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# One year on from Qatargate: How can the European Union be better protected against conflicts of interest and corruption?



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**Antoine Vauchez (coord.)**, Research Professor at CNRS, Université Paris 1-Sorbonne

**Lola Avril**, Postdoctoral Researcher in Political Science, University of Eastern Finland

**Chloé Fauchon**, Doctor of Criminal Law, Ater à l'Université Toulouse Capitole

**Emilia Korkea-aho**, Professor of EU Law, University of Eastern Finland

**Juliette Lelieur**, Professor of Criminal Law, Université de Strasbourg



# Synthesis

## A/ The Revealing Force of Qatargate

Scandals have a democratic virtue. Not only do they demonstrate the public's commitment to public ethics and democratic decision-making processes, but they also serve an observatory of how our institutions actually operate. Qatargate was no exception to the rule: it exposed not only the magnitude and extent of the threats to the EU democracy, but also its remarkable vulnerability.<sup>1</sup>

### 1. A Continuum of Threats

While some still argue that corruption and conflicts of interest are inherent in any form of government, there are many reasons to believe that the “regulatory/neoliberal turn” has heightened the susceptibility of public institutions to professionalised influence strategies. Governments have undergone a transformation into an extensive chain of “regulators” encompassing executives, independent agencies, central banks, courts, and more. These entities organise and monitor the operation of private markets through competition laws, freedoms of circulation, as well as product and labour standards (health, safety, environment, social rights, etc). Consequently, large firms, interest groups, and even third countries have become increasingly reliant on public regulation. This has given rise to a burgeoning field of influence along the “coral reefs” of democracies,<sup>2</sup> not only expanding in size and professionalism but also gaining political leverage. Given its role as the regulator of one of the world's largest internal markets, the EU is particularly targeted by these influence strategies.

#### *The European Union as a Special Target for Influence Strategies*

As the gatekeeper of a Single Market governing the lives of 450 million consumers and 22 million firms, the EU's center of power serves as a uniquely relevant access point for the influence strategies of large corporations, interest groups, and foreign governments,<sup>3</sup> aiming to control or shape what some refer to as the “Brussels effect” — the unilateral regulatory power of European norms.<sup>4</sup> Consider the epic battles that accompanied the European Parliament's granting of “market economy” status to China in 2016, the regulation of the digital economy (the Digital Services Act and the Digital Markets Act of 2022), the regulation of pesticides, and the initiation or conclusion of trade negotiations with third countries (Australia, Canada, Mercosur, Morocco), among others. Additionally, the recent emergence of the EU as an “investor state” through the Next Generation EU plan and its national ramifications has heightened its influence and capacity to drive public subsidies and support private spending in the realms of green transition and digitalisation.

As a result, EU democracy and its decision-making processes are facing increased pressure and stress. While a comprehensive systemic assessment of these risks is yet to be undertaken, both academic literature and a broad network of anti-corruption actors (including the EU Ombudswoman, non-governmental organisations (NGOs), and a select group of Members of the

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<sup>1</sup> Lola Avril, Emilia Korkea-aho, and Antoine Vauchez, “Comment protéger la démocratie européenne après le Qatargate?”, *le Grand Continent*, 15 December 2022, <https://legrandcontinent.eu/fr/2022/12/15/comment-protoger-la-democratie-europeenne-apres-le-qatargate/>; Juliette Lelieur, “Qatargate, L'Union européenne néglige de mettre en œuvre l'interdiction pénale pour défendre sa démocratie”, *Le Monde*, 2 January 2023.

<sup>2</sup> Stephen R. Barley, “Building an Institutional Field to Corral a Government: A Case to Set an Agenda for Organization Studies”, *Organization Studies*, 31, 2010, p. 777.

<sup>3</sup> Christian Lahusen, *European Lobbying*, Routledge, 2023.

<sup>4</sup> Anu Bradford, *The Brussels Effect. How the European Union Rules the World*, New York, Oxford University Press, 2020.

European Parliament (MEPs)) have extensively documented the various ways in which this field of influence intersects with EU public decision-making. MEPs often “supplement their EU salary with side jobs”<sup>5</sup> (the practice referred to as *moonlighting*). Revolving doors, involving the movement from the regulator to the regulated and back, are pervasive across EU institutions, spanning from parliamentary assistants to Commissioners, MEPs, European Central Bank (ECB) officials, and top officials of various agencies.<sup>6</sup> Private firms subsidise public forums such as thematic parliamentary working groups,<sup>7</sup> and even more notably, EU Council presidencies are sponsored by corporations like Coca Cola, Renault, or Stellantis.<sup>8</sup> While none of this is illegal in and of itself, these entrenched practices are particularly propitious to a variety of risks ranging from “conflict of interests” to “collusion” and “corruption”. Although different in nature, these practices collectively form a continuum of threats through which certain private interests, including firms, interest groups, and non-EU states, can disproportionately influence EU decision-making processes – reaching the point of exerting systemic pressure.

