sup> A minimum of 25 per cent of the parliamentary allowance is earmarked for APAs. Local parliamentary assistants are based in an MEP's constituency and have a private employment relationship with the MEP. There are also temporary service providers that MEPs can contract (for a maximum of 25 per cent of the allowance), as well as paying agents, who

manage the local contracts to ensure the requisite national taxes and contributions are paid. In addition to these categories, MEPs may also use the PAA for hiring interns in both Brussels and their constituency.<sup>160</sup>

There is a certain level of transparency regarding staffing arrangements of MEPs. Internal Parliamentary rules governing transparency of the PAA have been slightly enhanced recently by the Bureau.<sup>161</sup> For instance, the names of accredited parliamentary assistants, local assistants, paying agents and service providers are now all published on the Parliament's website,<sup>162</sup> However, no additional information is published by the Parliament. For instance, the public is provided with no details of staff responsibilities, the types of contracts (part-time/full-time) or the services offered by service providers.

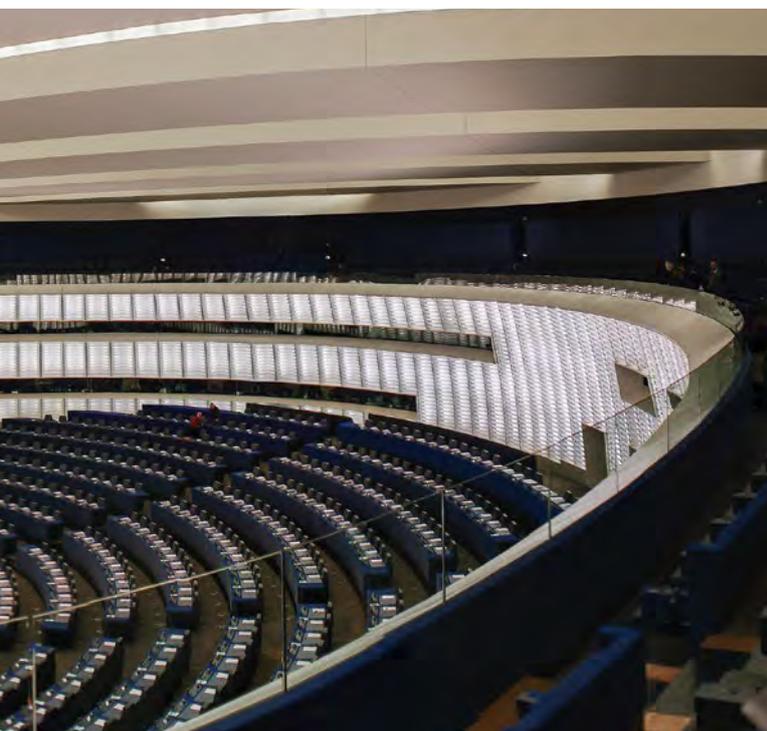
Unlike the GEA, which has no controls in place, the spending of the Parliamentary Assistance Allowance is managed by the Parliament. The internal controls have been enhanced since the leaking of a damning internal parliamentary audit report, outlining systematic abuse by MEPs. This 2008 report<sup>163</sup> documented risks in the control of these expenses and the numerous ways in which MEPs



The Parliament's Plenary chamber in Strasbourg, France

were misusing EU money; from concluding service provider contracts with companies owned by the MEP to funnelling money back to domestic political parties. The reform of implementing measures for the statute of MEPs<sup>164</sup> that entered into force in 2009 provided notable improvements in terms of transparency and management, but did not tackle the issue of local assistants. This perpetuates a two-tier legal system, where MEPs are still employers of their local assistant under national labour law and, for this reason, responsible for their own potential mistakes or management errors, although the assistant is actually paid by the EP. This also exposes them to pressures from national parties.

The Parliament's DG Finance carries out investigations over possible misuse of the PAA.<sup>165</sup> In 2015, the Parliament confirmed, in response to questions posed by the Budgetary Control Committee, that 109 separate investigations were carried out concerning the PAA "of which 96 resulted in partial or full recover, 2 in refusals and 1 was communicated to OLAF [the European Anti-Fraud Office]".<sup>166</sup> In the absence of further details regarding these investigations, it is unclear whether these irregularities were administrative mistakes, negligence on the part of MEPs or constituted intentional fraud.



In its 2016 annual report, the European Anti-Fraud Office (OLAF) has voiced alarm over an increase in investigations of possible misuse of the PAA by MEPs and assistants. OLAF states that these cases "typically relate to fictitious employment, misuse or fraudulent declaration of allowances, misuse of European Parliament funding to support the activities of national parties, as well as to situations of conflict of interest and possible corruption".<sup>167</sup>

There have been a number of public scandals of alleged fraud involving the PAA. These cases have indicated three ways that MEPs have misused the PAA. First, MEPs have used their staff allowance purely for personal gain. A former Member of the European Parliament was sentenced to a four-year jail sentence for fraudulently claiming approximately £100,000 (British Pounds, approximately €120,000) over five years.<sup>168</sup> He did this by doctoring employment documents and skimming off the top of his PAA payments. Another former MEP was found guilty in 2015 and sentenced to five years<sup>169</sup> in prison for fraudulently using more than £400,000 of this allowance to pay for mortgages and personal legal bills.<sup>170</sup>

Second, MEPs have encouraged nepotism. Until the introduction of a new Members' Statute, any MEP could employ their immediate family as parliamentary staff. MEPs who were still employing spouses in 2009 had a 'transitional' period, granted by the Bureau, of five full years where they could continue employing them. When the complete ban entered into force in 2014, some MEPs' spouses were simply hired by other MEPs in the respective political delegations.<sup>171</sup> Two Latvian MEPs have, during the 2014-19 parliamentary term, also employed each other's relatives as parliamentary interns.<sup>172</sup> However, clearer violations still occur, such as a recent investigation by journalists, which found a Danish MEP has allegedly paid her son on a service provider contract.<sup>173</sup>

The third way MEPs have been accused of misusing the PAA is improperly funnelling resources to their domestic political parties. The former Front National (FN) delegation of MEPs has been embroiled in a fraud case in France,<sup>174</sup> with the European Parliament trying to recover €339,000 for misuse of their staff allowance.<sup>175</sup> Marine Le Pen refused to repay, leading to a court sentence in June 2018,

which the FN appealed.<sup>176</sup> The FN is alleged to have paid more than a dozen staff members to carry out domestic political party activities, from a budget that is meant exclusively for the MEPs' European Parliamentary work. An assessment by the European Parliament estimated the cost of this at €7 million.<sup>177</sup> The United Kingdom Independence Party also faced allegations of systematic abuse of the PAA, with some MEPs allegedly using this allowance to pay local political party staff,<sup>178</sup> leading to the docking of an MEP's salary to retrieve the funds.<sup>179</sup> An investigation concluded by OLAF in 2020 established further cases of MEPs overpaying the PAA to funnel contributions of €640,000 to national parties over the period 2014-19, and another group of MEPs paying €540,000 to their

national party. OLAF also notes that MEPs cannot currently be sanctioned for this behaviour and recommends the introduction of "appropriate sanction" and the recovering of the funds.<sup>180</sup> Most of the aforementioned cases were exposed either by investigative journalists or former staff members, not by internal parliamentary controls.

Given the allegations of systematic abuse by entire delegations, and the fact they were mostly uncovered by media, the adequacy of resources of internal parliamentary control mechanisms must be called into question. Increased transparency of the PAA would also allow citizens, journalists, and civil society to more systematically scrutinise how MEPs are spending public money.

## RECOMMENDATIONS

- ▶ DG Finance should carry out an annual spot check of GEA expenditures for at least 15 per cent of MEPs.
- ▶ The Bureau should oblige MEPs to carry out an external audit of the GEA through mandatory earmarking of either the GEA or PAA for that purpose.
- ▶ The GEA should no longer be paid as a lump sum, new rules should more clearly stipulate that unused GEA funds must be paid back to Parliament.
- ▶ Parliament should publish more detailed information on the staffing arrangements of individual MEPs, including details of contracts (part-time or full-time, duration of the contract), as well as descriptions of the service provided regarding service providers.
- ▶ Parliament should introduce more stringent compliance monitoring mechanisms to ensure that the local assistants' contractual schemes are not open to fraud and misuse.
- ▶ Parliament should publish in a timely fashion the number of times and dates an individual MEP claims this subsistence allowance. This attendance information and corresponding annual expenditure data should also be published in machine readable format.

# ETHICS

## BOX 3: Conflict of interest as defined by the Code of Conduct

A conflict of interest exists where a Member of the European Parliament has a personal interest that could improperly influence the performance of his or her duties as a Member. A conflict of interest does not exist where a Member benefits only as a member of the general public or of a broad class of persons.

## Conflict of interest as defined by Transparency International

Situation where an individual or the entity for which they work, whether a government, business, media outlet or civil society organisation, is confronted with choosing between the duties and demands of their position and their own private interests.<sup>181</sup>

Wherever public officials are, or are perceived to be, confronted with a situation where their private interests diverge from the duties of their position, a risk of a conflict of interest arises.

In institutions as large as the European Parliament with up to 8,000 staff and among them 705 MEPs with mostly very varied and accomplished CVs, it is only natural that conflicts of interest will occur, be that in relation to side jobs or previous employments, a spouse or other family members, the prospect of a future job or a traditional bribe-for-amendment. Therefore, the key does not lie in downplaying the very real risk of conflicts of interests, but rather to have systems in place to spot conflicts of interest, and manage them by temporarily removing the interested individual from that particular decision-making process. In the view of the Organisation for Economic Co-operation and Development (OECD), any organisation should have measures in place to identify, manage and resolve conflicts of interest,<sup>182</sup> including a clear definition and mechanisms in place to ensure that public officials are aware of the procedures to declare such conflicts.<sup>183</sup> This is all the more true for public institutions of this size and level of responsibility.

For the EP, as direct representative of EU citizen's interest, preventing conflicts of interest requires an independent and accountable system that ensures representatives use their powers in the interest of the public. To increase public trust that such mechanisms are indeed effective, a degree of transparency is additionally required. The Code of Conduct and Rules of Procedure remain the main tools for regulating the ethical behaviour of MEPs and EP staff.

The EP's Code of Conduct (CoC) requires MEPs to act solely in the public interest and to refrain from obtaining or seeking any direct or indirect financial benefit or reward.<sup>184</sup> MEPs are furthermore asked to solve or prevent any conflict of interest on their own,<sup>185</sup> and are required to declare any outside activity as part of their financial interests declaration.<sup>186</sup> The text also addresses potential conflicts of interest caused by former MEPs engaging in professional lobbying.<sup>187</sup>

The EP has gone through several revisions of its rules of procedure (RoP) and the Code of Conduct, which forms an annex of the RoP, during the last parliamentary term in 2014-19.<sup>188</sup>

A recent assessment of the various Codes of Conducts of the EU institutions, carried out by the European Court of Auditors, found that, *de iure*, “audited institutions have, to large extent, adequate ethical frameworks in place”.<sup>189</sup> In practice, our research shows that the EP still lags behind in actually spotting potential conflicts of interest, in making members and staff accountable for existing conflicts, in providing effective sanctioning mechanisms to hold individuals found in breach of ethics rules to account and in making staff aware of the ethics framework.

The European Court of Auditors has, in a July 2019 study, shown that only 1.8 per cent of EP staff had ‘in-depth’ knowledge of the ethical framework, with 26.4 per cent claiming to possess ‘good knowledge’, including of where to get the relevant information. On the other hand, 55 per cent “have heard about the ethical framework but do not know much about it”, and 16.8 per cent had never even heard anything about an ethical framework, the lowest score when compared to the Commission and the Council.<sup>190</sup> EP staff’s assessment of their own institution shows cause for alarm, with almost 30 per cent of respondents disagreeing with the statement “the ethical culture in my institution is strong”, again performing worst among the three institutions surveyed. However, 45 per cent of respondents saw the integrity culture as strong.<sup>191</sup> Unsurprisingly, parliamentary assistants were

the most reluctant to flag ethics breaches, due to the dependence of their employment on their respective MEP.<sup>192</sup>

Low awareness of the ethics framework can partly be explained by the high turnover, with a large number of new MEPs joining Parliament in each legislative term, along with high fluctuation in the parliamentary assistants employed. This should motivate the EP to proactively ensure that new staff and Members are aware of applicable ethics rules. The findings also do not square with the EP’s administration’s decision not to cooperate with our research team based on the claim that it is extremely transparent. This has meant that, unlike the European Court of Auditors, we were not able to interview EP staff, e.g. as regards the implementation of the Code of Conduct.

