Transparency in the European Parliament
Ten proposals to restore confidence

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The European Parliament (EP) has been elected by direct universal suffrage for 40 years and now enjoys a remarkable influence in the political system of the European Union. Yet, it appears to many citizens as an institution with an unfathomable and technocratic functioning, whose members (MEPs) are simple cogs in a decision-making process largely governed by private interests. The reality is rather different, but it is true that MEPs act in an environment where expert rhetoric dominates and where they are subjected to intense lobbying. It is also true that the functioning of the EP has been peppered with scandals that have put light on the excessive proximity of some elected officials with particular interests.

The purpose of this paper is to issue a series of proposals aimed at restoring citizens' trust in their European representatives. In a context of rising populism, strongly characterised by antiparliamentarianism, anti-elitism and Euroscepticism, citizens will indeed be able to find faith in the EP only if a set of reforms can clearly establish the independence, probity and ability of its members to arbitrate between the general interest and particular interests. At a time when democratic systems and European integration are under frontal attack, and are showing signs of alarming fragility, it's not the time to be taking half-measures : the reforms must be legible and unambiguous, and allow for a real and qualitative leap forward.

However, we must beware of demagogic proposals, which, for example, would consist of simply abolishing the EP at intergovernmental bodies, to replace all MEPs by citizens drawn by lot, or to pay them the minimum wage. It is also important to recall that the EP's track record regarding transparency and ethics is already much better than that of most national parliaments.

The challenge of this paper is therefore to identify realistic reform paths – applicable in the short and medium term – which do not affect the powers of the EP or the working conditions of its members. Firstly, we propose to look back at the reasons why the EP offers such a troubled image. Second, we will analyse the achievements of the regulations on transparency and the behaviour of elected representatives in the EP. Third, we will highlight some limitations. Finally, we will examine ten reforms that could help to substantially improve the safeguards of independence and integrity offered by the European elected representatives.

Throughout the series of reforms, the Treaties gave the EP significant legislative and budgetary powers as well as competences concerning the ratification of international agreements : today, no important decision can be taken in the EU without the participation of the assembly. It also retains a central role regarding the control of the Commission’s activities, and was given the power to "elect" its President, and to approve the composition of the College of Commissioners. The EP also retains its "tribunitian" power, i.e. the right to debate and express oneself on all issues which resort from the European Union. Finally, the EP will participate in future treaty reforms.

In all these activities, the EP sets itself apart thanks to its political and organizational independence. Unlike a number of lower houses in the Member States, which are constrained by the majority rule and by the mechanisms of rationalized parliamentarism supporting the action of the

executive power, the EP is free to define its political line. Even if large groups – Christian-democrats (EPP), socialists (S&D) and liberals (Renew Europe) – tend to support the Commission's action, the EP puts forward its own point of view on each submitted text and is rather demanding in its control over the Commission. The political regime of the EU is indeed less dependent on the principle of separation of powers than on diversified representation of the general European interest : it is conceived in a supranational and abstract way by the Commission, as the result of national interests by the Council and the European Council, and as the will of the people by the EP.

Despite its now central role, the EP remains marked by two stigmas. The first is the idea that it is an advisory body without any real influence on the production of EU public policies. The EP appears to be a small theatre of parliamentary powerlessness, where a large number of MEPs would be content to validate the proposals of the Commission and the Council's amendments without being able to voice their opinions. Institutionalization of legislative "trilogues" (i.e. discrete negotiations between representatives of the three institutions) has indeed made it possible to generalize the adoption of the texts from the first parliamentary reading. This implies that the EP renounces to amend the proposals freely and stands by the amendments duly negotiated in advance. This way of proceeding does not deprive the assembly of its influence, but it does not facilitate staging and induces an image of docility.

Second, the EP suffers from being assimilated to the Brussel’s bureaucracy. In the minds of many citizens, the EP is solely a pawn in a broad game of European governance, of which transparency, representativeness and probity are not the primary qualities. The Brussels microcosm generates the image of a world dominated by bureaucrats, experts, lobbyists and diplomats, in which MEPs also appear as interest brokers. The citizen, even if uninformed, knows

that lobbying rages across the European institutions and that MEPs have little accountability to their constituents. He or she also perceives that deputies' influence is less based on their eloquence or the strength of their convictions, than on their technical knowledge of the issues at hand, their ability to interact with other stakeholders in the decision-making system and their ability to seal alliances.