### *The European Union’s Special Vulnerability*

What makes this continuum of threats even more concerning in the case of the EU is its particular vulnerability to influence peddling.

The first reason for the EU’s vulnerability lies in the symbiotic relationship and special dependence that the European Commission, and to a lesser extent, the European Parliament, have historically developed with interest groups.<sup>9</sup> These groups have indeed constituted a privileged audience, a source of expertise, and a strategic ally for Brussels’ small bureaucracy in its effort to build political leverage vis-à-vis Member States. Despite being a latecomer in the legislative game, the European Parliament has failed to disrupt this collusive pattern and has progressively adapted to this reality, thus becoming an equally important target and partner for lobbyists.<sup>10</sup>

The second reason lies in the structural weakness of the EU’s “civil society”, which undermines the ability of European citizens to mobilise in the face of scandal. Due to the absence of European-wide media that could assist in building momentum and mobilisation, the small number of NGOs specialised in the field of public ethics (e.g., organisations such as Corporate European Observatory, Transparency International, Follow the Money, etc.) appear rather isolated in the “Brussels bubble” and have limited capacity to shape the policy agenda – except for the very short windows of opportunity opened by corruption scandals. Qatargate is emblematic in this respect, as despite the seriousness of the facts, the case only managed to generate sustained interest in the few most affected countries, primarily due to the nationality of the accused (Belgium, Greece, and Italy).

## **2. A General State of Unpreparedness**

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<sup>5</sup> Transparency International, “Burning the candle at both ends: one quarter of MEPs top up their EU salary with side jobs”, October 2021, accessible at: <https://transparency.eu/burning-candle-mep-income/>.

<sup>6</sup> See among others: <https://www.ombudsman.europa.eu/en/case/en/56050>; <https://www.ombudsman.europa.eu/en/opening-summary/en/153041>

<sup>7</sup> Jean Comte, *Au cœur du lobbying européen*, Maison des sciences de l’homme, 2023.

<sup>8</sup> Nikolaj Nielsen, “EU to keep corporate sponsorship of presidencies”, 10 July 2010, accessible at: <https://euobserver.com/eu-political/148939>

<sup>9</sup> Sylvain Laurens, *Les courtiers du capitalisme. Milieux d’affaires et bureaucrates à Bruxelles*, Agone, 2015.

<sup>10</sup> Olivier Costa, “La transparence au Parlement européen. 10 propositions pour restaurer la confiance”, Note prepared for l’Observatoire d’éthique publique, 14 May 2019, accessible at: <https://www.observatoireethiquepublique.com/assets/files/propositions/etudes/etude-1.vers-francaise.pdf>

The European decision-making process is not only exposed and vulnerable; it is also ill-equipped and ill-prepared to deal with the challenges to democracy posed by this continuum of threats. Over the past two decades, the Union has adopted a multitude of rules on public ethics, giving the impression of being a laboratory in this field.<sup>11</sup> These rules, including the Transparency Register, the publication of Commissioners' meeting agendas, and the codes of conduct of various institutions, are not only dispersed but are also implemented by weak and tolerant ad hoc consultative committees. These committees commonly consist of former members of the institutions they oversee, often appearing more concerned with protecting the institution's reputation than addressing the systemic threats to the functioning of the EU.

Even more concerning is the structural weakness in the criminal defense of democracy within the EU. The European Public Prosecutor's Office (EPPO), created in 2021, was found to be almost entirely incompetent, legally speaking, in the face of Qatargate. Its mandate is restricted to the protection of the financial interests of the EU, leaving other (non-financial) EU public interests, such as the general integrity of EU public decision-making, outside its remit.<sup>12</sup> As the EPPO lacked jurisdiction in the Qatargate context, Belgian, Italian, and Greek investigating judges or public prosecutors had to intervene, risking the initiation of complex, lengthy proceedings more vulnerable to dilatory and moot tactics of defense lawyers.<sup>13</sup>

Qatargate has also brought to the public eye the "permissive institutional culture" that exacerbates this general state of unpreparedness. This expression refers to the overall lack of vigilance within EU institutions, rooted in a diffuse underestimation of risks and manifested in entrenched institutional preferences for secrecy, soft law, and self-policing – often anchored in inter-institutional rivalries between the Commission and the European Parliament.