Faced with these results, the EP’s Bureau noted that it “does not consider that it is necessary to consolidate this [approach to ethics] into a single strategy document”.<sup>193</sup> However, the recommendation for such an ethics strategy is not the result of Parliament’s comparatively low awareness on ethics, but a general recommendation for public institutions based on best practices compiled by the OECD, an international government organisation of which all but three EU Member States are a member.<sup>194</sup>

Repeatedly pointing out that MEPs are directly elected and accountable to citizens is a flawed argument if citizens do not have access to the information to judge their representatives, be that due to missing checks on the veracity of financial interests or to the incomplete information on lobby meetings. Nor does this argument address the apparent vulnerability of Parliament, open as it is to new members and staff, as underscored by the limited awareness of the ethics framework.

To provide an overview of the ethics framework, this section analyses the revisions of the rules of procedure and code of conduct during the past five years, identifying the remaining loopholes that lead to the risk of conflicts of interest not being addressed properly. MEPs drafting a legislative report while being paid by entities with strong interests at stake, revolving door scandals and



Decisions on conflicts of interest and the conduct of Members ultimately rest with the President

MEPs' side jobs appear as the main threats to the EP's integrity system. Finally, we will provide examples of international best practice to highlight how these risks can be mitigated by applying appropriate measures.

## REFORM OF THE RULES OF PROCEDURE

The Rules of Procedure of Parliament were amended in 2016 and 2019 (see also the section Lobby transparency). The reforms made some improvements to the rules around transparency and integrity in parliamentary work, as well as in the vetting procedure for Commissioner nominees.<sup>195</sup> The Code now includes a definition of a conflict of interest (Col) – see Box 3.<sup>196</sup> Members “shall refrain from accepting, in the performance of their duties, any gifts or similar benefits, other than those with an approximate value of less than EUR 150”; and these gifts must be handed over to the EP.<sup>197</sup> In the case of travel, accommodation or subsistence allowance received in the context of an event organised by a third party, these must be separately declared on the page of the MEP using a standardised form. Finally, former MEPs must inform Parliament if they engage in lobbyism directly related to the EU. Such a notification will result in them no longer having access to facilities granted to former Members (e.g. access to Parliament buildings), although no clear sanction is laid out in the case of failing to notify the Parliament.

The 2016 reform also amended the MEPs' Code of Conduct, which is an Annex of the Rules of Procedure. The new Code finally introduced a ban on MEPs accepting side-jobs as paid lobbyists: MEPs shall “not engage in paid professional lobbying directly linked to the Union decision-making process”,<sup>198</sup> although this formulation would seem to leave a number of loopholes, such as paid professional lobbying indirectly linked to EU decision-making processes. For example, many MEPs continue to be paid by entities that indeed have strong interests at stake in EU law-making. However, since MEPs are not clearly employed as lobbyists, these side-jobs and payments have

to be looked at from the perspective of possible conflicts of interest arising in the course of MEPs' mandate, rather than entailing an outright ban of such side-jobs. However, the CoC also states that MEPs shall refrain from accepting any direct or indirect reward, monetary or in kind, “in exchange for specific behaviour in the scope of the Member's parliamentary work”.<sup>199</sup>

The level of detail of MEPs' financial statements was improved, enhancing the data on the many remunerated side-jobs MEPs have,<sup>200</sup> as well as non-remunerated activities.<sup>201</sup> This led to the requirement for all 705 MEPs to update their declarations, which most but not all of them did within the six-month timeframe allocated. These updates included more detail (see section on Side jobs, below). A general ‘plausibility check’ is carried out by the Members' Administration Unit in the EP's Secretariat, specifically in the Directorate-General Presidency.<sup>202</sup> According to the Advisory Committee on the Conduct of Members, this check is limited to spotting “manifestly erroneous, flippant, illegible or incomprehensible information”.<sup>203</sup> Indeed, partially illegible, hand-written and then scanned declarations in any of the EU's 23 official languages had previously been allowed. While declarations are made on the responsibility of the MEP concerned, the President may request a corrected version.<sup>204</sup> In practice, Transparency International EU found numerous inconsistencies and outdated entries, some of which were only corrected after publication of our report *Moonlighting in Brussels* in 2018.

The European Court of Auditors also recently recommended that scrutiny of financial declarations should be improved,<sup>205</sup> something the EP rejected as part of its reply to the report, claiming that “[a]ny further-reaching requirements to check accuracy and completeness ex officio would entail the need for significant staff increases and/or investigative powers, none of which are available”.<sup>206</sup> This is an odd claim, given that EP staff has increased in comparison to Council and Commission staff, and given that in view of the over 8,000 staff,<sup>207</sup> a dedicated unit could go a long way in ensuring that individual conflicts of interest do not imperil the overall functioning, quality of legislation and reputation of the EP.<sup>208</sup>

The new rules of procedure also reform the way that potential conflicts of interest of Commission-nominees are scrutinised.<sup>209</sup> We discuss this in greater detail in the forthcoming Transparency International EU study dedicated to the Commission.<sup>210</sup> However, the uneven implementation of this new procedure in the case of the incoming Commission in 2019 suggests that conflict of interest checks should be performed exclusively, and with additional time and resources, by the Legal Affairs Committee. It should also have the support of an EU ethics body, as any other approach risks a politicised process that will present inconsistencies across the various policy committees charged with evaluating the Commissioners. In certain cases, the substantive Committees turned down candidates largely on grounds of integrity considerations, even though they had been checked and cleared by the Legal Affairs Committee. This procedure should be improved to ensure due process for each candidate and to reduce the risk that Parliament is seen as politically biased in its pronouncements on integrity and conflicts of interest.

In summary, the 2014-2019 legislative term has seen not one but two reforms of the Rules of Procedure and Code of Conduct, with some improvements notably on the declarations of financial interests, a long overdue ban on MEPs simultaneously being paid lobbyists, and an increase on lobby transparency (see section under Legislative transparency).



Two Commissioner-nominees were rejected by the Legal Affairs Committee on the grounds of conflicts of interest. One nominee who passed this scrutiny was later rejected by the substantive Committee, due in part to integrity considerations.

## REVOLVING DOORS

While the Code of Conduct requires former Members to notify the Parliament if they engage in lobbying activities directly related to the EU decision-making process,<sup>211</sup> no cooling-off period applies, in contrast to EP staff, other EU institutions and international best practice.<sup>212</sup>

After the 2014 European elections, we recorded a number of revolving door cases. Examples include a UK MEP from the Economic and Monetary Affairs Committee who started working for the London Stock Exchange after leaving the EP, and a German MEP who left to work as director of European Affairs, Public Policy and Government Relations at Opel Group, after 10 years' working on the regulation of the car industry.<sup>213</sup> As previously documented in our 2017 report *Access all Areas*, we tracked the career paths of 485 MEPs who had left the EP. 171 of them left politics, 30 per cent of them took up a job with entities registered on the EU Transparency Register, meaning they conduct at least some EU lobbying.

Of these former MEPs, 26 even joined consultancy firms that specialise in lobbying the EU – meaning they do not work for a company with specific sectoral interests; rather, they are lobbyists for hire, influencing the EU decision-making process according to the priorities of paying clients. Therefore, their jobs involve lobbying former colleagues, and overseeing, advising or instructing others on how to do so. These cases and numbers show that the revolving door phenomenon constitutes a clear risk to the integrity of the EP, with the added risk that the prospect of such employment may already constitute a conflict of interest before MEPs leave office.

The broader risk to democratic decision-making exists in what we refer to as 'regulatory capture', where public policy is increasingly done in the interest of specific groups or sectoral needs, rather than in the public interest.<sup>214</sup> The revolving door accentuates the already uneven playing field in lobbying, with particularly well-resourced interests able to recruit more high-level or well-experienced former public servants, benefiting from inside

knowledge and networks. This generates unfair competition and erodes public trust in legitimate lobbying activities.

MEPs should be subject to post-employment rules, especially since MEPs already receive a generous transitional allowance, a form of payment that is usually intended as compensation for the requirement to act in the public interest even after the end of their mandate. Members of the Commission have cooling-off periods of two years,<sup>215</sup> as do both Parliament and Commission staff (see under 'Rules for EP staff' below). This requirement has to be balanced against the MEPs' human right to work, leading to a time-limited cooling-off period and the payment of a transitional allowance. As it stands, former Members receive the transitional allowance, but have no limitations on their future employment. The Members' Statute should be adapted to introduce cooling-off periods, and in the meantime, MEPs should include such restrictions in their Code of Conduct and declare individually that they will not lobby their former colleagues without an appropriate cooling-off period of at least two years.

The purpose of cooling-off periods is to diminish the risks involved by setting minimum timeframes within which former public officials may not be involved in their previous areas of work in the EP, especially lobbying their former colleagues. With the passing of time, legislative files the policy-maker worked on previously may already have been concluded, while turnover of staff may dilute the relevance of pre-existing networks. Last but not least, clear, and visible cooling-off periods will serve to strengthen the awareness about the ethical implications of the revolving door, and about the possible conflicts of interest this entails.

EU post-employment rules lag behind international best practice. Canada, for instance, has a five-year prohibition on lobbying applying to former senior officials, ministers and Members of Parliament.<sup>216</sup> It also prohibits them from accepting any job, board membership or contract of service with any entity with which they had significant official dealings. This cooling-off period is applicable for one year to public office holders and for two years to former

ministers.<sup>217</sup> Additionally, there is a lifetime ban for former holders of public office to act on behalf of a new employer in the subject area in which they had previously worked during their public service.<sup>218</sup> Another case of highly regulated revolving doors is France, where public officials are subjected to a three-year cooling-off period, during which they are banned from lobbying after the end of their public functions.<sup>219</sup>

While the 2003 UN Convention against Corruption includes a recommendation for such cooling-off periods as a measure to combat conflicts of interest,<sup>220</sup> the EU as a signatory to the Convention does not have a consistent framework for cooling-off periods in place.

## SIDE-JOBS

One of the main risk areas for potential conflicts of interest to arise is through a second job or position, either paid or unpaid. It is quite common for politicians to have side-jobs in addition to their mandates. This was the case for 60 per cent of MEPs during the 2014-19 mandate,<sup>221</sup> including regular employments, paid board memberships, honorary or academic positions, or other political mandates. Together, the then 751 MEPs had a total of 1,366 declared side-jobs during the first half of the 8<sup>th</sup> term, an increase of 13 per cent compared with the beginning of their mandate.

Second jobs, paid or unpaid, do not necessarily lead to conflicts of interest. A common justification is that they allow elected officials to stay in touch with the realities of their electorate, and with their profession in case they return to a previous job when they leave office. Unremunerated activities (e.g. board memberships) can be beneficial for maintaining close links with society. However, outside jobs on top of a full-time activity as an MEP can also lead to conflicts of interest or can prevent them from devoting sufficient time and attention to their roles as elected representatives. It should be clear that serving as an MEP is a full-time job and is well-remunerated as such, including transitional allowances after the expiry of the legislative term.



We analysed over 2,000 declarations of financial interests to tally the types of side-jobs MEPs were engaged with during the 2014-19 mandate, including calculations of the self-declared income, according to the written statements submitted by the MEPs themselves. The declarations improved our ability to track conflicts of interest, insofar as a new income category (€1-499 per month) was introduced, and for monthly side-incomes exceeding €10,000, members now have to indicate “the nearest 10,000 amount”. Another major impediment in making these declarations an effective tool is the fact that only PDFs are published. This is an improvement compared to the hand-written and scanned declarations from the past. However, the data is still spread across 705 different webpages, requiring each PDF to be analysed separately. The data should instead be posted directly on the MEPs’ website according to open data standards, so that third party tools such as our own EU Integrity Watch<sup>222</sup> can better process the data. Furthermore, the current Code of Conduct relies on MEPs’ good faith in publishing a complete declaration and notifying the President of any changes in their external income. However, there are no periodic checks by an independent entity to verify if the information published matches reality. In practice, there is a lack of effective accountability mechanisms to prevent incomplete declarations or to sanction conflicts of interest.

As stated above, not all paid outside activities lead to conflicts of interest. However, activities that generate large amounts of income, or are conducted with registered lobby organisations, or have started during the term in office present a greater risk of conflict of interest. Three MEPs held paid positions in organisations on the EU lobby register during the last parliamentary mandate. Viviane Reding was a board member for the Bertelsmann Foundation;<sup>223</sup> Paul Rübzig held a position with the Austrian Chamber of Commerce (WKÖ),<sup>224</sup> representing the interests of Austrian businesses; and Agnes Jongerius continues to be an MEP during the 2019-24 legislative term and, as of the beginning of the mandate, is still on the supervisory board of PostNL, listing a monthly income from PostNL in the financial interests’ declaration of between €1,001 and €5,000.<sup>225</sup>

Since the beginning of the 2014-19 mandate, 49 MEPs started new activities with four of them earning more than €100,000 extra per year – on top of their salaries as public servants.<sup>226</sup> Activities started during the mandate can have a higher risk of conflict of interest, as these are potentially directly linked to an MEP’s activity in the Parliament. High incomes are particularly worrying when the descriptions of the activities in the declarations are limited to ‘consultant’, ‘lawyer’ or ‘freelancer’. The complete lack of detail on the subject areas involved makes it impossible for citizens, journalists, or civil society to monitor these particular types of activities for potential conflicts of interest.