This representation contains some truth. The EP has encountered - since the end of 1980s - a "rationalization" dynamic based on the idea that the influence of the institution had to pass through a pacification of its relations with other institutions - at the expense of the primacy of discrete negotiations - and a close supervision of its organs and members activities - at the expense of a dull deliberation which is only slightly compatible with the idea of representative democracy.

So, how can the EP restore its image ? There are two options. The first would be to revise the EP's interinstitutional strategy, to allow more conflict and discussion, and less staging of one and another's positions. The most efficient way to assert its representativeness is for the EP to oppose and object the Commission or the Council on a given case, in the name of the citizens' interests and values. This option requires, however, to question an institutional strategy that has not changed since the end of 1980s, and partly is also aimed at limiting Eurosceptic MEPs capacity for action. The second solution is to offer more guarantees to citizens concerning MEPs' probity and independence. It is true that the institutional logic of the EU leads deputies to have constant interactions with other actors in the European decision making process and with representatives of interests from all horizons ; however, they should give the necessary guarantees so that one cannot accuse them of sacrificing the public interest to favour particular interests, or their own. Civil society can help to make things happen in this regard.

The idea is far from new : since the early 1990s, well before that the issues probity and deontology were mentioned in most national lower chambers, MEPs set about reflecting on their relationships with the representatives of interests as well as the transparency of the functioning of their assembly. These issues occupied a key place in the EP deliberations since then, and have been the object of multiple reports and reforms. The EP represents a kind of laboratory or think tank in this respect. However, it is not a model of virtue : indeed, its members have very diverse, and not necessarily very virtuous, behaviours towards the interest groups.

Several factors can explain this. First, MEPs' perception of how they should behave towards lobbyists varies greatly according to their nationality and their political orientations. Some believe that lobbying is a legitimate dimension of democratic functioning, while others see it as an unacceptable deviation from it. The question raises lively and recurrent questions within the EP, which often lead to deadlocks. Secondly, it should be underlined that European deputies are subject to more intense lobbying than most elected national MPs, and that this pressure is increasing with the changes in the assembly's powers. Due to the nature of their mandate and the physical and symbolic distance that exists between their assembly and national public spaces, MEPs also have greater freedom of action than their national counterparts, vis-à-vis their party, the media and their electors, which makes it easier for them to establish a relationship with lobbyists. These relationships are not necessarily problematic, but they are often misunderstood and perceived negatively. Finally, the "revolving doors" phenomenon, i.e. the fact for EU officials to find a job in private companies after their term, is a much more significant career prospect for MEPs than national MPs, given the relative opportunities available. The first are often faced with difficulties in pursuing their political career, because of the uncertain nature of their re-nomination to the European elections, the lack of

EU-wide opportunities, and a difficulty to return to national or local politics. For the most influential MEPs, it is often easier to consider a transition to the private sector in Brussels, particularly into organizations that seek to influence the policies or norms of the EU. As a result, the need to regulate the behaviour of Members is more pressing in the EP than in the national chambers.

The issue related to the behaviour of MEPs, in particular vis-à-vis private interests, has spurred many initiatives for almost 30 years. They did not all succeed, because of the deep national and partisan divisions they aroused, but MEPs are called to follow a large set of rules. Over time, some general principles have governed the EP's action: interest groups are not perceived as illegitimate actors and the priority is seen as the transparency of represented interests and of the steps taken; the MEPs are not suspected to be dishonest a priori; the EP does not try to distinguish public and private interests, and the same rules apply to all – with an exception for representatives of local and regional authorities and political parties, which enjoy preferential treatment.

The first report on the supervision of lobbies in the EP was entrusted to Belgian MP Marc Galle in 1990. After several years of fierce debate, the assembly adopted two reports in July 1995. They provide that every MP must communicate at the time of his election the details of his professional and paid activities, all financial support he enjoys whether it's staff or material, as well as the identity of the donors. The register where these statements are recorded is updated annually and available to the public. An annex to the rules of procedure defines how to obtain permanent visitor passes and bonds which parliamentary assistants are subject to.

This initial regulatory framework was expanded throughout the 2000s, and each scandal was followed by a new reform aimed at strengthening the rules governing over the activities of lobbyists, members of EP or the relationship

between the two. In 2008, the EP adopted a report on "the development of the framework for the activities of interest representatives (lobbyists) in the European institutions". It recognizes that lobbyists can contribute useful expertise to parliamentary proceedings, but deems essential to be able to identify the organizations they represent. The report advocates internal reforms and the extension of mechanisms put in place in the EP to other EU institutions : a compulsory register, transparency on funding and sponsors, and code of good conduct for all interest representatives holding an access permit. It asks the EP, the Council and the Commission to think about the creation of a "One-stop shop". The Commission has accepted the principle of a common register, on a voluntary basis, and a code of conduct, but the Council has declined the offer.