The leniency of this institutional culture was revealed by Qatargate, exposing instances such as MEPs "forgetting" to register gifts, top Commission officials flying business class for free on Qatar Airways at least nine times between 2015 and 2021, a former Commissioner on the payroll of Fight Impunity meeting "privately" with current Commissioners, and the European Parliament's Subcommittee on Human Rights collaborating with Fight Impunity without ensuring proper registration on the Transparency Register. Here, the focus is not on the legality of these practices but on using them as manifestations of a general lack of vigilance. A "bubble of impunity" ensues, providing a hospitable environment for influence strategies to prosper and become ever more effective.<sup>14</sup>

## B/ Failing Forward? Lessons Learned from the Failure of Previous Reforms

The Union's vulnerability to conflicts of interest and corruption underscores the urgent need for extensive reforms to safeguard Europe's democratic processes. Simultaneously, it emphasises the necessity for a comprehensive assessment of the reasons behind the failures of previous reform packages. Without such an inventory, there is a risk of once again missing the target.

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<sup>11</sup> Cécile Robert, "La transparence comme nouvel horizon des démocraties européennes. Genèses et usages d'une injonction ambivalente", *Politique européenne*, vol. 61, no. 3, 2018, pp. 8-43.

<sup>12</sup> The need for a European body empowered to deal with MEP corruption was already highlighted more than a decade ago by the 2011 Sunday Times scandal, but the European public authorities did not seem to be worried about it.

<sup>13</sup> Jean-Pierre Stroobants, "A Bruxelles, l'incertitude plane sur la poursuite de l'instruction", *Le Monde*, 11 September 2023.

<sup>14</sup> For a similar inquiry of the conditions of possibility of the "Dalli scandal", see Guillaume Sacriste, "Sur les logiques sociales du champ du pouvoir européen. L'exemple de l'affaire Dalli", *Politique européenne*, vol. 44, no. 2, 2014, pp. 52-96.

## 1. Assessing Past Failures to Address the Issue: Reforms Based on Soft Law and Transparency

Given the high stakes involved, impacting the integrity of democracy and the credibility of European institutions, the responses to date have been modest and incomplete. Despite the EU reacting to the various scandals that have marked its history with “panic laws” aimed at hastily correcting flaws and loopholes as they arise, there has been a structural reluctance to take comprehensive action. Failing to acknowledge the systemic dimension of risks, reforms have thus far remained superficial and scattered.

### *A Structural Underestimation of the Problem*

Numerous indicators suggest an inadequate starting point, primarily due to the structural underestimation of the continuum of threats that weigh upon EU decision-making processes. Despite countless warnings from the European Ombudsman and a small group of specialised NGOs (such as the Corporate European Observatory and Transparency International), all of which have highlighted the systemic breadth and scope of conflicts of interest in the EU, they have struggled to capture the attention of EU policymakers. While Ombudsman Emily O’Reilly has initiated numerous proceedings and documented many concerning trends,<sup>15</sup> her policy proposals have generally been met with reluctance by EU institutions to address the problem on a systemic basis. It may not be surprising to sociologists that elites, particularly political elites, tend to minimise, euphemise, if not justify issues of conflicts of interest and corruption.<sup>16</sup> Nevertheless, this failure to recognise the gravity of the problem is particularly concerning in the case of the EU.

### *A General Preference for Non-binding Rules and Consultative Committees*

Given this backdrop of a structural underestimation of risk, it is hardly surprising that European decision-makers have struggled to formulate a response capable of fully safeguarding the integrity of democracy in the EU. This is not due to a lack of attempts – consider initiatives like the (optional) Transparency Register and the (consultative) ethics committees mentioned earlier. However, none of these tools or entities has been endowed with real investigative or decision-making powers.

The Commission’s Independent Ethical Committee is a case in point. Established in 2003 to assess requests for new occupations by former Commissioners, it has demonstrated limited effectiveness and appears to have evolved more into a tool for safeguarding the Commission’s reputation than a robust instrument of control. Its limited effectiveness is explained by institutional design that prevents the Committee from fulfilling its tasks. For example, the Ethical Committee, although in principle independent, is dependent on the Commission’s Secretariat General (SecGen) to be able to act. In the absence of a request from SecGen, it cannot issue an opinion.<sup>17</sup> Furthermore, not only has the number of incompatibility opinions remained remarkably low, but numerous problematic authorisations have been granted. Finally, the monitoring of the implementation of the Committee’s own opinions remains very modest, with the Commission citing the need to protect the privacy and reputation of companies hiring former Commissioners.<sup>18</sup>

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<sup>15</sup> EU Ombudswoman, “Commission failed to fully implement conflict of interest rules for finance expert group”, 6 May 2021, accessible at: <https://www.ombudsman.europa.eu/en/news-document/en/141414>.