Another concern is the veracity of information published by MEPs. In our 2018 report, we published the names and salary bands of the top 30 MEPs with the highest incomes from side activities. Many contacted us to point out that the information declared by them was not correct, was incomplete or outdated. This shows that the current approach to publishing information lacks a proper plausibility check, and that a bit of public scrutiny can go a long way to ensure that MEPs comply with basic rules intended to guard against potential conflicts of interest.



Transparency of interests, detection of conflicts, and effective mitigation are the keys to resolving conflicts of interest where they arise

## CONFLICTS OF INTEREST

Specific cases of conflicts of interest also arose during the last legislature and are instructive as to the kind of safeguards required to mitigate them.

In 2016, two MEPs were put in charge as rapporteurs of a draft law dubbed ‘Netflix legislation’, the Audiovisual Media Services Directive. The directive included a number of restrictions for private services such as Netflix, which in Germany and many other countries compete for viewers with public broadcasters. The two rapporteurs were both German MEPs, and both were at the time, and continue to be, paid members or deputy members of a board of WDR, which forms part of the largest German public broadcaster. Both MEPs are remunerated in

their position, according to their financial interest declarations: they received between €1,000 and €5,000 and between €500 and €1,000 euro a month from the public broadcasters, respectively. While this WDR board is tasked with representing the public’s interests within WDR, they are nonetheless paid on behalf of WDR. The broadcaster had a clear interest in the legislation, given that its parent company ARD submitted a response to the public consultation leading up to the drafting of the law.<sup>227</sup> In spite of this perceived conflict of interest, which was flagged by media and fellow MEPs at the time,<sup>228</sup> the EP’s Conference of Presidents decided that no action needed to be taken. The MEPs maintained that, due to their transparency, there was no conflict of interest.<sup>229</sup> While the transparency helped journalists, fellow MEPs and watchdog organisations to spot the

perceived conflict of interest, this did not lead to mitigating it, specifically by removing MEPs from a leading position on the legislation in question. We note with concern that no such action was taken. Clearly, an independent authority should decide about the presence of such conflicts. An EU ethics body could take on such a role.

Another apparent conflict of interest concerned an MEP who was the rapporteur on the Markets in Financial Instruments Directive (MiFID II) and Vice-Chair of the Economic and Monetary Affairs Committee in 2014-19. According to emails seen by *Politico Europe* and our research team, the MEP used the parliamentary email address and office to promote financial products connected to MiFID II among the asset management community in 2017. The MEP had been appointed rapporteur on MiFID II in 2012, and co-founded the foundation PeoplesFinancials with an associate in 2013. This associate owns a company, which in turn sells a financial product that the MEP promoted on the basis that this product would be in line with the new MiFID II-rules. While the MEP maintains that he had no financial interests in the promotion of these products, this is already a breach of the Code of Conduct insofar as he did not declare his role in the foundation,<sup>230</sup> as the Code also requires declaration of unremunerated activities. His 2014 declaration does include a paid board membership for the association of German savings banks in Bavaria – which could also raise eyebrows when it comes the appointment as the EP’s lead negotiator on the Directive regulating markets in financial instruments – as well as a side-job as a ‘consultant’ earning up to €5,000 per month.

The EP President at the time, Antonio Tajani, did not respond for comment, but was asked by other MEPs to refer the case to the Advisory Committee on the Conduct of Members. We cannot know if this happened, although the 2017 annual report of the Committee refers to “a case involving the omission by a Member to comply with the disclosure obligation concerning certain unremunerated activities”. It seems the Committee had only been asked to look into the failure to declare the MEP’s role as founder of the foundation, and not his potential conflict of interest in promoting to investors a financial product sold, for profit, by

his co-founder. Furthermore, in view of the MEP’s belated update of his declaration of interests, the Committee concluded “that, despite his ill-advised conduct, the situation in which he was involved did not constitute a breach of Article 1 of the Code of Conduct”.<sup>231</sup> In his reply to our letter pointing out the MEP’s potential breach, Mr Tajani’s Head of Cabinet confirmed in December 2017 that the President of Parliament saw no violation of the Code of Conduct.<sup>232</sup>

When it comes to ensuring an ethical culture, leadership from the top is essential, from the President, the Conference of Presidents and MEPs. If obvious conflicts of interest are not addressed as such, this calls into question the broader reliability of the management of conflicts of interest.

## SANCTIONS AND THE ADVISORY COMMITTEE

The Code of Conduct establishes an ‘Advisory Committee on the Conduct of Members’ to guide MEPs and the President in interpreting the Code.<sup>233</sup> Members can seek confidential advice from the Committee, usually on modalities of the financial declarations. The President must consult the Committee on any case of a potential breach of the Code unless the case is clear-cut (‘manifestly vexatious’). The President is not, however, bound by the advice from the Committee, which is only advisory in nature. The Committee cannot become active on its own initiative.

The composition and appointment procedure of the Committee raises questions about its independence, given that the Committee is only composed of MEPs and not ethics professionals, and given that members are appointed by the President, and therefore are no more (or less) inclined to uncover wrongdoing than the individual MEP who occupies the Presidency at a given point in time. This is even more starkly the case on sanctions: Depending on how seriously the President, individually, takes the Code of Conduct and its application, he or she will have broad discretion.

The Committee is composed of five Members, but since the number of parliamentary groups will usually exceed that number, one MEP may be added to the Committee whenever it deals with cases concerning an MEP from a Group not usually represented.<sup>234</sup> These are picked from among the members of the EP's Committees on Constitutional Affairs and Legal Affairs, based on their 'experience' and 'political balance'. It is presided over by a rotating Chair, limiting the possibility that a Chair may be elected for merit, out of a particular interest in ethics, or that a Chair would develop the role sufficiently to become an authoritative figure when it comes to adjudicating breaches of the Code and possible sanctions. While the Committee requires the President's consent to hear outside experts, it does have the right and obligation to publish an annual report on its work, giving it an opportunity to express its views on the implementation of the ethics code, although any information about cases is anonymised.

Possible penalties are listed in Article 176 of the RoP.<sup>235</sup> Even in cases of gross and repeated violations of the Code, MEPs only have to fear a reprimand, the loss of a parliamentary position (e.g. rapporteurships, Committee Chairmanships etc.), a time-limited ban from speaking in plenary (though they may still vote) of up to 30 days, as well as the removal of the daily allowance of €320 per day worked in Brussels or Strasbourg, for up to 30 days. Both may be doubled to 60 days, maximum, in case of persistent breaches. For a maximum of one year, MEPs may be banned from representing the EP in international or inter-institutional delegations. In cases where funds are misspent, these can be retrieved (e.g. by withholding parts of the parliamentary allowance). While these sanctions do not appear to wield a strong deterrent effect, they are already the result of significant increases in the context of the 2016 CoC reform. The President must adopt any decision about penalties within a 'reasoned opinion', after the MEP concerned has been awarded the opportunity to provide a written defence. Any decision by the President must in due course also be announced to the Plenary and published 'prominently' on the Parliament's website.

During the 2014-19 legislative term, the Advisory Committee dealt with a total of 26 MEPs involved

in potential breaches of the Code of Conduct. However, none of them were sanctioned.<sup>236</sup> The breaches were related mainly to incomplete or incorrectly compiled declarations of financial interests, including 15 cases where MEPs had not included the reimbursed travel expenses of events to which they had been invited by third parties. Others were caught not declaring some side activities. Even in cases where the Advisory Committee established the presence of a breach, rectifying the situation ex-post, e.g. by updating declarations of travel paid by third parties, led to the conclusion that no sanctions needed to be applied.

When breaches come to light, this is not usually due to systematic checks by the EP, as already mentioned above, but rather through journalistic investigations. Efforts to deter the filing of incomplete or inaccurate declarations is further hampered by the very limited sanctioning powers of the EP. One notable breach involved the leader of the Brexit Party, Nigel Farage, over his alleged failure to declare nearly £450,000 in gifts from a British businessman. Uncovered by Channel 4 and under investigation by the UK National Crime Agency, the EP has yet to levy any sanctions.<sup>237</sup> Mr Farage did not update his declarations,<sup>238</sup> categorically denied any breach, and defied the summons of the Advisory Committee,<sup>239</sup> which recommended the "highest penalty" for a "serious breach" of the Code of Conduct.<sup>240</sup>

While former Members can breach the Code, they can hardly be sanctioned. It is concerning, however, that the EP's Bureau uses its "limited jurisdiction over former Members" as a reason to not even introduce post-employment obligations.<sup>241</sup>

If the very limited sanctions at the disposal of the EP are never applied, this calls into question the effectiveness of the Code of Conduct. MEPs should, at the very least, expect to be caught and penalised if they breach the Code. Even so, unethical behaviour is likely to pass undetected, and not to draw any sanctions even for undeclared outside incomes or illicit lobby meetings. The European Anti-Fraud Office, OLAF, also recommends introducing more appropriate sanctions for MEPs abusing their parliamentary allowances.<sup>242</sup>

All in all, it remains difficult for the public to hold their representatives to account. As noted above, the fact that this Committee is composed of MEPs, and that a decision to sanction ultimately rests only with the President, raises doubts about their independence and the reliability of the mechanism.

International best practice shows that better results can be achieved. Specifically, this requires clear rules and systematic checks on the veracity of Members' declarations, given that the information relies on MEPs' individual integrity, as well as their staff's experience with the requirements of the ethics code.<sup>243</sup> To add credibility to the rules, serious fines and other disciplinary penalties should be introduced to make sure that breaches carry a cost. Crucially, the enforcement authority must be independent, meaning it cannot be left to MEPs to judge fellow MEPs.

In France, the High Authority for Transparency in Public Life is tasked with checking MPs' declarations of interests, as well as the respect of

post-employment rules. It also has the resources to conduct audits and investigations for breaches of ethics rules. In case of serious breaches, it has the power to send cases to prosecutors who may open court proceedings. In Canada, conflicts of interest are monitored by an ethics commissioner, including potential breaches of post-employment obligations. The Commissioner is endowed with investigative and sanctioning powers and has issued over 79 penalties in more than 200 investigations since 2013.<sup>244</sup> This differs drastically from the powers of the EP Advisory Committee, which lacks the right of initiative, investigative capacity, resources and the power to sanction.

The Advisory Committee should therefore be replaced by the proposed EU Ethics Body, which should have the power to initiate investigations, be resourced to do so, have sanctioning powers over current MEPs as well as former MEPs when it comes to post-employment rules, and be independent both financially and in terms of its staff.



## RULES FOR EP STAFF

EP civil servants are EU officials selected by the central European Personnel Selection Office (EPSO) according to standard, highly competitive competitions. APAs are chosen by MEPs and undergo no standardised competition; they directly assist Members in the exercise of their functions. EP staff and APAs are both subject to ethics rules – APAs are additionally bound by the Code of Conduct, and MEPs are liable for the conduct of their assistants. Under the EU Staff Regulation, all EU staff are obliged to carry out their duties objectively and impartially in the Union's interests<sup>245</sup> – meaning that assistants too may not, under the EU Staff Regulation, have blind loyalty for their MEPs. There is an obligation to report on wrongdoing. If APAs are to be expected to report on their MEPs, they will require fundamentally strengthened whistleblower protection (see next section).

Staff have to file *ad hoc* conflicts of interest if and when they arise, as well as make a declaration of this type upon their recruitment.<sup>246</sup> They should also inform the authority of any possible conflict of interest and cannot engage in outside activities, paid or unpaid, without the permission of their appointing authority.<sup>247</sup> The Court of Auditors points out that such systems rely on the integrity of individuals and their ability to recognise (potential) conflicts of interest – an ability that may be limited by the patchy awareness of the ethics framework. The auditors were unable to establish whether, and how, further information is sought to cross-check potential conflicts of interest once an *ad hoc* declaration of a conflict has been made, e.g. by checking internal records or using open source information searchable on the internet.<sup>248</sup>

As regards gifts, the Staff Regulation bars EU staff from accepting any gift from any external sources, without the permission of the institution.<sup>249</sup> EP staff may presume gifts are acceptable under a value of €100, and need prior permission at a value above €100. The definition of gifts, hospitality and circumstances are judged insufficient by the Court of Auditors. Notably, the threshold for Parliament is double that of the Commission and Council, and no amount is stipulated as generally unacceptable.<sup>250</sup>

Unlike MEPs, APAs and EP staff are subject to post-employment rules.<sup>251</sup> APAs serving for at least five years<sup>252</sup> in the EP have a cooling-off period of two years, meaning they need to notify the EP of their new activity, which may or may not be approved. EP staff fall under the same rule. Additionally, senior officials are always prohibited from lobbying on their previous area of work for 12 months, which can be extended to two years as well. In the case of senior officials leave the EP or a political group, the EP is obliged to report annually on their professional activities.<sup>253</sup> This concerns officials starting at the rank of Director. However, in the years 2016-19 none of the senior management leaving the EP declared taking up an activity that would fall under the rules on revolving doors.<sup>254</sup>

In cases of breaches of the ethics rules under the EU Staff Regulation, sanctions can be considerable, and include the possibility of downgrading staff in terms of salary bands, or, in exceptional cases, removal from post and the reduction of pension rights.<sup>255</sup> The competent 'Appointing Authority' within the EP, in charge of enforcing the rules of the EU Staff Regulation for EP officials and APAs, is the authority empowered to conclude contracts of employment (AECE), as well as, in the case of APAs, the MEP responsible.<sup>256</sup> AECE shall, after hearing the Member responsible, take the appropriate measures to ensure that APAs comply with the conflict of interest rules and has the power to relieve assistants of their responsibilities.

