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European Union

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NOTE

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
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Subject:	Proposal for an Agreement on an interinstitutional ethics body - Agreement in principle on the Council position

I. INTRODUCTION

- On 8 June 2023, the Commission adopted a Communication¹ entitled “Proposal for an interinstitutional ethics body”, along with a draft interinstitutional Agreement establishing the interinstitutional ethics body (‘Body’) and a financial statement.
- The objective of the draft Agreement is to further align the institutions' standards and rules and to foster a mutual understanding of what ethical behaviour is expected of members of the European Union institutions and bodies.

¹ 10411/23+ADD 1-3

II. WORK IN COUNCIL

4. The Working Party on General Affairs (GAG) started the analysis of the text on 20 June 2023. On 10 July 2023, the Commission made a presentation to the Council (General Affairs).
5. The analysis of the draft Agreement by GAG has allowed the Spanish Presidency to put forward “Elements of a Council position”² (‘Elements’), covering Articles 1 to 9 of the proposed Agreement. Following the discussion at the Permanent Representatives Committee on 8 November 2023, it has been the basis for the Council’s substantial engagement in interinstitutional discussions thus far.

III. WORK AT INTERINSTITUTIONAL LEVEL

6. A first 'political kick-off meeting' took place on 7 July 2023, with representatives from the nine Parties, with the Chair of the Committee of Permanent Representatives representing the Council. Since then, two more political meetings³, and eight technical meetings⁴ have taken place.
7. Interinstitutional discussions in the two formats have shown convergence among participants on: the status of the members of the advisory bodies, the possibility of granting the observer status to the Court of Justice of the European Union, and the duration of the mandates of the Parties’ representatives.

² 14891/23

³ On 8 November and 12 December.

⁴ On 7 and 25 September, 27 October, 16 and 30 November, 14 and 18 December 2023, and on 12 January 2024.

8. However, the tasks of the future Body (including an “optional enhanced cooperation mechanism”, as put forward by the European Parliament), its composition, the organization of its secretariat, the possibility of including staff members in the scope of the Body, costs, and the preservation of institutional autonomy require further discussions among the participating institutions and bodies.

IV. WAY FORWARD

9. The Commission has proposed to hold two more interinstitutional meetings at political level (on 30 January and 23 February), with the aim of reaching a compromise on the text well ahead of the June 2024 European Parliament elections.
10. The content of the Annex to this note corresponds to the main outstanding issues identified at interinstitutional level and on which the Council is expected to take a position in future interinstitutional discussions. Based on delegations’ comments at the GAG meetings on 19 December 2023, 9 and 11 January 2024 and in written format, it further develops the guiding principles of a Council position and covers also matters that were not included in the original draft Agreement, but which were raised by participants during the interinstitutional discussions.
11. The content of the Annex supplements and builds upon the ‘Elements’ document. It contains, where appropriate, a degree of flexibility to allow the Presidency to react and adapt to developments in the context of interinstitutional exchanges.

V. CONCLUSION

12. The Permanent Representatives Committee is invited to agree on the principles outlined in Annex to this note, which will further enable the Presidency’s effective participation in interinstitutional discussions.
13. The Presidency will report back to this Committee after the political meeting of 30 January, and seek further guidance for negotiations, when and as appropriate.

**COUNCIL POSITION ON THE DRAFT AGREEMENT ESTABLISHING AN
INTERINSTITUTIONAL ETHICS BODY**

The points below are intended to provide the Presidency with the necessary guidance to further engage substantially on behalf of the Council in the interinstitutional discussions on the draft Agreement establishing an interinstitutional ethics body. They reflect the main issues raised either by delegations at Working Party level or by institutions and bodies in the interinstitutional context.

The present Council position does not replace the ‘Elements of a Council position’ (document 14891/23), but it builds upon and supplements those elements. Therefore, the issues and lines of actions contained in the ‘Elements’ document are not covered here, except when relevant for other issues (point 1).