<sup>16</sup> Pierre Lascoumes, *L’économie morale des classes dirigeantes*, Presses de Sciences Po, 2023.

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<sup>18</sup> See, for example, the Commission’s response to the Kroes case, Sarah Wheaton, “EU Influence: Commission’s Kafkaesque Kroes response”, Politico, 4 July 2022, accessible at: <https://www.politico.eu/newsletter/politico-eu-influence/commissions-kafkaesque-kroes-response-eu-tech-coup-fashion-statement/>.

## *An Over-reliance on the Regulatory Capacity of Transparency Measures*

Over the past two decades, “transparency” has become the primary tool in the fight against conflicts of interest and corruption. Lobbyists are encouraged to voluntarily register on the Transparency Register, and Commissioners, Directors-General of the Commission, as well as select groups of MEPs, have an obligation to maintain diaries of their meetings. These measures are founded on the belief that transparency, combined with soft law, will create a sufficiently strong incentive to initiate a virtuous dynamic and transform the behaviour of all actors in the European decision-making process, whether public or private.

It would be foolish to deny the democratic value of transparency. Transparency allows NGOs, journalists, and researchers to document and scrutinise the functioning of EU institutions and hold them accountable. It enables citizens to access information. However, its transformative capacity in the domain of public ethics has been vastly exaggerated. Partly, this is due to an enduring mirage: full or “fishbowl” transparency is impractical and largely illusory. In practice, it leads to an endless chase for new gaps and loopholes. Additionally, transparency measures tend to come with a “halo effect” that redirects policy efforts towards the instrument itself (its completeness, scope, enforcement, etc.) while causing policy-makers to lose sight of both the objective (the protection of public ethics) and the actual results. Transparency does not offer a global solution: it can help draw up an inventory of the situation but cannot counteract the development of a policy of influence on the periphery of European institutions or deal with the systemic nature of the conflicts of interest that undermine democracy in the EU.

## *The Underdevelopment of European Criminal Law*

The system of criminal protection of the integrity of European public officials remains surprisingly weak and complex, with considerable ambiguity in the application of anti-corruption laws. From the perspective of the offenses themselves, European texts are rare, often originating from the Council of Europe (and therefore not specifically targeted at the EU) and very incomplete, as only the bribery of European public officials is criminalised, failing to cover the wide range of unethical behaviours that are nevertheless penalised in many Member States: trading in influence, abuse of public office, illegal taking of interest, etc. From an implementation standpoint, the situation is even more confusing, as the enforcement of European criminal law remains the responsibility of national police and judicial authorities. While, since 2021, the EPPO has been coordinating and supervising criminal prosecutions for offenses against the Union’s financial interests, it is incompetent for offenses against the Union’s democratic interests (i.e., not involving European funding but European decisions).

## **2. “This Time, It’s Different”?**

It is true that, in response to the magnitude of Qatargate, the European institutions acted swiftly. Several measures have been announced or even already implemented since the scandal broke, ranging from the “Metsola Plan” of January 2023, which outlines 14 proposals for reforming the Parliament’s internal practices, to the Commission’s May 2023 proposal for a directive on the fight against corruption, and the Commission’s June 2023 proposal for the creation of an inter-institutional ethics body. However, despite this array of reform plans and proposals, the prevailing sentiment is one of yet another missed opportunity. The European response largely adheres to conventional reformist models and fails to provide the necessary guarantees of protection that European democracy needs today.

### *President Metsola's 14-point Proposal*

The measures proposed by the President of the European Parliament, Roberta Metsola, as part of her “14-point plan”, aim to strengthen the transparency obligations for Members of Parliament and their assistants. These include extending the notion of conflicts of interest, imposing obligations to declare meetings with interest groups, addressing conflict-of-interest situations for rapporteurs and shadow rapporteurs, monitoring parallel activities of Members of Parliament, and enhancing control over declarations made by interest groups to the Transparency Register through random checks. However, the fact that this plan, ultimately adopted by modifying the Parliament’s Rules of Procedure on 13 September 2023,<sup>19</sup> is limited to technical measures, which, while undoubtedly useful, mainly involve adjustments, is certainly disappointing. This is especially true in light of the ambitious goals initially announced in the extensive “Metsola Agenda”, adopted almost unanimously by the EP in the days following the emergence of Qatargate on 13 December 2022.

For instance, lobbying by former MEPs is prohibited for six months after leaving office, but this is outlined in a rather convoluted article that does not provide any means of monitoring compliance with these obligations. While it is acknowledged that the Advisory Committee proactively monitors MEPs’ compliance with this Code of Conduct and its implementing measures, it remains exclusively composed of former MEPs, and its powers and scope remain unchanged.