## WHISTLEBLOWING RULES

Whistleblowing rules are an important element in efforts to fight corruption and spot conflicts of interest or maladministration. However, whistleblowers often put themselves at high personal risk. They may be fired or, if that is impossible, their career progression may be halted, including demotion to less prestigious jobs and other forms of mobbing. They risk their careers and personal safety by exposing wrongdoings that potentially threaten the public interest. By disclosing information about such misdeeds, internally or externally, whistleblowers have helped to save countless lives and billions of dollars in public funds,



Whistleblowers are crucial to detect wrongdoing, but MEPs' assistants are in a uniquely vulnerable position

but have also prevented emerging scandals from worsening.<sup>257</sup>

Protecting whistleblowers from unfair treatment, including retaliation, discrimination, or disadvantage, can embolden people to report wrongdoing, creating a culture of integrity that increases the likelihood that wrongdoing is prevented, uncovered or penalised. Inadequate whistleblower rules will, however, inhibit people from making reports.

As of today, the most comprehensive protection of whistleblowers is granted by the 2019 Directive on the protection of persons reporting on breaches of Union law. In May 2019, the Parliament and the Council approved the Directive, which lays down

common minimum standards providing for a high level of protection of people reporting on breaches. Once the Directive has been implemented by the Member States, it will provide a stronger protection to whistleblowers across Europe, but it will not be applicable to EU staff. EU and EP staff are instead protected by the EU Staff Regulation<sup>258</sup> and by the EP's Internal Rules on whistleblowers.<sup>259</sup>

In this section, we assess the adequacy of whistleblower protection rules within the European Parliament. This assessment looks at a range of factors that discourage potential whistleblowers and identifies ways to strengthen whistleblower protection.

## BOX 4: Rules on harassment and sexual harassment

---

APAs are uniquely vulnerable, as their employment depends on the relationship of trust to their MEP. Over the years, this has given rise to a number of complaints regarding harassment of APAs. As the above section notes, scope for sanctions is very limited when it comes to MEPs. Evidence of harassment and sexual harassment has therefore tended to come out through the media, in particular following the #metoo movement starting in 2017. To improve the visibility of the problem, in spite of APAs' weak standing vis-à-vis MEPs, a website for anonymous reports on cases of sexual harassment at the EP was set up by APAs.<sup>260</sup>

A number of resolutions<sup>261</sup> were adopted by Parliament to address the problem. In spite of the difficulty of sanctioning directly elected MEPs, a number of bodies have been created to address these concerns. Confusingly, Parliament now has two advisory committees dealing with harassment.<sup>262</sup> The 'Advisory Committee dealing with harassment complaints concerning Members of the European Parliament' was established in 2014 and reformed in 2018, setting out the details of the procedure by which alleged harassment by MEPs will be investigated, and the presence of harassment ascertained.<sup>263</sup> It is composed of three MEPs and two representatives of APAs, plus the Chair of the other committee, called 'Advisory Committee on Harassment and its Prevention at the Workplace'.<sup>264</sup>

When a case has been brought to the attention of the first advisory committee, it will assess the case and vote on whether harassment has taken place. Given that the Committee is composed of MEPs and given the low frequency of meetings, the procedure of establishing facts and holding hearings is likely to be drawn out, although the length was reduced from over a year to about three months during the 2014-2019 term.<sup>265</sup> Once the case has been investigated, the Committee submits a report to the EP President, containing a summary of the allegations, of the investigation and witnesses heard and evidence collected, as well as the Committee's conclusion as to whether harassment occurred.<sup>266</sup> It remains the sole authority of the President to issue a reasoned decision on whether harassment has indeed taken place, and to decide on any sanctions.<sup>267</sup>

In the period 2014-16, the Chair of the Advisory Committee reports the Committee dealt with 10 cases of harassment, and was at one time overwhelmed due to the presence of four simultaneous cases.<sup>268</sup> The report establishes harassment in the case of one MEP, against whom three cases had been filed, although the identity of the MEP remains secret. It seems clear that a body consisting of professionals who do not simultaneously have to fulfil duties as regular MEPs, should be in charge of a highly sensitive and rather specific subject matter such as harassment and sexual harassment. This is both in the interests of the APAs to be protected and the MEPs who have been accused of wrongful behaviour. The Chair of the Advisory Committee also lamented that she had to set up the entire Committee on top of her legislative duties "in a house where there was no culture of fighting harassment".<sup>269</sup>

The 2018 EP resolution recommends making training on sexual and psychological harassment compulsory for all staff and MEPs. However, this not being a Bureau decision, it is not binding on the EP, which nonetheless implemented some of the measures,<sup>270</sup> organises voluntary trainings and compiled a brochure on 'Zero Harassment in the Workplace' dealing with harassment complaints between MEPs and APAs and warning of 'zero tolerance'.<sup>271</sup>

In a December 2018 letter,<sup>272</sup> the leaders of the Green, Liberal, Left and Social Democrat Groups called for additional measures to be taken, including an external assessment of the functioning of the Advisory Committee, the possibility to merge the two advisory committees and the involvement of external and independent *experts*, including doctors, therapists and legal experts in the domain of harassment.<sup>273</sup>

## Internal rules on whistleblowing

The 2004 EU staff Regulations actively oblige EU civil servants to report any illegal activity or misconduct they observe in the course of their work. With the revision of the Staff Regulations in 2014, the EU institutions are also required to introduce internal rules creating a procedure by which whistleblowers can file reports in a protected setting.<sup>274</sup>

When Transparency International EU published our first landscape review of integrity policies in EU institutions in 2014,<sup>275</sup> we recommended that the EP should adopt internal whistleblowing procedures in line with obligations under the EU Staff Regulations, with respect to existing standards on internal whistle-blower protection such as those elaborated by the British Standards Institute.<sup>276</sup> In 2015, the European Ombudsman noted in an own-initiative inquiry that only the European Commission and the European Court of Auditors had adopted whistleblowing rules in accordance with the Staff Regulations.<sup>277</sup>

In December 2015, the European Parliament adopted its own internal rules on whistleblowing, which entered into force in January 2016. From an overall assessment of the adequacy of the main institutions' and agencies' internal rules on whistleblowing, the EP's rules are vague, imprecise, and incomplete. The EU Parliament adopted just six articles to implement the Staff Regulations and comply with the Ombudsman's decision.

The EP rules have a very narrow scope: they are applicable only to Parliament staff, meaning the EP did not consider individuals who, in the course of or in connection with the performance of their duties, may become aware of facts that may give rise to a presumption of possible illegal activity within the EP, or to the other individuals or legal entities that may be related to potential whistleblowers and that may need protection. The EU Whistleblowing Directive provides an example of a broader scope.<sup>278</sup>

Rather than being limited to staff, the scope should usefully differentiate between various categories of staff. Accredited Parliamentary Assistants (APAs) may be part of the EP's staff, but they require specific protections tailored to their situation,



View on the European Parliament building in Brussels. MEPs are not required to submit any receipts for how they cumulatively spend nearly €40 Million per year in general expenditure allowance.

given that their employment depends directly on their MEP, making them uniquely vulnerable. This means that over 1,700 members of EP staff are insufficiently protected.

If APAs do report on wrongdoing, it will be difficult for the institution to provide adequate and equivalent employment opportunities elsewhere. At the very least, the EP should give APAs the ability to protect themselves by providing an avenue for the filing of anonymous reports, something the EP's rules actually specifically exclude. Other staff, such as officials with a lifetime contract, present other vulnerabilities – as they cannot be laid off easily, they may face stigmatisation, social isolation, reduced career prospects and general harassment.

In addition to the narrow scope, the rules consist of just a few short articles offering notional advice and assistance, promising protection for whistleblowers, right to information and appeals. All these articles are extremely vague, and as they stand, are not enough to provide adequate assistance and

protection to (potential) whistleblowers. Additionally, the EP did not provide any additional explanatory documents, explanatory examples, or guidance.

Adequate guidance is crucial for prospective whistleblowers, who may be insecure about whether and how they should report wrongdoing. The procedure should answer questions such as: am I going to be persecuted by superiors? Is the observed behaviour problematic enough to warrant a report? Is the EP in a position to protect me? Who should I speak to first, and what other possible reporting channels exist in case my hierarchy is unwilling to look into it, or complicit?

Many best practice examples exist on how to create a culture of integrity,<sup>279</sup> one that is open to whistleblowers' reports, and does not equate them to 'snitches' or individuals putting the reputation of an institution at risk by insisting on proper conduct.

Furthermore, the current rules do not specify how whistleblowers should be protected and against which kind of behaviour and/or situations. The rules do not specify the procedure that a potential whistleblower should follow to report potentially illegal activities, therefore falling back on the Staff Regulations. Those reporting procedures appear unreasonable to follow in some cases, for instance when MEPs' personal trainees should report directly to the Secretary-General. Furthermore, the internal rules exclude anonymous reporting, do not include sanctions in case superiors breach the confidentiality obligations, all while emphasising the possibility of disciplinary proceedings for false or malicious allegations. All of the above is unlikely to increase the willingness of prospective whistleblowers to step forward.

Support to whistleblowers is essentially the responsibility of the European Parliament as an employer, and a legal obligation under EU law. The Parliament should, to the greatest extent possible, protect a whistleblower against all forms of retaliation or reprisal, disadvantage or discrimination at the workplace linked to or resulting from whistleblowing. The EP should put in place mechanisms to give potential whistleblowers the necessary tools to protect themselves from all types of harm they can suffer as a consequence of blowing the whistle, including: dismissal; probation;

punitive transfers; harassment; reduced duties or hours; withholding of promotions or training; loss of status and benefits; and threats of such actions.<sup>280</sup>

The protections granted by the provisions of the EP Internal Rules seem inadequate, both when compared to other institutions' internal rules and compared to the 2019 Directive passed by the co-legislators. The EP should at least guarantee the same 'minimum level of protection' that it has legislated for Member States to implement at the national level. In particular, there are three main issues that should be addressed by the EP in a revision of its internal rules. First, the protections granted by the Directive should also be afforded to EP staff and service providers. Second, a culture should be created that rewards reports, given that almost no whistleblower cases have been reported since the rules entered into force. Third, a special regime should be found for APAs, as the current rules cannot guarantee employment protections to parliamentary assistants.

According to the EP's own reports, since the rules entered into force in January 2016, almost no whistleblower cases have been reported, calling into question the efficacy of the current framework: in a public institution with such a large number of varied staff and members, the absence of reports on wrongdoing cannot seriously be interpreted as signifying an absence of conflicts of interest or other breaches. Three whistleblower cases were reported in 2016, all by APAs who were then fired by their respective MEPs. In 2017, no cases have been reported.

As we have already mentioned, APAs' contracts are concluded and administered directly by the EP, and they are counted as EU staff, but their contracts are based on a relationship of mutual trust with the MEP for whom they are working.<sup>281</sup> According to the Conditions of Employment of Other Servants of the EU,<sup>282</sup> loss of 'trust' is recognised as a legitimate reason for terminating the contract of an APA. Therefore, APAs are unlikely to take the chance to report potentially illegal activities, or other activities that breach MEPs' Code of Conduct or the proper uses of parliamentary allowances, since it is wholly unclear how they will be protected by the Parliament in case their MEP decides to terminate their contract in retaliation.

In March 2019, MEPs adopted a report noting that, in view of the three dismissed APAs and zero reports recorded in 2017, “whistleblowing is crucial in deterring unlawful activities and wrongdoing and [the Parliament] believes that the Parliament may not be inspiring confidence in their staff generally, nor granting requisite legal protection to APAs specifically, to those who wish to report wrongdoing; [and] calls on the Secretary-General to remedy this situation as a matter of urgency”,<sup>283</sup> as well as urging “the Secretary-General to apply comparable remedies to APA whistleblowers to those APAs who are victims of harassment, such as post transfer and salary payment until the end of their contract”.<sup>284</sup>

Transparency International EU welcomes the EP’s statements, as reported above, as a first step in the right direction. The EP’s administration should act on this resolution by its members. As noted in the section on the EP’s internal functioning, the EP’s Secretariat is accountable to the Bureau, but the latter does not necessarily implement the instructions it receives from MEPs by majority vote in the plenary. The precarious situation of APAs has lasted for too long and should be remedied as a matter of urgency, via a resolute overhaul of the internal whistleblowing rules, not least against the backdrop of the much more ambitious whistleblowing legislation that Parliament was able to agree with Member States in early 2019.

