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**EUROPEAN COMMITTEE ON DEMOCRACY AND GOVERNANCE
(CDDG)**

**ABRIDGED REPORT OF THE 10th MEETING
9-11 December 2019**

**DRAFT GUIDELINES OF THE COMMITTEE OF MINISTERS OF THE
COUNCIL OF EUROPE ON PUBLIC ETHICS**

DRAFT GUIDELINES OF THE COMMITTEE OF MINISTERS OF THE COUNCIL OF EUROPE ON PUBLIC ETHICS

(Adopted by the Committee of Ministers on ... 2020 at the ...th meeting of the Ministers' Deputies)

The Committee of Ministers,

Considering that the aim of the Council of Europe is to achieve greater unity between its members for the purpose of safeguarding and realising the ideals and principles which are their common heritage;

Considering that public ethics are a fundamental element of a properly functioning and effective democracy, which is an objective that is common to all Council of Europe member States;

Considering that the strengthening of public ethics is an effective means of building and restoring citizens' trust in public institutions;

Considering that the requirements and expectations of citizens in relation to public ethics are legitimate, more pronounced than in the past and relevant to all officials holding public responsibilities, including members of both the executive and national parliaments, holders of a judicial office, local and regional elected representatives and public officials at national, regional and local levels;

Considering that the integrity, legality, objectivity, transparency, honesty, leadership and accountability of persons exercising public responsibilities, as well as their compliance with the law and legal standards in their own behaviour, are decisive in guaranteeing good governance and the respect for the rule of law;

Having regard to the need to complement Recommendation No. R (2000) 10 of the Committee of Ministers to member States on codes of conduct for public officials and considering that the developments that have occurred since its adoption justify these guidelines, which cover a wider personal and material scope;

Having regard to:

- the Convention for the Protection of Human Rights and Fundamental Freedoms (1950) (ETS No. 5);
- the Criminal Law Convention on Corruption (1999) (ETS No. 173);
- the Civil Law Convention on Corruption (1999) (ETS No. 174);
- Recommendation CM/Rec(2017)2 of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making;
- Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistle-blowers;
- Recommendation CM/Rec(2010)12 of the Committee of Ministers to member States on judges: independence, efficiency and responsibilities;
- the Strategy for Innovation and Good Governance at local level, including the 12 Principles of Good Democratic Governance, appended to the Valencia Declaration adopted on 15-16 October 2007 at the 15th session of the Conference of European ministers responsible for local and regional government;

- Recommendation Rec(2003)4 of the Committee of Ministers to member States on common rules against corruption in the funding of political parties and electoral campaigns;
- Committee of Ministers Resolution (97) 24 on the twenty guiding principles for the fight against corruption;

Considering the activities of the Parliamentary Assembly of the Council of Europe relating to integrity and corruption, including:

- Resolution 2170 and Recommendation 2105 (2017) on promoting integrity in governance to tackle political corruption;
- Resolution 2300 and Recommendation 2162 (2019) on improving the protection of whistle-blowers all over Europe;
- Resolutions 2060 (2015) on improving the protection of whistle-blowers and 1729 (2010) on the protection of “whistle-blowers”;

Considering also the activities of the Congress of Local and Regional Authorities of the Council of Europe in relation to safeguarding integrity, tackling conflicts of interest and promoting openness and transparency, including:

- Resolution 435 (2018) and Recommendation 424 (2018) on transparency and open government;
- Resolution 433 (2018) on the European Code of Conduct for all Persons Involved in Local and Regional Governance;
- Resolution 434 (2018) and Recommendation 423 (2018) on conflicts of interest at local and regional level;

Considering the work carried out by the Group of States against Corruption (GRECO), namely its report “Corruption prevention – Members of Parliament, Judges and Prosecutors (fourth evaluation round) – Conclusions and trends” (2017), as well as its findings and recommendations relating to the fifth evaluation round “Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies”;

Considering also the work of the European Commission for Democracy through Law (Venice Commission), including the Venice Commission and the OSCE/ODIHR “Joint Guidelines for preventing and responding to the misuse of administrative resources during electoral processes” (CDL-AD(2016)004) and the Venice Commission “Code of Good Practice in the field of Political Parties” (CDL-AD(2009)002);

Having regard to texts adopted by Council of Europe organs and bodies which, although not specifically related to public ethics, include provisions and recommendations relating to the conduct of public officials, including:

- Recommendation CM/Rec(2019)1 of the Committee of Ministers to member States on preventing and combating sexism and the guidelines appended to it;
- Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities;
- Parliamentary Assembly Resolution 2275 (2019) on the role and responsibilities of political leaders in combating hate speech and intolerance;

- ECRI General Policy Recommendation No. 15 on combating hate speech;

Taking note of the reports by the Secretary General of the Council of Europe entitled "State of democracy, human rights and the rule of law in Europe";

Taking note also of the recommendation of the Council on Public Integrity of the Organisation for Economic Co-operation and Development, adopted in 2017, which refers to public integrity as the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector,

Adopts the following guidelines, inviting member States to make the widest possible use of them, and to ensure their translation into the official languages and dissemination to public organisations in their respective countries, and/or to entrust these tasks to the competent public authorities, in compliance with the applicable constitutional and other legislative provisions.

