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WORK ON PUBLIC ETHICS: FIRST RESULTS AND NEXT STEPS

For discussion and action

Secretariat Memorandum
prepared by the
Directorate General of Democracy
Democratic Governance Department

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Introduction

The terms of reference of the CDDG for the biennium 2018-2019 include specific task iii: "As a follow-up to the findings of the good governance section of the Secretary General's Reports on the State of Democracy, Human Rights and the Rule of Law with regard to public ethics:

- develop Guidelines on public ethics at all levels of government, taking into account the findings of GRECO and Committee of Ministers' Recommendation [Rec\(2000\)10](#) on Codes of Conduct for Public Officials;
- update the [2004 Handbook of good practice on public ethics at local level](#), taking into account experience with the implementation of the revised Public Ethics Benchmark Toolkit of the Centre of expertise on local government reform, and extend it to cover all levels of government – local, regional and national;
- carry out a feasibility study on the preparation of a Council of Europe indicator framework to identify trends with regard to public ethics and to allow member States to assess their performance."

At its meeting on 4-5 December 2017, the CDDG agreed that the working group on public ethics

- should first update the 2004 [Handbook of Good Practice on Public Ethics at Local Level](#), extending it to cover all levels of government – local, regional and national;
- in parallel, in cooperation with an external expert, advise on the feasibility of a Council of Europe indicator framework on public ethics;
- subsequently develop Guidelines on public ethics at all levels of government;
- consider ethics in its large sense of ethical conduct as defined in the 12 Principles of Good Governance: "The public good is placed before individual interests; there are effective measures to prevent and combat all forms of corruption; and conflicts of interest are declared in a timely manner and persons involved must abstain from taking part in relevant decisions".

The CDDG working group on public ethics met twice in 2018, on 7-8 June and on 4-5 October 2018. The reports on these meetings have been published with the reference numbers GT-EP(2018)3 and 7 respectively.

Results and proposals for further action

Handbook / guide on public ethics

At its first meeting, the working group confirmed that the 2004 Handbook of Good Practice on Public Ethics at Local Level required thorough revision in terms of both topics and structure, including an overview of fundamentals and principles for comprehensive integrity mechanisms in member States. The format and language should also be simplified, shortened and more accessible. While the principles themselves would be further elaborated in the guidelines on public ethics, the new handbook would be based on existing good practice and focus on practical means and measures for their implementation. It would draw on existing documents, also from other international organisations.

Three experts prepared reports and different draft versions of the guide for the working groups' meetings. The draft guide entitled "Steps to implementing public ethics in public organisations" is the result of this work which was validated by the CDDG Bureau at its meeting on 19 October. The draft guide appears in document CDDG(2018)4 Addendum.

The draft guide needs to be examined by the CDDG. Member states may also wish to present additional case studies for inclusion in the guide. It is understood that the guide would be finalised once the draft guidelines are established so that it can effectively facilitate their implementation.

Guidelines on public ethics

In the exchange of views concerning the objectives and content of the guidelines on public ethics, the working group highlighted that they should contain recommendations to governments of Council of Europe member states on the principles and legislation as well as implementing measures for creating a regulatory and institutional framework and policy measures in relation to securing high standards of ethical conduct across the public sector.

As regards the format of the guidelines on public ethics, the Recommendation [CM/Rec\(2018\)4](#) on the participation of citizens in local public life could serve as example: in the body of the text, it contains the preamble and the recommendations to governments of member States. The Appendix to the Recommendation has one chapter on basic principles and another on steps and measures to encourage and reinforce participation. This latter chapter contains four sub-chapters: one on general steps and measures, two on steps and measures in specific types of participation, and one specific steps and measure to encourage certain categories of citizens.

As regards the scope of the guidelines on public ethics, the CDDG might take into account

- the draft guide on public ethics entitled "Steps to implementing public ethics in public organisations";
- the specific issues addressed in the 2004 Handbook of Good Practice on Public Ethics at Local Level, notably the legal status of local elected representatives, the status of local public servants, the funding of political parties;
- the [European Code of Conduct for all Persons Involved in Local and Regional Governance](#) adopted on 7 November 2018 by the Congress of Local and Regional Authorities;
- recent developments, in particular the [fifth evaluation round of GRECO](#) which focuses inter alia on preventing corruption and promoting integrity in central governments (top executive functions)

with a view to supplementing existing standards on public ethics.