## RECOMMENDATIONS

- ▶ Introduce cooling-off rules for MEPs for as long as they receive a transitional allowance.
- ▶ Declarations of outside activities should be made available on the website in machine-readable format. Spot checks for veracity and completeness should be performed by parliamentary services.
- ▶ Appointments of rapporteurs should include a specific conflict of interest check by the Committee concerned with regard to the legislative file at hand.
- ▶ MEPs who declare generic activities such as ‘consultant’ or ‘attorney’ should make detailed declarations as regards the type of service provided and whether it relates to EU policy making.
- ▶ For the vetting of Commissioner-nominees, declarations of financial and other interests should be vetted by the Legal Affairs Committee, based on an assessment by the proposed Independent Ethics Body. Sufficient time, resources and independent expertise should be made available.
- ▶ Monitoring and sanction mechanisms should be strengthened.
- ▶ Intensify trainings for new staff and managers to increase the awareness of ethics rules, and further develop ethics guidance, including real-life examples on conflicts of interest.
- ▶ A revision of the EP’s internal rules should bring current the whistleblower protections in line with the provisions of the 2019 directive, with special emphasis on protecting vulnerable staff classifications such as MEPs’ accredited parliamentary assistants and interns.
- ▶ Anonymous reporting should be allowed, as it is in the Commission, and confidentiality should be properly guaranteed.
- ▶ In the medium term, all the above monitoring, support functions and sanction mechanisms should be the remit of a well-resourced and independent EU ethics body common to all three EU institutions.

## ENDNOTES

- 1 <https://www.transparency.org/en/national-integrity-system-assessments>
- 2 Article 227, Treaty on the Functioning of the European Union (TFEU).
- 3 Article 289, TFEU and Title II, Chapter 4 of the Parliament's Rules of Procedure (Rules 78a-e).
- 4 C-139/79 Maizena v Council.
- 5 Article 14(2), 19(1), 49 and 50, Treaty on European Union (TEU), as well as Article 311, 312(2) and 352 TFEU
- 6 For example, in the case of the Anti-Counterfeiting Trade Agreement in 2012.
- 7 Lord, Christopher. 'The European Parliament: a working parliament without a public?' *The Journal of Legislative Studies*, 2018, 24:1, pp.34-50.
- 8 See the degree of cohesion across issues and political groups, available at <https://www.votewatch.eu/en/term9-political-group-cohesion.html>
- 9 Library of the European Parliament, *Parliament's legislative initiative*, [Library Briefing] (24 October 2013).
- 10 An INI requires the initiative of an MEP or Committee and must be voted for by a majority at both Committee and Plenary level. INI-reports do not have to be legislative in nature and can be adopted on a wide variety of subjects, including foreign policy.
- 11 Article 225, TFEU.
- 12 Mahony, Honor: EU leaders to review 'Spitzenkandidat' process, EU Observer, 27 June 2014, at <https://euobserver.com/election/124796>
- 13 Ursula von der Leyen, *A Union that strives for more, Political Guidelines for the next European Commission 2019-2024*, European Commission, p.20.
- 14 Framework Agreement of 20 October 2010 on relations between the European Parliament and the European Commission.
- 15 This is provided in a more user-friendly way by third parties such as the NGO [Votewatch.eu](http://Votewatch.eu).
- 16 Article 6(1), as last amended by the Council as Council Decision 2018/994 on 13 July 2018.
- 17 Article 3(1) and 3(1) of the Statute for Members of the European Parliament.
- 18 Article 2, Rules of Procedure (RoP).
- 19 Alemanno, Alberto, 'Lobbying transparency enhances MEPs' freedom, *EUobserver*, 4 July 2017, at: <https://euobserver.com/opinion/138426>
- 20 Lorenzo De Sio, Luana Russo and Mark n. Franklin, 'Explaining the outcome. Second-order factors still matter, but with an exceptional turnout increase, in: De Sio, L., Franklin, M.N. and Russo L. (eds), *The European Parliament Elections of 2019*, (Luiss University Press: Rome, 2019).
- 21 Article 229, TFEU.
- 22 Protocol (No 7) on the privileges and immunities of the European Union, Articles 7-9.
- 23 Articles 5-8, RoP.
- 24 Article 9, RoP.
- 25 Alemanno, Alberto, 'Unpacking the Principle of Openness in EU Law: Transparency, Participation and Democracy,' HEC Paris Research Paper, 2013, at: [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2303644](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2303644)
- 26 Article 15(3), TFEU.
- 27 Steve Peers, 'Beware of Courts Bearing Gifts: Transparency and the Court of Justice of the European Union,' (2019), 25, *European Public Law*, Issue 3, pp.403-420.
- 28 Article 209, RoP.
- 29 Article 25(2), RoP.
- 30 European Parliament resolution of 28 April 2016 on public access to documents (for the years 2014-2015 (2015/2287(INI)), available at: [www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0202&language=EN](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0202&language=EN)
- 31 European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI)), available at: [www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0358&language=EN&ring=A8-2017-0133](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0358&language=EN&ring=A8-2017-0133)
- 32 See: [www.europarl.europa.eu/RegistreWeb/search/typedoc.htm?codeTypeDocu=BUROJ](http://www.europarl.europa.eu/RegistreWeb/search/typedoc.htm?codeTypeDocu=BUROJ)
- 33 Article 27, RoP.
- 34 Article 26(3), RoP.
- 35 De la Baume, Maia, 'European Parliament accused of political stitch-up over top posts,' *Politico Europe*, 29 March 2018.
- 36 Article 29, EU Staff Regulation.
- 37 Article 42, EU Charter on Fundamental Rights, which is annexed to the EU Treaties and binding on EU institutions as well as Article 298, TFEU.
- 38 Letter of 27 March 2018 from Pilar Antelo, European Parliament Staff Committee Chair, available at: <https://g8fip1kplyr33r3krz5b97d1-wpengine.netdna-ssl.com/wp-content/uploads/2018/03/Tajani-appointments-1.pdf>

- 39 Committee on Budgetary Control Extraordinary meeting, 15 April 2019, available at: [https://multimedia.europarl.europa.eu/en/committee-on-budgetary-control-extraordinary-meeting-cont-committee-meeting\\_20190415-1945-COMMITTEE-CONT\\_vd](https://multimedia.europarl.europa.eu/en/committee-on-budgetary-control-extraordinary-meeting-cont-committee-meeting_20190415-1945-COMMITTEE-CONT_vd)
- 40 Specifically, the EP staff committee cites Articles 27 and 45 of the Staff Regulation as laying down criteria for performance and selection that may be undermined by the politicised recruitment process.
- 41 Blomeyer & Sanz, 'Appointment procedures in the EU institutions, study requested by the EP's CONT Committee,' February 2019, p.34, at: [www.europarl.europa.eu/RegData/etudes/STUD/2019/621803/IPOL\\_STU\(2019\)621803\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2019/621803/IPOL_STU(2019)621803_EN.pdf)
- 42 Ibid., p.26.
- 43 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), at: [www.europarl.europa.eu/RegData/PDF/rev\\_801268\\_1\\_EN.pdf](http://www.europarl.europa.eu/RegData/PDF/rev_801268_1_EN.pdf)
- 44 European Parliament Bureau decision of 28 November 2001 on public access to European Parliament documents, arts 4(3), 5(1), 5(2), at: [https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32011D0722\(01\)](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32011D0722(01))
- 45 EP ATD decision, Article 4(4).
- 46 Article 39, 2016 Interinstitutional Agreement on Better Law-Making.
- 47 The register can be consulted at [www.europarl.europa.eu/RegistreWeb](http://www.europarl.europa.eu/RegistreWeb)
- 48 2018 Public Access to documents report, p. 5, at [https://www.europarl.europa.eu/RegData/PDF/rapport2018/Annual\\_report\\_EN.pdf](https://www.europarl.europa.eu/RegData/PDF/rapport2018/Annual_report_EN.pdf)
- 49 Article 15(3), TFEU.
- 50 2018 Public Access to documents report, p. 7.
- 51 Ibid., p. 9.
- 52 Footnote 8, p. 5, Council document 11099/18 pf 13 July 2018, at: <https://www.statewatch.org/media/documents/news/2018/aug/eu-council-legislative-transparency-11099-18.pdf>
- 53 Ombudsman Decision in case 682/2014/JF – though regarding a case of the European Commission, the decision is addressed also to the Council and the Parliament, [www.ombudsman.europa.eu/en/decision/en/87636](http://www.ombudsman.europa.eu/en/decision/en/87636)
- 54 Holly Haines, Alicia Lorenzo, Giovanni Manzoni, '2020 Vision? Access to Documents in the EU,' College of Europe Transparency Group paper, 2019.
- 55 Article 122(2), RoP.
- 56 Article 4 of the Statute of MEPs.
- 57 See [www.europarl.europa.eu/RegData/PDF/C216\\_C284\\_EN.pdf](http://www.europarl.europa.eu/RegData/PDF/C216_C284_EN.pdf)
- 58 Teffer, Peter, 'The shadowy EU parliament boss who likes to say "no",' *EUobserver*, 15 March 2019.
- 59 Teffer, Peter, 'Documents on new rules for MEP expenses kept secret,' *EUobserver*, 1 August 2018.
- 60 Paragraph 12, 2015/2287(INI), adopted on 28 April 2016.
- 61 European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI)), available at: [www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0358&language=EN&ring=A8-2017-0133](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0358&language=EN&ring=A8-2017-0133)
- 62 Article 10 TEU.
- 63 Article 15 TFEU.
- 64 Article 294, TFEU.
- 65 Available at <https://oeil.secure.europarl.europa.eu/oeil/home/home.do>
- 66 Eder, Florian: Brussels Playbook of 2 November 2020, at <https://www.politico.eu/newsletter/brussels-playbook/politico-brussels-playbook-the-world-vs-trump-whos-your-cuddle-buddy-loyalty-or-else>
- 67 Joint declaration on practical arrangements for the co-decision procedure, 30.6.2007, para. 7.
- 68 If the plenary has adopted the first reading position, the Committee may still decide to enter into Trilogue negotiations with the Council before the Council adopts its first reading position. The plenary cannot stop the Committee from doing so, as it has already adopted the first reading position which constitutes the Committee's negotiating mandate. If the EP then agrees a joint text with the Council, the Council can adopt this text without the EP having to make any more amendments. The Council's first reading position then becomes law after the EP adopts the Council's first reading position. Parliament's second reading position is therefore identical with the Council's first reading position, hence the name 'early second reading'. Alternatively, EP can await the expiry of the three-months deadline after which the EP's position becomes law, see Article 72 RoP.
- 69 European Parliament, 'Handbook on the Ordinary Legislative Procedure. A guide to how the European Parliament co-legislates,' (2020), [https://telacmsf.europarl.europa.eu/cmsdata/211311/OLP\\_2020\\_EN.pdf](https://telacmsf.europarl.europa.eu/cmsdata/211311/OLP_2020_EN.pdf)
- 70 Available at <http://transparency.eu/eu-law-making-needs-more-transparency-says-european-ombudsman/>
- 71 Brandsma, G.J., 'Co-decision after Lisbon: The politics of informal Trilogues in European Union lawmaking,' *European Union Politics* 2015, 16(2): 309
- 72 European Parliament: Activity report: Developments and Trends of the Ordinary Legislative Procedure, 1 July 2014 – 1 July 2019, 2019, p.8.
- 73 European Parliament: Activity report: Developments and Trends of the Ordinary Legislative Procedure, 1 July 2014 – 1 July 2019, 2019, p. 3
- 74 Available at <http://transparency.eu/Trilogues-in-urgent-need-of-more-transparency/>