A. Scope and purpose

1. These guidelines aim to help Council of Europe member States to establish a comprehensive and effective public ethics framework. A public ethics framework should be founded on the principles of public ethics and should comprise, as appropriate, strategies, legislation, regulations, codes of conduct and guidance which work together to enable and embed ethical practice throughout the activities of public organisations and in the decision making and actions of public officials.
2. Member States are encouraged, through the establishment of their public ethics framework, to develop and maintain a culture of the highest standards of conduct by public officials and/or to entrust these tasks to the competent public authorities in compliance with their applicable constitutional or other legislative provisions. This will both promote an ethical culture in public organisations and sustain the confidence and trust of citizens in the public officials and institutions who represent them, take decisions affecting their lives or are responsible for delivery of public services.

B. Conditions

1. Conditions for an effective public ethics framework include:
 - a. respect for human rights and fundamental freedoms;
 - b. respect for the rule of law;
 - c. respect for democratic norms, including adherence to the Council of Europe's 12 Principles of Good Democratic Governance, whereby effective political democracy is guaranteed;
 - d. the creation and maintenance by the member State of a political, legal and practical enabling environment to promote, facilitate and sustain this respect.

C. Definitions

1. For the purposes of these guidelines, the following definitions shall apply.
 - a. The term "public ethics" refers to the practical implementation of ethical standards by public officials whereby the public good is placed before private interests in accordance with the law so that confidence and the trust of citizens in the action and decisions of public officials and public organisations are maintained and strengthened.
 - b. "Public official" includes:
 - i. persons who are elected or appointed to a public mandate or function, such as members of national and regional governments, members of national and regional legislatures, local executives and local elected representatives, and holders of a judicial office;
 - ii. persons who are employed by a public organisation as defined below;
 - iii. persons who act on behalf of a public organisation without having been elected, appointed to a public mandate or function or employed by a public organisation.
 - c. A "public organisation" is a national, regional or local institution or administration; a company or similar entity managed or financed by such an institution or administration, or by the State; or a private-sector entity, including non-profit entities, providing public services.
 - d. A "conflict of interest" is a situation in which the public official has a private interest, which is such as to influence, or appear to influence, the impartial and objective performance of their duties. The public official's private interests include any actual, potential or perceived advantage to themselves, or to any connected persons, including advantages arising from assets, income and liabilities whether financial or civil. Connected persons include a spouse or civil partner, any other person with whom the public official lives in a family relationship – children, step-children or parents – as well as friends and persons or organisations and institutions with whom they have or have had business, political or social connections.

D. The principles of public ethics

1. The following principles apply to all public officials.
 - a. Legality – Public officials must act and take decisions in accordance with the law.
 - b. Integrity – Public officials must put the obligations of public service above private interests when carrying out their mandates or functions.
 - c. Objectivity – Public officials must, in carrying out their mandates or functions, act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
 - d. Accountability – Public officials are, in carrying out their mandates or functions, accountable for their actions and must submit themselves to the scrutiny necessary for this.
 - e. Transparency – Public officials should, in carrying out their mandates or functions, act and take decisions in an open and transparent manner, ensure access to information and facilitate understanding of how public affairs are conducted.
 - f. Honesty – Public officials should be truthful.

- g. Respect – Public officials should behave with courtesy and consideration toward others.
- h. Leadership – Public officials should demonstrate the principles of public ethics in their own behaviour, while supporting and promoting those principles, and challenging poor ethical behaviour.