### *The EU Ethics Body*

On the part of the European Commission, a proposal was published on 8 June 2023 for the creation of an inter-institutional ethics body that aims to rationalise the current patchwork of public ethics in the EU by establishing a unified framework for all European institutions responsible for ensuring compliance with the transparency obligations of MEPs and Commissioners. As noted by several NGOs, and even the French government, this proposal is considered unambitious as it entails a consultative body with no investigative powers, falling short of the recommendations put forward by academics and civil society organisations. However, beyond the shortcomings of the proposal itself, it would be misguided to place too much hope in the creation of such an ethics body. This is not only due to the limitations of transparency policies, as discussed above but also because the experience of the French Haute Autorité pour la Transparence de la Vie Publique, despite being held up as a model for reform on a European scale,<sup>20</sup> calls for caution. The effectiveness of this authority in detecting conflicts of interest and addressing their systemic dimension remains uncertain.

### *A European Fight Against Corruption?*

In a Joint communication to the EP, the Council, and the European Economic and Social Committee dated 3 May 2023,<sup>21</sup> the Commission and the High Representative of the Union for Foreign Affairs and Security Policy presented proposals on the fight against corruption. The two most significant measures are the Proposal for a Directive on combating corruption and a dedicated Common Foreign and Security Policy sanctions regime to fight corruption when and where acts of corruption seriously affect or risk affecting the fundamental interests of the Union

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<sup>19</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2023-0316\\_FR.html](https://www.europarl.europa.eu/doceo/document/TA-9-2023-0316_FR.html).

<sup>20</sup> Alberto Alemanno, *Towards a New Ethics Body*, 2020, accessible at:

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=4062961](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4062961). See also Report by Daniel Freund, *Rapport sur le renforcement de la transparence et de l'intégrité des institutions de l'Union européenne par la création d'un organisme européen indépendant chargé des questions d'éthique*, Parlement européen, 28.7.2021 - (2020/2133(INI)).

[https://www.europarl.europa.eu/doceo/document/TA-9-2021-0396\\_FR.html](https://www.europarl.europa.eu/doceo/document/TA-9-2021-0396_FR.html)

<sup>21</sup> [https://commission.europa.eu/system/files/2023-05/JOIN\\_2023\\_12\\_1\\_EN.pdf](https://commission.europa.eu/system/files/2023-05/JOIN_2023_12_1_EN.pdf).



and the objectives of the CFSP as set out in Article 21 of the Treaty on European Union. After two decades of almost exclusive reliance on transparency at the EU level, this represents a significant shift and indeed an important addition to the toolkit. However, the overall strategy chosen by the Commission dilutes the protection of the functioning of EU democracy into a grand plan to “take action to fight corruption in the EU and worldwide”.<sup>22</sup>

Also, the issue of corruption is framed not in relation to EU democracy and EU polity but rather as an obstacle to the proper functioning of the internal market. Accordingly, not only does the Commission’s plan address public and private corruption, but it also targets the territory of the 27 Member States – going beyond the specific and urgent problem of EU institutions. Such an approach not only risks potential failure due to its maximalist character, likely to face resistance from many Member States, but it also risks missing the target of a specific reinforcement of the protection of European democracy because of its very broad prism (addressing all forms of corruption throughout Europe).

Finally, discussions in the European Parliament committee ING2,<sup>23</sup> currently discussing a report on recommendations for the reform of EP’s rules on transparency, integrity, accountability, and anti-corruption, are rich, but they frame corruption issues as an “external” problem and therefore focus on proposals aimed at limiting third-country “interference”. The same is true of the Commission, which is working in parallel on a plan to protect “the resilience of the EU democracies” (the Defence of Democracy Package) against foreign “interference” in its decision-making process by focusing solely on foreign influences, at a time when Qatargate has shown the continual blurring of internal (EU) and external (non-EU) boundaries.

## **C/ A New Art of Separation: The White Paper’s Guidelines and Proposals**

This White Paper proposes a different strategy, grounded in European society’s interest in an integrity-oriented European democracy. The focus is not solely on protecting the reputation of European institutions or the European project itself, as has often been claimed. Instead, the primary concern is for European citizens and democracy, who become the diffuse victims of corruption that undermines the future capacity of our institutions to legitimately address monumental challenges such as war and peace, ecological transition, social inequalities, etc. By acknowledging European society’s interest in safeguarding democracy in European decision-making processes, this White Paper proposes a new “art of separation”,<sup>24</sup> designed to protect the democratic public sphere from influence strategies.