- 75 Christilla Roederer-Rynning & Justin Greenwood, 'The culture of Trilogues,' *Journal of European Public Policy*, 2015, 22:8, 1148-1165, p.1151.
- 76 European Parliament, 'Handbook on the Ordinary Legislative Procedure. A guide to how the European Parliament co-legislates,' (2020), Footnote 1 on p.21.
- 77 See e.g. the Procedure File 2016/0107 (COD) in the EP's legislative observatory, at: [https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/0107\(COD\)](https://oeil.secure.europarl.europa.eu/oeil/popups/ficheprocedure.do?lang=en&reference=2016/0107(COD))
- 78 European Parliament: Activity report: Developments and Trends of the Ordinary Legislative Procedure, 1 July 2014 – 1 July 2019, 2019, p. 8
- 79 See proposals withdrawn due to "no foreseeable agreement", Annex IV to the Commission Work Programme 2020, at: [https://eur-lex.europa.eu/resource.html?uri=cellar%3A7ae642ea-4340-11ea-b81b-01aa75ed71a1.0002.02/DOC\\_2&format=PDF](https://eur-lex.europa.eu/resource.html?uri=cellar%3A7ae642ea-4340-11ea-b81b-01aa75ed71a1.0002.02/DOC_2&format=PDF)
- 80 For more detail on legislative transparency within the Council and a focus on Member State positions, see the parallel study on the Council available at: [www.transparency.eu/council](http://www.transparency.eu/council)
- 81 Article 69(4), RoP.
- 82 Christilla Roederer-Rynning and Justin Greenwood, 'The culture of Trilogues,' *Journal of European Public Policy*, 2015, 22:8, 1148-1165, p.1155.
- 83 Ibid.
- 84 Joint declaration on practical arrangements for the co-decision procedure (Article 251 of the EC Treaty), para. 9.
- 85 Judgment of the General Court (Seventh Chamber, Extended Composition) of 22 March 2018, Emilio De Capitani v European Parliament, Case T-540/15.
- 86 De Capitani v European Parliament, para. 73.
- 87 Footnote 8, p. 5, Council document 11099/18 of 13 July 2018, at: <https://www.statewatch.org/media/documents/news/2018/aug/eu-council-legislative-transparency-11099-18.pdf>
- 88 European Parliament, 'Interpretation and implementation of the Interinstitutional Agreement on Better Law-Making European Parliament resolution of 30 May 2018 on the interpretation and implementation of the Interinstitutional Agreement on Better Law-Making (2016/2018(INI))', para. 63.
- 89 Council document 11099/18, see the Annex for the specific milestones (left column) which trigger publication of specific documents (right column), including progress reports and Note to Council, and 4-column documents.
- 90 De Capitani v. Parliament, Para. 106.
- 91 Council document 9493/20 of 9 July 2020, at: <https://data.consilium.europa.eu/doc/document/ST-9493-2020-INIT/en/pdf>
- 92 De Capitani v European Parliament, para. 68.
- 93 More details on QMV are available at the Council website, at: <https://www.consilium.europa.eu/en/council-eu/voting-system/qualified-majority/>
- 94 Article 293 and Article 294(9), TFEU.
- 95 Article 294(7) lit. A, TFEU.
- 96 Transparency International, *The European Union Integrity System*, 2014. Available at [www.transparency.eu/euis](http://www.transparency.eu/euis)
- 97 European Ombudsman, 'Decision of the European Ombudsman setting out proposals following her strategic inquiry,' OI/5/2015/JAS concerning the transparency of Trilogues. Available at [www.ombudsman.europa.eu/en/decision/en/69206](http://www.ombudsman.europa.eu/en/decision/en/69206)
- 98 European Ombudsman, 'Decision of the European Ombudsman setting out proposals following her strategic inquiry OI/5/2015/JAS concerning the transparency of Trilogues', 2016. Available at [www.ombudsman.europa.eu/en/decision/en/69206](http://www.ombudsman.europa.eu/en/decision/en/69206)
- 99 In particular Articles 70-74, RoP. See also, European Parliament, 'Handbook on the Ordinary Legislative Procedure. A guide to how the European Parliament co-legislates,' (2020), p. 26.
- 100 Article 74, RoP.
- 101 Article 74, RoP.
- 102 Article 73(2) of the old Rules of Procedure, see EP decision of 13 December 2016 on the general revision of Parliament's Rules of Procedure, available at: [www.europarl.europa.eu/doceo/document/TA-8-2016-0484\\_EN.html?redirect](http://www.europarl.europa.eu/doceo/document/TA-8-2016-0484_EN.html?redirect)
- 103 Article 72, RoP.
- 104 Article 71, RoP.
- 105 See table released via access to document request, at: <https://www.asktheeu.org/en/request/6382/response/22207/attach/6/CRP%20mandates.pdf>
- 106 Article 16(8) TEU
- 107 Article 2(4), ATD-Regulation.
- 108 Article 1 lit. e, Annex to the Council document of 9 July 2020, available at: <https://data.consilium.europa.eu/doc/document/ST-9493-2020-INIT/en/pdf>
- 109 Inter Alia by the Dutch Council Presidency in 2016, see Working Party on Information 19 May 2016, 9536/16, 26 May 2016, p. 3, at <https://data.consilium.europa.eu/doc/document/ST-9536-2016-INIT/en/pdf>
- 110 Article 240(3) TFEU

- 111 See for example the list of Trilogues foreseen for 26 to 29 October 2020, which was published on 27 October, at <https://twitter.com/EU2020DE/status/1321043478063833088>
- 112 Council document of 9 July 2020, at <https://data.consilium.europa.eu/doc/document/ST-9493-2020-INIT/en/pdf>
- 113 Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-Making (IIA on Better Law-Making), paras. 32-39.
- 114 *Ibid.*, para. 34.
- 115 *Ibid.*, para. 38.
- 116 *Ibid.*, para. 39.
- 117 European Ombudsman, 'Decision of the European Ombudsman setting out proposals following her strategic inquiry OI/5/2015/JAS concerning the transparency of Trilogues,' paras. 46-48.
- 118 Non paper - Increasing transparency and accountability of the EU, 28 January 2020, available at: [www.permanentrepresentations.nl/permanent-representations/pr-eu-brussels/documents/publications/2019/06/18/non-paper---transparency-and-accountability](http://www.permanentrepresentations.nl/permanent-representations/pr-eu-brussels/documents/publications/2019/06/18/non-paper---transparency-and-accountability)
- 119 GRECO, 'Corruption Prevention. Members of the Parliament, Judges and Prosecutors. Conclusions and Trends', Groups of States Against corruption (4<sup>th</sup> Evaluation Round), p.14-15.
- 120 Article 15 as well as Article 294, TFEU, and Articles 2(4) and 12 of the ATD-Regulation.
- 121 *De Capitani v European Parliament*, para. 98.
- 122 Burson Marsteller, 'A Guide to Effective Lobbying in Europe: The View of Policymakers,' 2013.
- 123 Annex 3 of the Agreement between the European Parliament and the European Commission on the transparency register for organisations and self-employed individuals engaged in EU policy-making and policy implementation: [https://eur-lex.europa.eu/legal-content/en/TXT/?uri=uriserv:OJ.L\\_.2014.277.01.0011.01.ENG](https://eur-lex.europa.eu/legal-content/en/TXT/?uri=uriserv:OJ.L_.2014.277.01.0011.01.ENG)
- 124 European Parliament decision of 15 April 2014 on the modification of the interinstitutional agreement on the Transparency Register (2014/2010(ACI)): [www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0376+0+DOC+XML+V0//EN](http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2014-0376+0+DOC+XML+V0//EN)
- 125 According to the EP's own "legislative train" website on the inter-institutional agreement on a mandatory transparency register for lobbyists: [www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-inter-institutional-agreement-on-a-mandatory-transparency-register-for-lobbyists](http://www.europarl.europa.eu/legislative-train/theme-union-of-democratic-change/file-inter-institutional-agreement-on-a-mandatory-transparency-register-for-lobbyists)
- 126 European Parliament decision of 13 December 2016 on the general revision of Parliament's Rules of Procedure (2016/2114(REG)): [www.europarl.europa.eu/doceo/document/TA-8-2016-0484\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2016-0484_EN.html)
- 127 European Parliament resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions (2015/2041(INI)): [www.europarl.europa.eu/doceo/document/TA-8-2017-0358\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2017-0358_EN.html)
- 128 Note of the Secretary-General: Resolution on transparency, accountability and integrity in the EU institutions, Note for the Attention of the Members of the Bureau, D(2018)17770, 19 July 2018, available at [www.europarl.europa.eu/RegData/publications/notes/2018/017770/EP-PE\\_NT\(2018\)017770\(2018-07-19\)\\_XL.pdf](http://www.europarl.europa.eu/RegData/publications/notes/2018/017770/EP-PE_NT(2018)017770(2018-07-19)_XL.pdf)
- 129 European Parliament decision of 31 January 2019 on amendments to Parliament's Rules of Procedure affecting Chapters 1 and 4 of Title I; Chapter 3 of Title V; Chapters 4 and 5 of Title VI; Chapter 1 of Title VIII; Title XII; Title XIV and Annex II (2018/2170(REG)): [www.europarl.europa.eu/doceo/document/TA-8-2019-0046\\_EN.html](http://www.europarl.europa.eu/doceo/document/TA-8-2019-0046_EN.html)
- 130 Note of the Secretary-General: Resolution on transparency, accountability and integrity in the EU institutions, Note for the Attention of the Members of the Bureau, D(2018)17770, 19 July 2018, para. 3.
- 131 Kergueno, Raphaël, 'MEPs take steps towards lobby transparency and publish 10,000 meetings,' Transparency International EU, 23 September 2020, at: [transparency.eu/european-parliament-10000-meetings/](https://transparency.eu/european-parliament-10000-meetings/)
- 132 European Parliament, overall balance sheet 2015. Available at [www.europarl.europa.eu/cmsdata/113266/04\\_Bilan.pdf](http://www.europarl.europa.eu/cmsdata/113266/04_Bilan.pdf)
- 133 [www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0132&language=EN&ring=A8-2016-0131](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2016-0132&language=EN&ring=A8-2016-0131)
- 134 European Parliament, Resolution on Parliament's estimates of revenue and expenditure for the financial year 2018, 5 April 2017. Available at [www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0114&language=EN&ring=A8-2017-0156](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0114&language=EN&ring=A8-2017-0156)
- 135 European Parliament resolution of 27 April 2017 with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2015, paragraph 4, (2016/2152(DEC)). Available at [www.europarl.europa.eu/cmsdata/117867/P8\\_TA-PROV\(2017\)0146%20-%20Provisional%20version.pdf](http://www.europarl.europa.eu/cmsdata/117867/P8_TA-PROV(2017)0146%20-%20Provisional%20version.pdf)
- 136 European Parliament resolution of 28 April 2016 with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2014, para. 36-37-38, 28 April 2016 (2015/2155(DEC)). Available at [www.europarl.europa.eu/cmsdata/101345/P8\\_TA-PROV\(2016\)0150\\_EN.pdf](http://www.europarl.europa.eu/cmsdata/101345/P8_TA-PROV(2016)0150_EN.pdf)
- 137 European Parliament, Decision of the bureau concerning implementing measures for the Statute for Members of the European Parliament, 19 May and 9 July 2008 (2009/C 159/01). Available at [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009D0713\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009D0713(01))
- 138 Court of Auditors, Special report No 10/98 concerning the expenses and allowances of the Members of the European Parliament together with the replies of the European Parliament, paragraph 1.31, 3 August 1998 (98/C 243/01). Available at [www.eca.europa.eu/Lists/ECADocuments/SR98\\_10/SR98\\_10\\_EN.PDF](http://www.eca.europa.eu/Lists/ECADocuments/SR98_10/SR98_10_EN.PDF)