1. Status of the members of the institutions and the two advisory bodies

In the absence of a legal basis for establishing a common ethical framework for representatives of the governments of the Member States, it is proposed that these representatives should be excluded from the scope of the Agreement. Accordingly the reference to the representatives at ministerial level of the Member State holding the Presidency in Article 2(1)(c) of the draft Agreement should be deleted. The Council should nevertheless be a Party to the Agreement to ensure that the High Representative (HR) is included in the scope of the Agreement not only in his/her function as member of the Commission, but also in his/her functions as High Representative and President of the Foreign Affairs Council, while making sure that members of the Parties with multiple functions such as the HR are not subject to different rules in their respective functions.

As regards the members of the institutions and advisory bodies who exercise their European Union mandate on the basis of, or in addition to, a national, regional or local mandate or another function or activity subject to specific national rules, it is proposed to agree that the standards only refer to the exercise of the European Union mandate.

2. Status of observer of the Court of Justice of the European Union

In order to guarantee the independence of the judiciary, it is proposed to recognise the requested observer status for the Court of Justice of the European Union, subject to necessary clarifications of that status in the text of the draft Agreement.

3. Duration of the mandate of parties' representatives

To better respect each Party's autonomy and enable more flexibility and continuity, it is proposed to agree that each Party should have full discretion to proceed with the replacement or reappointment of its full or alternate representative. In any event, the term of the full or alternate representative should automatically come to an end when the representative ceases to hold office in the Union institution or body that it represents.

4. EP proposal on ‘Enhanced cooperation’/’opt-in’ for handling individual cases

The EP proposal for an optional enhanced participation mechanism raises legal, political, institutional, and budgetary concerns. In particular the proposed investigation of alleged breaches of the ethical standards on a request by a participating institution or body creates risks of duplication of tasks with existing structures (such as the European Anti-Fraud Office, the European Public Prosecutor's Office, the European Ombudsman or relevant national authorities).

Nonetheless, other tasks could possibly be included in Article 6 (2) of the draft Agreement listing the tasks of the Body, concerning the competence:

- a) to examine, upon request of a Party to the Agreement, declarations of interests by members of that Party which the Party concerned deems to be particularly relevant for the purpose of developing and/or updating their ethical standards;
- b) to advise, upon request of a Party to the Agreement, on cases of actual or potential conflict of interest of the members of that Party after the end of their term of office, which the Party concerned deems to be particularly relevant for the purpose of developing and/or updating their ethical standards;
- c) to advise Parties at their request on the interpretation of ethical standards on individual cases pertaining to their members;
- d) to provide the Parties with an abstract interpretation of common ethical standards elaborated by the Body and of ethical standards adopted by the Party concerned.

5. Rotating Secretariat of the Body

To ensure efficiency and consistency of the work of the Body, it is proposed that the Secretariat shall be formally hosted in the Commission. The Secretariat should operate under the coordination of the official who, within the Party chairing the Body (in accordance with Article 4 (1) of the draft Agreement), is responsible for the ethics rules for the members of his/ her institution, or an official specifically designated for that purpose by the Party chairing the Body.

6. Composition of the Body and independence of experts

It is proposed to revert to the remaining aspects related to the role, profile and selection process of the experts upon clarification of the tasks which will be assigned to the Body.

7. Request to include staff members of the institutions in the scope of the Body

EU staff members are already covered by the Staff Regulations. Therefore, the development of ethical standards concerning staff members cannot be included in the list of tasks of the Body. Instead, it is proposed to consider the addition of a recital, specifying that the institutions and bodies should consider the minimum standards adopted by the Body when applying the rules of the Staff Regulations to senior officials with particularly high responsibilities.

8. Institutional autonomy

In order to preserve the autonomy of each Party, it is proposed to delete the second sentence of Article 7(7) of the draft Agreement. Instead, a general provision should be inserted in which the Parties agree to reflect the content of the Agreement in their internal rules by means of individual decisions taken on the basis of their powers of internal organisation.

9. Remaining issues

Depending on the evolution of the draft Agreement in the interinstitutional negotiations, it is proposed to revert at a later stage to the issue of national statements on compliance with ethical standards and/or sharing information on national standards.

Similarly, it is proposed to revert to the issue of cost-sharing between the Parties once there is an agreement on the tasks that will be assigned to the Body.