### **1. Assessing the Scope of Influence Practices**

The first step is undoubtedly to make the right diagnosis. Defending the “Integrity of Democracy” and enhancing the capacity of the EU and its citizens to care for and protect its democracy require specific forms of knowledge and methodologies capable of documenting the scale and gravity of the politics of influence unfolding in the EU. Currently, our knowledge remains fragmented (sector by sector, institution by institution, etc.) and has mostly been developed on an ad hoc basis by NGOs, academics, or the Ombudsman. Despite its value, this approach does not enable cross-sector or cross-period comparisons, thus failing to provide a proper assessment of both the scale

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<sup>22</sup> COM(2023) 234 final.

<sup>23</sup> Special Committee on foreign interference and disinformation, and on strengthening integrity in the EP.

<sup>24</sup> Michael Walzer, “Liberalism and the Art of Separation”, *Political Theory*, 12, no. 3 (1984), p. 315-30. See also Antoine Vauchez et Pierre France, *Sphère publique, intérêts privés. Enquête sur un grand brouillage*, Paris, Presses de Sciences Po, 2017.

and gravity of corruption as well as conflicts of interest. The absence of systemic knowledge is problematic not only because it hinders the identification of the main threats and risks but also because it allows various demagogic and populist narratives to thrive and delegitimise public institutions as a whole.

Hence the need to build a permanent, independent Observatory for the Integrity of Democracy, along the lines of the EU Tax Observatory currently chaired by Gabriel Zucman and hosted by the Paris School of Economics.<sup>25</sup> Its mission would be to accumulate knowledge on the systemic threats and networks of interests that impact public decision-making in the EU (such as revolving doors, subcontracting to consultancy firms, lobbying expenditure, etc.), and also to contribute to the emergence of new practical proposals.

Hence, there is a need to incorporate the external expertise of corruption specialists. While EU Member States undergo annual or biannual monitoring and receive recommendations from international organisations such as the Council of Europe, the OECD, or even the EU, the EU itself is not subject to comparable external monitoring. For instance, the EU, currently holding observer status with GRECO (the Council of Europe's Group of States against Corruption), could consider becoming a member or, more straightforwardly, request an ad hoc evaluation from this body, which has long worked towards establishing a common European standard in the fight against corruption. This would entail an external, independent, and internationally recognised assessment.

## 2. Recognising the Damaged Interest of the European Public

EU policymakers have repeatedly underestimated the costs of conflicts of interest and corruption. These issues have mostly been perceived as causing damage to the reputation of EU institutions (such as the Commission or the Parliament) or to individuals involved (MEPs, Commissioners, or senior officials). This perspective fails to recognise that all these institutions are part of a unique democratic system accountable to one European public.

Conflicts of interest and corruption undermine the very idea of citizenship and its promise of equality before the law, which is supposed to permeate the entire operation of European public institutions: equal access to rights and public functions, fair and transparent distribution of public money, and equal participation in public decision-making.<sup>26</sup>

As they betray the egalitarian promise at the core of democracy, corruptive and collusive practices bear a long-term collective cost for the European public itself. One of these costs lies in the impairment of the EU's collective capacity to address the future issues of European importance that lie ahead of us (war and peace, ecological destruction, soaring inequalities, and so on), for which strong, trusted, and legitimate public institutions are needed.<sup>27</sup> In that respect, all EU citizens are all diffuse victims of these corruptive and collusive practices.

Because the fundamental interests of European society are at stake, criminal law (and not transparency or soft law alone) should be the preferred tool for protecting European democracy.

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<sup>25</sup> <https://www.parisschoolofeconomics.eu/fr/recherche-academique/laboratoires/observatoire-europeen-de-la-fiscalite/>

<sup>26</sup> Emanuela Ceva, E and Maria Paola Ferretti, "Political Corruption", *Philosophy Compass*, 12-1/2, 2017.

<sup>27</sup> Such a weakening can already be seen in the attacks launched by Viktor Orban against the EU's intervention in the fight against corruption. See his tweet of 12 December 2022: [https://twitter.com/PM\\_ViktorOrban/status/1602255764059561987?s=20&t=GHRtNlSxsbIBIZur-LDrzw](https://twitter.com/PM_ViktorOrban/status/1602255764059561987?s=20&t=GHRtNlSxsbIBIZur-LDrzw)

### 3. A Continuum of Responses to Protect Democracy in the EU

It is undoubtedly impossible to dismantle a collusive system that has been consolidated over decades solely through legal and institutional reform. The reality is that the EU has thus far demonstrated limited ambition in exploring solutions that go beyond its usual preference for transparency, soft law, and self-regulatory tools. Therefore, we propose here a rebalancing of tools (both preventive and repressive) that emphasises a criminal component, which has hitherto been neglected.