- 139 European Parliament, Decision of the bureau concerning implementing measures for the Statute for Members of the European Parliament, Article 28, 19 May and 9 July 2008 (2009/C 159/01). Available at [http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009D0713\(01\)](http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32009D0713(01))
- 140 European Parliament, Decision of the bureau concerning the list of expenses that may be defrayed from the General Expenditure Allowance (GEA). Available at [transparency.eu/wp-content/uploads/2017/04/list-of-expenses-GEA.pdf](http://transparency.eu/wp-content/uploads/2017/04/list-of-expenses-GEA.pdf)
- 141 European Parliament, Response by Vice-President Ildikó Gall-Pellcz to access to document request A (2015)14430-35-37, 16 February 2016. Available at [transparency.eu/wp-content/uploads/2017/01/Response-to-the-appeal.pdf](http://transparency.eu/wp-content/uploads/2017/01/Response-to-the-appeal.pdf)
- 142 European Parliament, Information on the budgetary and the financial management of the European Parliament in 2014, p.50. Available at <https://www.europarl.europa.eu/cmsdata/95161/NT%20SG%20CONT%20Questionnaire%20Discharge%202014%20final.pdf>
- 143 European Parliament, Resolution with observations forming an integral part of the decision on discharge in respect of the implementation of the general budget of the European Union for the financial year 2014, paragraph 38, 28 April 2016 (2015/2155(DEC)). Available at [www.europarl.europa.eu/cmsdata/101345/P8\\_TA-PROV\(2016\)0150\\_EN.pdf](http://www.europarl.europa.eu/cmsdata/101345/P8_TA-PROV(2016)0150_EN.pdf)
- 144 European Parliament, Resolution on Parliament's estimates of revenue and expenditure for the financial year 2018, Paragraph 38, 5 April 2017. Available at [www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0114&language=EN&ring=A8-2017-0156](http://www.europarl.europa.eu/sides/getDoc.do?type=TA&reference=P8-TA-2017-0114&language=EN&ring=A8-2017-0156)
- 145 Vote watch, MEP vote on discharge 2015: EU general budget – European Parliament / after paragraph 44 amendment 1/6, 27 April 2017. Available at [www.votewatch.eu/en/term8-discharge-2015-eu-general-budget-european-parliament-proposal-for-a-decision-after-paragraph-44-amen-6.html](http://www.votewatch.eu/en/term8-discharge-2015-eu-general-budget-european-parliament-proposal-for-a-decision-after-paragraph-44-amen-6.html)
- 146 Conservatives in the European Parliament, Code governing the expenses and allowances for Conservatives MEPs, June 2015. Available at <http://conservativeeurope.com/MEP-Expenses>
- 147 Labour in Europe, Labour's MEPs transparency arrangements. Available at [www.eurolabour.org.uk/transparency](http://www.eurolabour.org.uk/transparency)
- 148 Investigative reporting Denmark, Journalist of the MEP's project, Does your member run a ghost office? 5 June 2016. Available at [www.ir-d.dk/2017/06/does-your-mep-run-a-ghost-office/](http://www.ir-d.dk/2017/06/does-your-mep-run-a-ghost-office/)
- 149 Access Info Europe: European Parliament leaders vote against spending transparency, 3 July 2018.
- 150 Recommendation of the European Ombudsman in case 1651/2018/THH, 29 April 2019.
- 151 Teffer, Peter, 'EU parliament rejects ombudsman over expenses,' *EUobserver*, 26 July 2019.
- 152 EU Publications Office, Budget Online, Chapter 10, 2017. Available at <http://eur-lex.europa.eu/budget/data/LBL/2017/en/SEC01.pdf>
- 153 European Parliament, Information on the budgetary and the financial management of the European Parliament in 2014, question 42, 2014. Available at <https://polcms.secure.europarl.europa.eu/cmsdata/95161/NT%20SG%20CONT%20Questionnaire%20Discharge%202014%20final.pdf>
- 154 European Parliament, Minutes of the Bureau, page 35, 12 December 2016 (PE-8/BUR/PV/2016-12). Available at [www.europarl.europa.eu/RegData/organes/bureau/proces\\_verbal/2016/12-12/BUR\\_PV%282016%2912-12\\_EN.pdf](http://www.europarl.europa.eu/RegData/organes/bureau/proces_verbal/2016/12-12/BUR_PV%282016%2912-12_EN.pdf)
- 155 Vote watch, 'MEP vote on discharge 2015: EU general budget – European Parliament / after paragraph 44 amendment 1/4,' 27 April 2017. Available at [www.votewatch.eu/en/term8-discharge-2015-eu-general-budget-european-parliament-proposal-for-a-decision-after-paragraph-44-amen.html](http://www.votewatch.eu/en/term8-discharge-2015-eu-general-budget-european-parliament-proposal-for-a-decision-after-paragraph-44-amen.html)
- 156 European Parliament, Bureau Notice No 2/2015, New decisions concerning the implementation of the Statute for Members regarding parliamentary assistance, paragraph 2. Available at [www.euraffex.eu/wp-content/uploads/2015/12/Bureau-Notice-02-2015\\_EN.pdf](http://www.euraffex.eu/wp-content/uploads/2015/12/Bureau-Notice-02-2015_EN.pdf)
- 157 See Article 11a, European Parliament Rules of Procedure as of its January 2019 revision.
- 158 European Parliament, 'About MEPs, MEPs expenses,' available at <https://www.europarl.europa.eu/meps/en/about>
- 159 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, Title VII, 14 June 1962. Available at <http://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1433861011292&uri=CELEX:01962R0031-20140701>
- 160 European Parliament, 'About MEPs, Staffing arrangements.' Available at [www.europarl.europa.eu/meps/en/about-meps.html](http://www.europarl.europa.eu/meps/en/about-meps.html)
- 161 European Parliament, Bureau Notice No 2/2015, New decisions concerning the implementation of the Statute for Members regarding parliamentary assistance: [www.euraffex.eu/wp-content/uploads/2015/12/Bureau-Notice-02-2015\\_EN.pdf](http://www.euraffex.eu/wp-content/uploads/2015/12/Bureau-Notice-02-2015_EN.pdf)
- 162 European Parliament, Lists of Assistants. Available at [www.europarl.europa.eu/meps/en/assistants.html](http://www.europarl.europa.eu/meps/en/assistants.html)
- 163 European Parliament, Internal Audit Report No 06/02, Audit of the Parliamentary Assistance Allowance, 9 January 2008. Available at [www.europarl.europa.eu/register/audit/EP-PE\\_ADT%282006%290002\\_EN.pdf](http://www.europarl.europa.eu/register/audit/EP-PE_ADT%282006%290002_EN.pdf)
- 164 Decision of the Bureau of 19 May 2008 and 9 July 2008.
- 165 European Parliament, Directorate-General for Finance, Annual Activity Report 2015. Available at [www.europarl.europa.eu/cmsdata/104263/10\\_FINS\\_RAA2015\\_EN\\_signed.pdf](http://www.europarl.europa.eu/cmsdata/104263/10_FINS_RAA2015_EN_signed.pdf)
- 166 European Parliament, Information on the budgetary and the financial management of the European Parliament in 2015, 2015. Available at [transparency.eu/wp-content/uploads/2017/01/Discharge-.pdf](http://transparency.eu/wp-content/uploads/2017/01/Discharge-.pdf)
- 167 European Anti-Fraud Office, The OLAF report 2016, p.22, 2017. Available at [https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf\\_report\\_2016\\_en.pdf](https://ec.europa.eu/anti-fraud/sites/antifraud/files/olaf_report_2016_en.pdf)
- 168 BBC News, 'Ex-MEP jailed for expenses fraud,' 29 April 2016. Available at [www.bbc.com/news/uk-england-sussex-36167299](http://www.bbc.com/news/uk-england-sussex-36167299)

- 169 Laurens Cerulus and Maia de la Baume, 'Ex-UKIPer jailed for duping EU Parliament,' *Politico EU*, 13 July 2015. Available at [www.politico.eu/article/mote-ashley-jailed-fraud-european-parliament-case-uk-ukip-farage/](http://www.politico.eu/article/mote-ashley-jailed-fraud-european-parliament-case-uk-ukip-farage/)
- 170 BBC News, 'Former MEP Ashley Mote jailed over expenses fraud,' 13 July 2015. Available at [www.bbc.com/news/uk-politics-33508850](http://www.bbc.com/news/uk-politics-33508850)
- 171 James Rush, *The Independent*, Nigel Farage's wife "is paid with public money", it is revealed, despite denial on show with Gogglebox's Steph and Dom, 16 December 2014. Available at [www.independent.co.uk/news/uk/politics/ukip-leaders-wife-is-paid-with-public-money-it-is-revealed-following-his-denial-on-googleboxs-steph-9928490.html](http://www.independent.co.uk/news/uk/politics/ukip-leaders-wife-is-paid-with-public-money-it-is-revealed-following-his-denial-on-googleboxs-steph-9928490.html)
- 172 Sanita Jemberga, RE:BALTICA, MEPs can't hire relatives? Ask the Latvians how to get around the rules, 24 November 2016. Available at <https://en.rebaltica.lv/2016/11/meps-cant-hire-relatives-ask-the-latvians-how-to-get-around-the-rules/>
- 173 Ditte O. Lyngø, Ekstrabladet, 'Rikke Karlsson spent EU money on her son, 20 April 2017.' Available at <http://ekstrabladet.dk/nyheder/politik/dansktopolitik/rikke-karlsson-brugte-eu-penge-paa-sin-soen-jeg-laegger-mig-fladt-ned/6623317>
- 174 Esther King, 'Marine Le Pen's party under investigation for fraud,' *Politico EU*, 1 May 2017. Available at [www.politico.eu/article/marine-le-pens-party-under-investigation-for-fraud-national-front/](http://www.politico.eu/article/marine-le-pens-party-under-investigation-for-fraud-national-front/)
- 175 Nicholas Vinocur, 'European Parliament seeks €339,000 from Marine Le Pen,' *Politico EU*, 31 October 2017. Available at [www.politico.eu/article/european-parliament-seeks-339000-euros-from-marine-le-pen-national-front-france/](http://www.politico.eu/article/european-parliament-seeks-339000-euros-from-marine-le-pen-national-front-france/)
- 176 Deutsche Welle, 'European court rules Marine Le Pen must repay €300,000 in misspent funds,' 19 June 2018.
- 177 Guyot, Claire: EU Parliament to claim €427,000 from National Front over expenses abuse, Euractiv, 7 March 2018 at <https://www.euractiv.com/section/politics/news/national-front-faces-e427000-eu-parliament-money-clawback/>
- 178 Jennifer Rankin, Nigel Farage among Ukip MEPs accused of misusing EU funds, *The Guardian*, 1 February 2017. Available at [www.theguardian.com/politics/2017/feb/01/nigel-farage-among-ukip-meps-accused-of-misusing-eu-funds](http://www.theguardian.com/politics/2017/feb/01/nigel-farage-among-ukip-meps-accused-of-misusing-eu-funds)
- 179 Rankin, Jennifer, 'Nigel Farage has MEP salary docked to recoup misspent EU funds,' *The Guardian*, 12 January 2018. Available at [www.theguardian.com/politics/2018/jan/12/nigel-farage-eu-salary-docked-claim-misspent-public-funds](http://www.theguardian.com/politics/2018/jan/12/nigel-farage-eu-salary-docked-claim-misspent-public-funds)
- 180 OLAF uncovers financial irregularities by MEPs, OLAF Press Release No 12/2020, at: [https://ec.europa.eu/anti-fraud/media-corner/news/30-04-2020/olaf-uncovers-financial-irregularities-meps\\_en](https://ec.europa.eu/anti-fraud/media-corner/news/30-04-2020/olaf-uncovers-financial-irregularities-meps_en)
- 181 Available at [www.transparency.org/glossary/term/conflict\\_of\\_interests](http://www.transparency.org/glossary/term/conflict_of_interests)
- 182 OECD: Managing conflict of interest in the public sector, 2005, and OECD: Recommendation on Public Integrity, Paris, 2017.
- 183 European Court of Auditors (ECA), 'The ethical frameworks of the audited EU institutions: scope for improvement' (2019), para. 39.
- 184 Article 1, CoC.
- 185 Article 3, CoC.
- 186 Article 4 CoC.
- 187 Article 2 CoC.
- 188 The Rules of Procedure were reformed in 2016 and early 2019.
- 189 European Court of Auditors, 'The ethical frameworks of the audited EU institutions: scope for improvement,' Special Report, 2019, para. 26.
- 190 Ibid., Annex II, p.49.
- 191 ECA 2019, p.53.
- 192 ECA 2019, para. 84.
- 193 ECA 2019, p.60.
- 194 OCED, 'Recommendation on Public Integrity,' 2017.
- 195 See the Transparency International EU study on the Commission, published alongside the present report: [www.transparency.eu/commission](http://www.transparency.eu/commission)
- 196 Article 3, CoC.
- 197 Article 5, CoC.
- 198 Article 2 (c), CoC.
- 199 Article 2 (b), CoC.
- 200 See Transparency International EU, 'Moonlighting in Brussels,' 2018.
- 201 Article 4.2, CoC.
- 202 Article 7 and 8, CoC.
- 203 2017 Annual Report of the Advisory Committee on the Conduct of Members.
- 204 Article 4(a), CoC.
- 205 Recommendation 1(c), ECA 2019, p.37, as well as paras. 46 to 50.
- 206 ECA 2019, p.60.
- 207 [www.europarl.europa.eu/at-your-service/en/work-with-us/employment](http://www.europarl.europa.eu/at-your-service/en/work-with-us/employment)
- 208 This is all the more the case in view of some other functions the Parliament devotes significant resources to, including

representative offices around the world in non-EU countries, where it would seem that EU Delegations would be the relevant diplomatic representative, and perfectly able to prepare occasional visits by MEPs.