In 2009, a more detailed common register entered into force, and in 2011 the Code of Conduct became more binding : organizations that do not register, lose their rights of access. The register and the code of conduct were modified once again in 2014, in order to collect ever more detailed data. In order to encourage organizations to register, they now benefit from privileged information on the activities of institutions aimed at the public and exclusive access for certain actors, which has significantly increased the number of registered organizations.

In 2016, the EP launched a new reform of its rules of procedure. The Corbett report proposes progress on the issue of transparency and a new version of the code of conduct. This bans deputies from carrying out lobbying activities in parallel with their mandate and imposes more detailed and frequent statements of financial interests. The report also provides for parliamentarians to commit - as the main officials of the Commission have since 2014 - to meeting only the previously registered lobbyists. The report also proposes to make these contacts public, so as to limit the occult influence

of lobbies and to empower elected officials. Finally, it suggests that the EP be informed if MPs get lobbying jobs after their term ("moonlighting").

Once again, the process of revising the regulations has been difficult. MPs discussed at length these issues, including the question of transparency, also referred to by the Giegold own initiative report “On Transparency, Accountability and Integrity in the EU institutions”, which goes much further in its recommendations. The final elements of the Corbett report have thus only been adopted in January 2019, after complex debates and the opposition of some of the members.

From now on, MEPs who participate most actively in the legislative procedure publish on the EP website the details of their meetings with interest representatives in the Transparency register. Moreover, the rule invites - with no obligation - all elected officials to do the same. They must also publish certified information relating to the use of their general expenses allowance (4.416 Euros per month) – something they had always refused to do in the past. The Code of Conduct includes new rules (psychological or sexual harassment, behaviour in plenary, language) and is annexed to the rules. Members must make a written commitment to respect it; otherwise, they are deprived of official functions and responsibilities.

MEPs' efforts to better regulate their own behaviours and those of lobbyists have paid off, but the advocates for more ambitious regulation conflict with dilatory and obstructive strategies. If the achievements are real, lobbying is ever more intense and lobbyists show great ingenuity to work around existing rules and develop new strategies. The EP is struggling to keep up because its steps towards a better regulation of the representation of interests face three recurring problems.

First, they encounter major differences between practices, traditions and legislation of the Member States in this area, which are reflected in the positions of MEPs. The adjustments are all the more difficult because perceptions in this matter refer to different fundamental conceptions of democracy, legitimacy or probity. The EP's efforts are also hindered by its disagreements with the other institutions to better regulate the representation of interests. The assembly has long been more demanding than the Commission and the Council ; since 2014, the Commission has more progressive positions, but the Council remains reluctant. The development of a common framework for the transparency of representation of interests and for contacts between lobbyists and stakeholders of the EU political system is therefore difficult. The EP has the option to act alone, but some MEPs have always preferred a concerted approach, or use this argument to defend the status quo. Finally, parliamentarians face the impossibility to clearly distinguish the different types of representatives interests (private, public, associative, political, territorial...). Indeed, one cannot consider that representatives of civil society (NGOs, associations, churches, unions ...) always defend the public interest. Also, it is rather easy to promote private interests under the guise of an association, a think tank or an NGO, and thus to exploit possible regulation tending to give them a privileged status.

The ten following propositions are for the most part neither original nor unpublished. Many actors have been reflecting on these issues for a long time now, whether within the EP or on the side-lines of it. Organizations like Transparency International Europe or the Corporate Europe Observatory contributed to report abuses in the EP and reflect on ways to correct them. The assembly itself has drafted and adopted numerous reports dealing with these questions. However, there is a persistent gap between the solutions that the members are debating and the decisions that are taken, as the EP is

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A first set of measures concerns organizations seeking to influence parliamentary work :

PROPOSAL N° 1 :

Since the first debates regarding the creation of a lobby registry - which concerns in fact, all organizations or persons wishing to access regularly the EP - some have proposed that it become mandatory. Various measures have been introduced to encourage lobbyists to register, such as specific rights and privileges. But it is not enough, especially for organizations that are least concerned about ethics when defending their interests. It would be advisable to make access to EP premises only possible for organizations who are duly registered. It would also be necessary for all MEPs, but also other actors of the assembly (agents of the general secretariat and groups, parliamentary assistants), to be authorised only to meet with accredited interest representatives. Finally, registration should also be compulsory for all persons acting as experts to the EP and its bodies, as long as they are not public

officials or do not derive their entire income from a university or research institution.