#### *Preventive Tools*

a) While acknowledging the limitations of the transparency toolbox, we endorse the establishment of a single European institution (EU Integrity Body) tasked with preventing conflicts of interest and ensuring compliance with transparency obligations for both public and private entities.

However, such an institution should:

- encompass all European public bodies, including EU agencies and the European Central Bank,
- enjoy guarantees of independence,
- be endowed with ample staff, resources, and powers.

Aligned with a policy aimed at safeguarding the interests of European society, its institutional framework should provide at least two assurances of openness: the inclusion of external actors and representatives of the European public (such as specialised NGOs and members of national parliaments) in the governing board, and the ability of these actors to refer cases or questions to the ethics body.

b) A genuine “infrastructure of incompatibilities” for European public officials

Simultaneously, we propose strengthening the second preventive tool, often overlooked at the European level, namely incompatibility rules. These rules would address activities carried out concurrently with an office or mandate (so-called moonlighting) or activities conducted previously or subsequently (revolving doors). Historically, the Commission has erred on the side of individual freedom of employment, downplaying the public interest in a high-quality democracy. As a result, the scope of incompatibilities has been limited to departures (from the public to the private sector) rather than arrivals (from the private sector to the public sector), and “activities relating to matters connected with the missions carried out”, with a short cooling-off period of two years. Stricter rules are warranted. For MEPs, this entails a prohibition on any new parallel activity for the duration of their term of office. If these incompatibilities are diligently monitored, they constitute one of the most effective tools for demarcating the public and private sectors.

#### *Repressive Tools*

In a system that favours incentives and non-binding rules, administrative and criminal sanctions remain structurally weak and lack credibility. The White Paper, therefore, proposes a two-fold reform.

a) The creation of a clearer, more credible system for enforcing and sanctioning breaches of ethical rules. Fearing damage to the institution’s reputation (Commission or Parliament), breaches of ethical rules are most often dealt with “internally” and “upstream”, making sanctions extremely rare. Sanctions for breaches of ethics regulations could, therefore, target not only the individual

(responsible for the reprehensible act) but also, cumulatively and more ambitiously, the company that hired him or her. Individual sanctions could include a range of administrative penalties: deprivation of civil rights, prohibition from holding certain public offices, ineligibility, reduction of pension rights, repayment of the allowance received, and more.

As for companies, this White Paper suggests the possibility of sanctioning them by excluding them from public contracts and projects involving public funding - akin to Article 57 of the 2014 Public Procurement Directive, which allows the contracting authority to exclude an economic operator in the event of a conflict of interest. For example, certain consultancy firms could be excluded from public tenders if they engage “revolvers” in violation of “cooling-off periods”.

Finally, the broader contribution of companies and the consulting professions (particularly lawyers) to European ethics also involves making them more accountable through measures that go beyond sanctions alone. For example, the adoption of ethical political behaviour (regarding lobbying activities or the hiring of “revolvers”) could be included in the corporate social responsibility (CSR) requirements of major corporations.

b) If it is true that the function of criminal law is to protect society from attacks on its fundamental values, then the EU urgently needs to equip itself with comprehensive criminal law specifically designed to ensure the integrity of European democracy. Even if, in a liberal society, criminalisation must be the ultima ratio, there is, as we have said, a clear and enduring “interest of European society” in the integrity and efficiency of European decision-making processes. This justifies the development of criminal law protection, all the more so as the current regime based on transparency and soft law has failed to protect this public interest.

The recourse to criminal law bears several advantages. First, it has a “pedagogical” function in that it helps clarify the fundamental values of European society and spread a culture of public integrity not only among civil servants but also in civil society and among businesses. Conversely, the absence of criminal sanctions might convey a form of indifference of European society to the impartial and open functioning of EU institutions. Secondly, recourse to criminal law, if the penalties imposed appear to be fair and proportionate to the seriousness of the attack on democratic values, has a real dissuasive effect on both public servants and their private sector interlocutors.

On this basis, the Report suggests a two-step approach:

- As a first step, we recommend the adoption of an EU directive on the Protection of the Integrity of Democracy, allowing the completion of European material criminal law on the protection of EU democracy. This legal instrument should provide for different offenses, all protecting the same European value: the integrity of EU public officials which is vital for sound EU democracy. The offenses of the new directive must include active and passive corruption, as defined in the 1997 EU Convention on corruption, as well as active and passive trading in influence as contemplated in the 1999 Criminal Law Convention of the Council of Europe. Other criminal offenses targeting the most serious behaviours resulting from conflicts of interest in which EU public officials find themselves are necessary too.
- Secondly, we call for an extension of the powers of both OLAF and the European Public Prosecutor’s Office, to cover criminal offenses against the Union’s democratic interests, as these bodies are currently only empowered to operate in relation to offenses against the Union’s financial interests. This new European jurisdiction would avoid the pitfalls of interplay between several national jurisdictions, as seen in the Qatargate case.

