

COURT OF JUSTICE
OF THE
EUROPEAN UNION

The President

Luxembourg, 20 June 2023

Mrs Ursula VON DER LEYEN
President of the European Commission
200, rue de la Loi
B – 1049 BRUXELLES

Dear President,

Thank you very much for your letter of 8 June 2023, by which you informed me that the Commission has adopted a Communication entitled ‘Proposal for an interinstitutional ethics body’, accompanied by a draft agreement to be concluded by the institutions and advisory bodies listed in Article 13 TEU (‘draft agreement’), including the Court of Justice of the European Union (‘CJEU’).

Having read your letter and its attachments with great interest, I would like to stress once again that, as previously mentioned in my letter of 4 April 2022, I fully share, as do all the Members of the CJEU, the concern expressed in your letter that the institutions of the European Union must be uniformly open and beyond reproach on matters of ethics, transparency and integrity if Europeans are to maintain their trust in the Union.

I also agree entirely with the need for further action on this topical issue. It is indeed desirable that there should be a common understanding of the ethical behaviour that is expected of persons holding the highest functions within the European Union throughout its institutions and that, to the extent possible, a common set of rules should be applicable to such persons. The establishment of an interinstitutional ethics body for that purpose must, as is also envisaged by the draft agreement itself (Art. 7(1)), take account of the particularities of each party to that body.

In that context, I must nevertheless emphasise that, as the Union’s judicial institution, the CJEU is not in the same position, as regards any such common rules, as the Union’s legislative and executive institutions. If the CJEU were to accede to the draft agreement as a party, whatever its precise form, it would be perceived to be – and would indeed actually be –

involved in the decision-making process that would lead to the establishment of common rules on ethical behaviour applicable to institutions and bodies other than itself.

However, given the scope of the jurisdiction conferred upon it by the EU Treaties, the CJEU will inevitably be called upon, sooner or later, to interpret and, potentially, to examine the validity of those rules. Indeed, the CJEU has, with respect to the other proposed parties to the draft agreement, jurisdiction to hear and to determine cases relating to compliance by, respectively, Members of the European Commission (Articles 245 and 247 TFEU), Members of the Executive Board of the European Central Bank (Article 11.4 of Protocol (No 4) on the Statute of the European System of Central Banks and of the European Central Bank) and Members of the European Court of Auditors (Article 286(6) TFEU) with the obligations arising from their functions.

Any involvement of the CJEU in the establishment of rules applicable to those Members of the other Union institutions would therefore inevitably compromise the ability of the CJEU, acting in its judicial capacity, to judge such cases in a manner that civil society and the wider public would perceive as fulfilling the requirements of independence and impartiality. For this reason, it is imperative that the CJEU should refrain from participating in this process in a manner that might create such a perception and, therefore, from adhering to the draft agreement as a party.

That being said, the same perception would not arise if the CJEU's role within an interinstitutional ethics body were limited to that of an observer, without its playing any role in, or exerting any influence over, the decision-making process leading to the establishment of substantive ethical rules. At the same time, the role of an observer would allow the CJEU to benefit from the work of the interinstitutional ethics body, in view of its own permanent reflections on the manner in which its own rules on ethical behaviour might be adapted, where necessary, in order to ensure that the highest possible standards continue to be maintained.

I also thank you for the invitation to take part in the interinstitutional discussions on the draft agreement, which I gladly accept. To that end, a delegation led by the Registrar of the CJEU will participate in the discussions with the Commission at a first in-person meeting on the afternoon of Monday 3 July 2023 in Brussels.

Yours sincerely,



Koen LENAERTS

cc A. Calot Escobar, Registrar