PROPOSAL N° 2 :

The transparency register obliges organizations and individuals who are listed to provide information on their activities, resources and expenses, and to update this information each year. But, concretely, it is easy for an organization to underestimate its lobbying expenses or its resources. The register should be updated immediately when an organization receives funding of a large scale, otherwise it is impossible for officials to know on whose behalf actions are really taken. In addition, registered entities should declare all customers for whom they are working ; it is indeed easy for a lobbyist or an organization to register on behalf of a benign client and act on behalf of another. This situation is particularly problematic regarding lawyers who fulfil lobbying missions under the guise of legal advice. These rules should apply equally to private structures, NGOs, think tanks and associations, since nothing prevents a company or organization from creating a cover as a non-profit structure. Also, since MEPs often have a positive respect to civil society organizations, they should be able to know their sources of funding.

PROPOSAL N° 3 :

The pursuit of influence within the EP is not only done through lobbying. Some organizations or foreign powers create certain MEPs liable by contributing to the financing of political parties through donations or loans. The rules related to financing are highly variable from state to state. To ensure the independence of European parliamentarians, it would be advisable to closely supervise the financing of national or European parties in view of the European elections, and to prohibit obtaining loans from banks outside the EU.

A second set of measures concerns the behaviour of Members when fulfilling their mandate.

PROPOSAL N° 4 :

Since the reform of January 2019, the deputies most involved in the legislative process must declare their meetings on the agenda with interest representatives, and provide information to measure lobbyists "legislative footprint" on the texts adopted. However, the MEPs without a specific role remain free to meet lobbyists without informing anyone, and informal contacts which are not on the agenda of members or take place outside the premises of the PE, escape transparency. The obligation to report and disclose should be systematic for meetings between MEPs and members of their team with lobbyists, regardless of their degree of involvement in the legislative procedure and wherever they occur. One can certainly not require that MEPs provide a detailed list of all these contacts - which can be rather numerous - or for them to mention of each email or call received, but they could communicate the complete list of persons or organizations with whom they have been in contact, whether it was directly or via their collaborators.

PROPOSAL N° 5 :

There are sanctions for MEPs who do not respect the code of conduct, but their implementation is far from satisfactory. Since 2012, an Advisory Committee composed of 5 members from the 5 main parliamentary groups assists the President of the EP. Because of its composition, it is not prone to severity ; thus, it reviewed 12 cases between its creation and February 2019, but has never proposed a single sanction. In addition, for the time being, its deliberations and recommendations are secret. It would be advisable to entrust the examination of breach cases to an independent body, that is not related to political groups, able to launch investigations on its own initiative, to publicly express its views and to actually sanction MEPs.

A final set of rules must apply to MEPs themselves :

PROPOSAL N° 6 :

Under a variety of national laws, some members do not offer the guarantees of probity that citizens are entitled to expect. It is indeed possible for persons convicted for acts of poor governance (bribery, influence peddling, conflicts of interest, embezzlement of public funds...) to stand for the European elections and to become a member of the EP. The 1976 Act should be reformed organizing the European elections so as to strike a period of ineligibility that is proportional to the seriousness of the acts committed by the persons in question.

PROPOSAL N° 7 :

Il There is a long tradition of revolving doors in the EP. This term refers to an elected representative – who has chosen not to run again for European elections, has not been reselected by his party, or has been defeated – who decides to serve private interests with a particular concern in the policies and regulations of the EU. Some come back to the EP as lobbyists, and may maintain confusion as to their status. Others do not attend Parliament offices but are working on issues that involve it. In both cases, they make use of their knowledge of the actors, procedures and issues to defend particular interests. Some former members are also recruited for services rendered at the time they were elected, and benefit from of a form of corruption a posteriori. In this respect, the EP is more demanding vis-à-vis Commission's members and high civil servants than with its own members. For the moment, the outgoing deputies are only required to inform the authorities of the EP of their new functions. There is no such thing (like for the former Commissioners) as a "cooling off" period prohibiting them during a given period of time of being hired by a company related with their past parliamentary activities, or to ask an organisation to approve their reclassification. Such a reform does not fall within the EP rules of procedure but is related to the status of the members, and would require, yet again, an amendment to the 1976 Act, and therefore

the intervention of the Council. It should nevertheless be forbidden for any former MEP to benefit, for example, for a period of 3 years after the termination of his mandate, any remuneration from any organization registered on the Transparency Register or having interests in European legislation or policies. An independent organ would be responsible for examining these situations, as is already the case for the Commission. Exceptions could be made for MEPs who were employed in these companies prior to their mandate.