# Conclusion

## Opening a Democratic Debate (Not Just an Expert Discussion)

While the debate on solutions inevitably has a technical dimension, we must avoid the pitfalls of technicalisation. This is not only because there is no “magic bullet” in this field, and institutional engineering alone cannot solve a problem with deep political and economic roots. Above all, the level of permeability (or impermeability) between the sphere of public institutions and the private sector, and consequently the nature of the protections we wish to build around European democracy, vary according to political positions, whether liberal, environmentalist, social-democrat, radical-left, etc.

Consequently, the collective task of experts in the field is not to close the debate but rather to open it up by pointing to sets of mutually complementary solutions and possible levels of protection (list of incompatibilities, limits on revolving doors, length of the cooling-off period, level of administrative and penal sanctions, role of citizens and civil society, etc).

From this point of view, the upcoming campaign for the European Parliament elections in June 2024 offers a unique opportunity for debate. The time has come to take collective action to defend democracy, a fundamental value of European society. Our ability to meet the monumental challenges of our time depends on it. The EU, as the common facade of the Member States, has a particular responsibility to pave the way for a new “art of separation”.

# Proposals

## A new art of separation

### 1) A risk assessment and knowledge policy

Assessing the scope of influence practices in the EU

⇒ Creation of a permanent, independent Observatory for the Integrity of Democracy.

Encouraging external evaluation of the Union's anti-conflict of interest and anti-corruption tools

⇒ Joining the Group of States against Corruption (GRECO). Alternatively, EU institutions such as the Commission, Parliament or others can undergo an *ad hoc* GRECO evaluation.

### 2) Preventive policy

**Adopt a single, strong and credible institutional framework (and stop self-regulation)**

⇒ Creation of a **single European body (EU Integrity Body)** in charge of ensuring compliance with all rules relating to the integrity of European public officials (conflicts of interest, compliance with transparency obligations, etc).

⇒ The body will be given the power to initiate investigations and impose sanctions.

⇒ The body should include representatives from outside the European institutions (specialised NGOs, members of national parliaments), and should be open to receive complaints from citizens and NGOs.

**Prevent conflicts of interest through a genuine “infrastructure of incompatibilities” for European public officials.**

⇒ For Member of the European Parliament:

- Limit *moonlighting*, in particular by prohibiting all new parallel professional activities for MEPs.
- 12-month post-mandate cooling-off period during which the MEPs cannot engage in lobbying activities vis-à-vis EU institutions and agencies.

⇒ For (senior) officials:

- strengthening and extending the ban on meetings with lobbyists who are not on the Transparency Register to all officials
- ban on lobbying during the cooling-off period to all EU institutions and agencies (not just the institution of the former official).

⇒ Publication of the lists of people on cooling-off periods on the Transparency Register.

- ⇒ Relations with lobbyists: the rule requiring Commissioners and their Cabinet Members to meet only with lobbyists listed in the Transparency Register should be extended to all staff of the European institutions and to Coreper members.
- ⇒ Include private actors (companies, consultancies) in the protection of European democracy by making the adoption of ethical political behavior part of corporate social responsibility requirements.
- ⇒ Involve bar associations in regulating lobbying by lawyers.

### 3) Repressive policy

#### **Strengthening administrative and civil penalties for non-compliance with ethical and deontological rules and rules of incompatibility (under the authority of the EU Integrity Body).**

- ⇒ Introducing credible individual sanctions (ineligibility, reduced pension rights, etc).
- ⇒ Sanctioning companies and consultancies which recruit “revolvers” against the rules of European public ethics by excluding them from public contracts.

#### **Penalising the most serious practices through European law.**

- ⇒ Adopt a EU directive on the protection of the integrity of democracy (rather than a directive on the fight against corruption, as proposed by the Commission).
- ⇒ Extension of the powers of both OLAF and the European Public Prosecutor’s Office, to cover criminal offenses against the Union’s democratic interests.







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# One year on from Qatargate: how can the European Union be better protected against conflicts of interest? and corruption?

## CONTACT



**Anaïs REBUCCINI**  
Responsable Administrative et Financière

<http://www.observatoireethiquepublique.com/>  
IEP de Lille - 9 Rue Auguste Angellier 59 000 LILLE  
E-mail : [contact@observatoire-ethique-publique.com](mailto:contact@observatoire-ethique-publique.com)  
Twitter : @ObservatoireEP  
LinkedIn : L'Observatoire de l'Éthique Publique