Thus, the guidelines on public ethics could begin with the preamble and recommendations to governments on principles and legislation. The Appendix would contain concrete measures in relation to securing high standards of ethical conduct across the public sector, paying specific attention to selected questions such as:

- public ethics measures for different types of public officials, including politicians (elected representatives, members of government), appointed top executives and holders of judicial office, depending on their functions and levels of responsibility;
- public ethics measures for political parties, including their internal democratic organisation;
- public ethics measures for the local and regional levels, including the relations between local elected representatives and civil servants and the coordination with the central level.

The CDDG should consider these questions and transmit its conclusions to the working group so that it has a clear understanding of the Committee's expectations when beginning the drafting of the guidelines.

Feasibility study on a public ethics indicator framework

The working group discussed the feasibility study on the preparation of a Council of Europe indicator framework to identify trends with regard to public ethics and to allow member States to assess their performance, its aim and design. Working group members underlined that first it should be decided what the indicators shall measure (implementation of public ethics measures in member States? the situation as regards public ethics?) and why (to enable self-assessment by member states? to advise member states on action to be taken?). Members recalled that such indicator frameworks and associated regular data collection and evaluation were costly and emphasised that the data gathered and work by other organisations, in particular the OECD and EUROSTAT, should be taken into account. Possibilities for cooperation with the OECD should be explored. It was underlined ... that any decision on introducing or not such a framework was up to the Committee of Ministers.

Given the tight budget situation of the Council of Europe, it may be asked whether it is worthwhile to invest in a feasibility study on an indicator framework on public ethics when it may very well happen that the resources for establishing and exploiting an indicator framework may be missing. Therefore the Secretariat sought information on available publications assessing trends public ethics and performance of countries.

A number of surveys on governance and integrity exist which deal also to some extent with public ethics, such as

- the "Public Sector Integrity" chapter of the OECD reports "[Government at a Glance](#)";
- the [European Public Accountability Mechanisms](#) (EuroPAM) reports;
- the [European Research Centre for Anti-Corruption and State-Building \(ERCAS\) Index for Public Integrity](#);
- the [Bertelsmann Foundation Sustainable Governance Index](#).

These surveys are public and regularly updated. However, they cover neither all Council of Europe member states, nor the full scope of public ethics frameworks described in the CDDG draft guide on "Steps to implementing public ethics in public organisations".

For assessment of the performance of all Council of Europe member states, an indicator framework based on Council of Europe standards and European best practice would need to be developed. Surveys would have to be conducted at regular intervals to collect data for all Council of Europe member states. The average cost of such surveys is 12.000 to 15.000 Euros per country, depending on the number of questions.

What alternative means could the Council of Europe offer member states for assessing their performance with regard to public ethics, and, possibly to advise member states on action to be taken?

The current [Public Ethics Benchmark Toolkit](#) of the Centre of Expertise provides for a self-assessment at the local level. The application of the Toolkit requires the cooperation of international and local experts with the representatives of the local authorities for establishing the benchmark and a score card, preparing the review reports and implementation plans with a view to improving standards, capacities and infrastructure for public ethics. The results of the score cards allow comparing the performance of the participating municipalities.

The Centre of Expertise is committed to extending the Public Ethics Benchmark to all levels of government – local, regional national and to updating it once the guide and the guidelines on public ethics have been adopted.

In the light of the above and in the context of the tight budgetary situation of the Council of Europe, the CDDG may consider whether investing in a feasibility study on an indicator framework the application of which would require further heavy investment in data collection and analysis is the best way for identifying trends with regard to public ethics and allowing member States to assess their performance. It might be more promising to work with the updated Toolkit in countries which ask for Council of Europe support and thus support their reform efforts, and, as a secondary effect, produce through the scorecards comparable data.

These issues need to be considered by the CDDG and, if appropriate, brought to the attention of the Committee of Ministers.

The next meetings of the CDDG working group on public ethics are tentatively scheduled for March and June 2019.

Action required

The CDDG is requested to examine and take note of the draft guide on public ethics entitled “Steps to implementing public ethics in public organisations” which appears in document CDDG(2018)4 Addendum and give instructions to the working group for the finalisation of the text. CDDG members are encouraged to provide additional case studies for inclusion in the guide.

The CDDG is invited to hold an exchange of views on the content of the guidelines on public ethics with a view to giving guidance to its working group for their preparation, in particular concerning their format and scope.

The guidelines and the guide on public ethics should be ready for approval by the CDDG at its plenary meeting late 2019.

The CDDG is requested to express its views on the appropriateness to carry out a feasibility study on the preparation of a Council of Europe indicator framework to identify trends with regard to public ethics and to allow member States to assess their performance.