PROPOSAL N° 8 :

The 1976 Act prohibits only the cumulation of national and European parliamentary mandates, with the functions of MEP or Minister. For the rest, the issue is defined by the legislation of Member states, which is very diverse. The general prohibition of the cumulation of the European mandate with any other elective offices would have two virtues. It would first allow MEPs to be fully invested in a function that requires to have a high availability and very regular presence in Brussels and Strasbourg. Second, it would avoid the conflicts of interests that arise from the indeterminations of the European parliamentary mandate. Indeed, if the MEPs are elected on a national scale, in the framework of regional or national constituencies, they serve in a supranational institution and are supposed to represent, according to the treaties, "European citizens" as a whole. They are therefore relatively free to define their conception of the general interest – whether more or less territorialized, national or European. However, the binding mandate was outlawed by the 1976 Act and the EP has always refused to dismiss from deliberations deputies who were elected in a State that does not participate to a given policy. In short, they are invited to have a non-national approach to their mandate and are not intended to be local interest brokers. Banning multiple office-holding is the surest way to prevent MEPs from trying to get resources in favour of the entities elsewhere where they could be elected.

PROPOSAL N° 9 :

Debates on lobbying in the EP have largely focused on the benefits that MEPs can derive from their relations with interest representatives. As a result, they must now submit declarations of interest, commit to respecting a code of good conduct that is more and more demanding and can no longer exercise lobbying functions. Nevertheless, they can still benefit from external payments : they must be declared and made public, but the information provided does not always determine if there is a conflict of interest. In addition, this phenomenon is far from anecdotal : in 2018, 60% of MEPs declared side activities, and 31% of paid activities ; 35 elected members earned more than 100,000 Euros per year in addition to their parliamentary allowance, and 7 were employed by organizations of the register, mainly in managerial positions. During the 2014-2019 legislature, no less than 50 deputies started new professional activities. This cumulative situation poses obvious problems when MEPs are paid as consultants, lawyers or administrators of companies whose activities are governed by European standards. When a MEPs are paid for their advice, it is impossible to determine whether it is pursuant to their technical or legal skills, or rather their ability to defend the interests of their employer in the framework of their parliamentary activities or to provide them with sensitive information.

The EP is continually debating ways to better regulate these practices, but it is a Sisyphean task. The only really effective solution would be to prohibit MEPs from receiving any remuneration or benefits during the time in office. Their activities in associations, NGOs, learned societies, etc., would be subject to a strict principle of volunteering and would be mentioned in a public register. The perverse effects of such a solution are known. It would tend to cut deputies off from "real life" and it would make it difficult for some of them to return to civilian life. If they cannot maintain an activity in parallel with their mandate, they may be encouraged to consider retraining in lobbying activities once their term has expired.

That being the case, this radical solution would have two virtues, which seem crucial in these times of distrust vis-à-vis the elected representatives. First, it would force members to completely devote to their mandate for which they receive substantial compensation and which requires great availability. It would come down to all newly elected deputies abandoning their professional activities, as are already forced to do so those who cannot consider multiple mandates for practical, statutory or regulatory reasons. Also, other politicians are bound to this, whether ministers or national parliamentarians - in several Member States - or European Commissioners. Second, such a prohibition would solve - rather credibly - the problem of conflicts of interest, which are inevitable when MEPs work for private companies - as employees, consultants or business lawyers - or when they run their own company.

A final idea of reform concerns the EP's strategy on the question of transparency and ethics.

PROPOSAL N° 10 :

It has been stated that the EP has always made sure that the supervision of lobbying practices and the development of transparency and ethical tools are a subject of concerted action with the Commission and the Council. This is a reasonable approach : it is useless for the EP to develop very restrictive rules regarding lobbies if the Commission, the Council and other institutions and bodies of the EU, are not obliged to do so, and it is logical that all the European institutions actors be subject to similar ethical requirements. However, since nearly 30 years, interinstitutional negotiations have shown that the integrated approach is slow as well as detrimental to the image of the EP and of its members. It would have everything to gain from being exemplary without waiting for an interinstitutional consensus to emerge, and it would then be smart to emphasize the lack of interest of other the institutions regarding the question of transparency and that of ethics.