- 209 Article 125 (10) RoP and in particular Article 2, Annex VII of the RoP.
- 210 See the Transparency International EU study on the Commission, published alongside the present report: [www.transparency.eu/commission](http://www.transparency.eu/commission)
- 211 Article 6, CoC.
- 212 OECD, 'Post-Public Employment Good Practices for preventing Conflicts of Interest,' 2010.
- 213 Transparency International EU, 'Access all areas,' p.15 (ft 33).
- 214 OECD, 'Preventing policy capture – integrity in public decision making,' 2017.
- 215 Article 11, Commission Decision 2018/C 65/06 of 31 January 2018 on a Code of Conduct for the Members of the European Commission.
- 216 Article 10.11(1), Canada Lobbying Act 2008. Available at <https://laws-lois.justice.gc.ca/PDF/L-12.4.pdf>
- 217 Conflict of Interest Act 2007, Article 35. Available at <https://laws-lois.justice.gc.ca/eng/acts/c-36.65/page-5.html#h-92317>
- 218 Conflict of Interest Act 2007, Article 34.
- 219 Article 432-13 of the French Penal Code, at [www.legifrance.gouv.fr/codes/id/LEGIARTI000033912762/2017-01-22/](http://www.legifrance.gouv.fr/codes/id/LEGIARTI000033912762/2017-01-22/)
- 220 Article 12 UNCAC, at [www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](http://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)
- 221 Transparency International EU, 'Moonlighting in Brussels,' 2018, at <https://transparency.eu/wp-content/uploads/2018/07/TIEU-Moonlighting-in-Brussels-MEP-incomes.pdf>
- 222 [www.integritywatch.eu](http://www.integritywatch.eu)
- 223 See declaration at [https://www.europarl.europa.eu/mepdif/1185\\_DFI\\_LEG8\\_rev9\\_FR.pdf](https://www.europarl.europa.eu/mepdif/1185_DFI_LEG8_rev9_FR.pdf)
- 224 See declaration at [https://www.europarl.europa.eu/mepdif/2278\\_DFI\\_LEG8\\_rev5\\_DE.pdf](https://www.europarl.europa.eu/mepdif/2278_DFI_LEG8_rev5_DE.pdf)
- 225 See declaration at [https://www.europarl.europa.eu/mepdif/125021\\_DFI\\_LEG9\\_rev0\\_NL.pdf](https://www.europarl.europa.eu/mepdif/125021_DFI_LEG9_rev0_NL.pdf)
- 226 Transparency International EU, 'Moonlighting in Brussels,' 2018, p. 2.
- 227 Available at <https://ec.europa.eu/digital-single-market/en/news/contributions-received-companies-avmsd-public-consultation>
- 228 Spillane, Chris, 'MEPs crafting Netflix legislation sit on board of German public broadcaster,' *Politico Europe*, 13 June 2016, at: [www.politico.eu/article/meps-crafting-netflix-legislation-sit-on-board-of-german-public-broadcaster/](http://www.politico.eu/article/meps-crafting-netflix-legislation-sit-on-board-of-german-public-broadcaster/)
- 229 Baker, Jennifer, 'Netflix tax MEPs are "biased" and "unfit," say fellow MEPs,' *ARS Technica*, 1 July 2016, at: <https://arstechnica.com/tech-policy/2016/07/netflix-tax-biased-meps-avmsd-gue-ngl/>
- 230 Smith-Meyer, Bjarke, 'European lawmaker's pitch to investors stirs unease,' *Politico Europe*, 20 September 2017.
- 231 Advisory Committee on the Conduct of Members, Annual Report, 2017, p.9.
- 232 Mowat, Laura, 'Little incentive to play by the rules' EU slammed for dismissing concerns over German MEP,' *Daily Express*, 9 January 2018.
- 233 Article 7, CoC.
- 234 In the 2014-19 legislature, Parliament was composed of seven political groups, plus one representative for non-affiliated Members, with one of the three substitutes invited in whenever the potential breach regards an MEP from that Group.
- 235 Specifically, Article 11 paragraphs 2 to 9, RoP.
- 236 Advisory Committee of the Conduct of Members, Annual Reports from 2015-2018.
- 237 <https://www.channel4.com/news/exclusive-nigel-farage-accused-of-serious-breach-of-meps-code-of-conduct-in-leaked-letter>
- 238 See the latest declaration at [https://www.europarl.europa.eu/mepdif/4525\\_DFI\\_LEG9\\_rev0\\_EN.pdf](https://www.europarl.europa.eu/mepdif/4525_DFI_LEG9_rev0_EN.pdf)
- 239 De la Baume, Maia: Farage rejects European Parliament summons over undisclosed gifts, *Politico Europe*, 4 June 2019, at <https://www.politico.eu/article/farage-rejects-european-parliament-summons-over-undisclosed-gifts/>
- 240 Rankin, Jennifer, 'Nigel Farage paid at least €30,000 a month by own media firm,' *The Guardian*, 3 July 2019, at: [www.theguardian.com/politics/2019/jul/03/nigel-farage-earns-at-least-30000-a-month-from-media-company](http://www.theguardian.com/politics/2019/jul/03/nigel-farage-earns-at-least-30000-a-month-from-media-company)
- 241 ECA 2019, p.61, right-of-reply to Recommendation 1(6).
- 242 OLAF, 'OLAF uncovers financial irregularities by MEPs,' OLAF Press Release No 12/2020, at: [https://ec.europa.eu/anti-fraud/media-corner/news/30-04-2020/olaf-uncovers-financial-irregularities-meps\\_en](https://ec.europa.eu/anti-fraud/media-corner/news/30-04-2020/olaf-uncovers-financial-irregularities-meps_en)
- 243 ECA 2019, para. 40.
- 244 <http://ciec-ccie.parl.gc.ca/EN/ReportsAndPublications/Pages/MonetaryPenalties.aspx>
- 245 Article 11, Staff Regulation.
- 246 Article 11(3), EU Staff Regulation, Procedure 2018/2975 (RSP).
- 247 Article 12b, Staff Regulation.
- 248 ECA 2019, para. 43.
- 249 Article 11 Staff Regulation, as well as the Conditions of Employment of Other Servants for temporary staff.
- 250 ECA 2019, Annex I Part A, p.40.

- 251 Article 16, Staff Regulation.
- 252 Article 8, Implementing measures.
- 253 Article 16, Staff Regulation.
- 254 Reports available at <https://europarl.europa.eu/at-your-service/en/transparency/appropriate-behaviour>.
- 255 Disciplinary measures are found in Article 86 of the EU Staff Regulation and the 'Disciplinary proceedings' (Annex IX).
- 256 Article 16, EU Staff Regulation, and Bureau Decision of 13 January 2014 on the Delegation of the Powers of the Appointing Authority and of the Authority Empowered to Conclude Contracts of Employment (AECE)- [www.asktheeu.org/en/request/1420/response/5118/attach/2/Delegation%20powers%20of%20appointing%20authority.pdf](http://www.asktheeu.org/en/request/1420/response/5118/attach/2/Delegation%20powers%20of%20appointing%20authority.pdf)
- 257 Transparency International, 'Whistleblowing in Europe Legal Protections for Whistleblowers in the EU,' 2013, p.6.
- 258 Article 22a, 22b, 22c, (Article 24 and 90) EU Staff Regulations.
- 259 The European Parliament Internal Rules on implementing Article 22c of the Staff Regulations.
- 260 Available at <https://metooep.com/>
- 261 European Parliament resolution of 26 October 2017 on combating sexual harassment and abuse in the EU (2017/2897(RSP)) and European Parliament resolution of 11 September 2018 on measures to prevent and combat mobbing and sexual harassment at workplace, in public spaces, and political life in the EU (2018/2055(INI)).
- 262 Teffer, Peter, 'Frustrated EU parliament staffers set up #Metoo blog,' *EUobserver*, 4 October 2018. Available at: <https://euobserver.com/institutional/142990>
- 263 Bureau Decision on the functioning of the Advisory Committee dealing with harassment complaints concerning Members of the European Parliament and its procedures for dealing with complaints, Bureau Decision PE422.616/BUR of 2 July 2018, available at: [www.europarl.europa.eu/resources/library/media/20181003RES14909/20181003RES14909.pdf](http://www.europarl.europa.eu/resources/library/media/20181003RES14909/20181003RES14909.pdf)
- 264 *Ibid.*, Article 6(1).
- 265 Report on the Activities of the Advisory Committee dealing with harassment complaints between APAs and MEPs, which was leaked and made available by *Politico Europe*, at: <https://g8fip1kplyr33r3krz5b97d1-wpengine.netdna-ssl.com/wp-content/uploads/2017/10/MorinChartierEuropeanParliamentMEPHarassmentReport.pdf>
- 266 Bureau Decision, Article 10(2).
- 267 *Ibid.*, Article 11.
- 268 *Ibid.*, p.8.
- 269 Heath, Ryan and De la Baume, Maia, 'European Parliament struggles to handle harassment cases,' *Politico Europe*, 31 October 2017.
- 270 European Parliament measures against harassment, press release of 3 October 2018, available at: [www.europarl.europa.eu/news/en/press-room/20181003IPR14905/european-parliament-measures-against-harassment](http://www.europarl.europa.eu/news/en/press-room/20181003IPR14905/european-parliament-measures-against-harassment)
- 271 European Parliament, 'ZERO HARASSMENT IN THE WORKPLACE, A Guide for Members of the European Parliament.' Available at: [https://static.lecho.be/upload/brochure\\_mep\\_0\\_harassment\\_en\\_5992599-859966.pdf](https://static.lecho.be/upload/brochure_mep_0_harassment_en_5992599-859966.pdf)
- 272 [www.greens-efa.eu/files/doc/docs/12e598098a1728efec21f70461e2a68a.pdf](http://www.greens-efa.eu/files/doc/docs/12e598098a1728efec21f70461e2a68a.pdf)
- 273 Letter to the President regarding the State of Play of the implementation of the Roadmap for the adaptation of preventative and early support measures to deal with conflict and harassment in Parliament, of 12 December 2018. Available at: [www.greens-efa.eu/files/doc/docs/12e598098a1728efec21f70461e2a68a.pdf](http://www.greens-efa.eu/files/doc/docs/12e598098a1728efec21f70461e2a68a.pdf).
- 274 Article 22(c) of the Staff Regulations.
- 275 Transparency International, *The European Union Integrity System*, 2014. Available at [www.transparency.eu/euis](http://www.transparency.eu/euis)
- 276 *Ibid.*, p.10
- 277 European Ombudsman, Case OI/1/2014/PMC, available at: [www.ombudsman.europa.eu/en/decision/en/59114](http://www.ombudsman.europa.eu/en/decision/en/59114)
- 278 A best practice to take in consideration for the revision of Article 1 of the EP Internal Rules is Article 4 of the Directive on the Protection of persons reporting on breaches of Union law (Directive), para. 2, 3, 4 (a), (b), (c).
- 279 For example, Transparency International, 'A Best Practice Guide for Whistleblowing Legislation,' March 2018; as well as OECD, 'Whistleblower protection: encouraging reporting,' July 2012.
- 280 See the Directive on the Protection of persons reporting on breaches of Union law.
- 281 Article 5a, Staff Regulation. APAs are regulated by the Condition of Employment of Other Servants, by the Implementing Measures for Title VII of The Conditions of Employment of Other Servants and by EP Internal Rules.
- 282 Conditions of Employment of Other Servants of the EU, Article 139 (1)(d).
- 283 European Parliament decision of 26 March 2019 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2017, (2018/2167(DEC)), para. 135.
- 284 EP decision of 26 March 2019 on discharge in respect of the implementation of the general budget of the European Union for the financial year 2017.

# LIST OF ABBREVIATIONS

---

<b>APA</b>	Accredited Parliamentary Assistant
<b>ATD</b>	Access to Documents
<b>CCC</b>	Conference of Committee Chairs
<b>CoC</b>	Code of Conduct
<b>CoI</b>	Conflict of Interest
<b>CJEU</b>	Court of Justice of the European Union
<b>CoP</b>	Conference of Presidents
<b>DG</b>	Directorate-General
<b>ECA</b>	European Court of Auditors
<b>ECB</b>	European Central Bank
<b>EP</b>	European Parliament
<b>EPPD</b>	European Public Prosecutor's Office
<b>EPRS</b>	European Parliamentary Research Service
<b>EPSO</b>	European Personnel Selection Office
<b>EU</b>	European Union
<b>GEA</b>	General Expenditure Allowance
<b>IIA</b>	Interinstitutional Agreement
<b>MEP</b>	Member of the European Parliament
<b>NATO</b>	North Atlantic Treaty Organization
<b>NGO</b>	non-governmental organisation
<b>NI</b>	Non-inscrits / non-attached
<b>NIS</b>	National Integrity System
<b>OLAF</b>	European Anti-Fraud Office
<b>OLP</b>	Ordinary Legislative Procedure
<b>PAA</b>	Parliamentary Assistance Allowance
<b>PACE</b>	Parliamentary Assembly of the Council of Europe
<b>QMV</b>	Qualified Majority Vote
<b>RoP</b>	Rules of Procedure
<b>SG</b>	Secretary-General
<b>TEU</b>	Treaty on European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>VP</b>	Vice-President

TRANSPARENCY INTERNATIONAL EU

Rue de l'Industrie 10  
1000 Brussels, Belgium

[brussels@transparency.org](mailto:brussels@transparency.org)  
[www.transparency.eu](http://www.transparency.eu)

 [Twitter.com/TI\\_EU](https://twitter.com/TI_EU)