E. A public ethics framework – Standards of conduct

1. Founded on the principles of public ethics, a public ethics framework should provide standards and obligations for public officials and public organisations. These standards and obligations should cover the following areas:
 - a. public officials' individual interests and those of connected persons, the declaration of such interests and the handling of conflicts of interest;
 - b. public officials' activities which are outside their function or mandate, the declaration of these outside activities, the classification of permissible and prohibited outside activities for different categories of public officials, and the arrangements and conditions for participation in outside activities;
 - c. activities undertaken by public officials after their employment or the end of their mandate;
 - d. gifts, favours and hospitality, offered or received by public officials and public organisations;
 - e. the use of public resources, equipment and property by public officials and public organisations;
 - f. public organisations' internal control and accountability measures in public procurement, contracts and the payment of grants;
 - g. the requirements of professional bodies which are relevant to categories of public officials;
 - h. the protection of whistle-blowers, in line with Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistle-blowers;
 - i. lobbying activities, in line with Recommendation CM/Rec(2017)2 of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision making;
 - j. transparent, delegated decision making and clear reporting requirements;
 - k. citizens' access to information, including a presumption in favour of disclosure;
 - l. access to documents and the re-use of documents by public officials;
 - m. public officials' handling of information and confidentiality;
 - n. public officials' use of the internet, including social media;
 - o. bullying and harassment;
 - p. the promotion of equality and diversity along with the prohibition of discrimination and hate speech;
 - q. reporting breaches of a code of conduct applicable to public officials.

2. A public ethics framework will thus provide clarity as to the standards of conduct citizens should be able to expect of all public officials and public organisations.
 - a. In the performance of their duties, all public officials should:
 - i. avoid any situation where there could be a conflict of interest for them, and remove themselves immediately from any potentially problematic situation, while complying with relevant rules for handling conflicts of interest including rules of disclosure;
 - ii. refrain from using public resources for private purposes or in any other way which is contrary to the law;
 - iii. not accept for themselves, or any connected persons, gifts, invitations and hospitality, advantages and favours, donations and other benefits, which might, or might reasonably be perceived to, place them under an improper obligation; not demand or solicit for themselves or any connected person gifts and benefits;
 - iv. make all declarations in compliance with the relevant rules of their assets, income, liabilities and other interests, and those of connected persons;
 - v. avoid participation in any prohibited outside activities during their period of employment or mandate, and after that period in compliance with relevant rules, avoiding activities through which they would gain a personal or professional advantage due to their having been a public official;
 - vi. avoid any perception of prejudice or favouritism, including nepotism;
 - vii. avoid discrimination, refrain from hate speech, harassment or bullying, show respect for equality and diversity and work actively towards a culture of fairness and tolerance that appreciates diversity;
 - viii. avoid producing or using information and evidence in a misleading or inaccurate manner;
 - ix. exercise discretion when dealing with information of a confidential or private nature.
 - b. In the performance of their duties, public officials who are members of national governments or members of government of regions with legislative powers should:
 - i. make themselves accountable to their respective legislature for their actions and decisions, and for the actions and decisions taken by the ministries and entities for which they are responsible;
 - ii. give accurate and truthful information to their legislature, and be open and transparent to that legislature and to the general public, subject to any limitations that are necessary in accordance with the law;
 - iii. attach importance to complying with the rules and obligations relating to contact with lobbyists and other third parties that promote issues or support particular interests;
 - iv. after their term in office, only take positions which are consistent with the law on taking up employment after having held a position as a member of a national or regional government.
 - c. In the performance of their duties, public officials who are members of national parliaments or members of regional assemblies with legislative powers, should:
 - i. ensure their actions and decisions are open, transparent and accountable to their electorate;

- ii. attach importance to acting in conformity with the rules and obligations on their declarations of assets, income, liabilities and other interests;
 - iii. attach importance to complying with the rules and obligations relating to contact with lobbyists and other third parties promoting issues or supporting particular interests;
 - iv. after their mandate, only take positions which are consistent with the law on taking up employment after having held a position as a member of a national or regional legislature.
- d. In the performance of their duties, public officials who are executives and/or elected representatives at the local level, or executives and/or elected representatives of regions without legislative powers, should comply with the conduct described above for members of national governments and legislatures, as applicable.-
- e. Public officials who are holders of a judicial office should:
- i. administer justice impartially in accordance with the law, with competence, diligence and propriety, thereby preserving and strengthening public confidence in the integrity, impartiality and independence of the judiciary;
 - ii. act at all times, including in their private life, in a manner that upholds and is consistent with the independence of their judicial function;
 - iii. respect the confidentiality of their deliberations and act in a way consistent with the role and status of their office, including in relation to exercising discretion in public statements, by whatever means these might be made, and limit their participation in public debates and their engagement with the media.
- f. In the performance of their duties, public officials who are either employed by a public organisation or who are acting on behalf of a public organisation without having been elected, appointed to a public mandate or function or employed by a public organisation, should:
- i. act in a manner that is neutral as regards political parties, and take care not to allow their activities to be used for partisan purposes;
 - ii. demonstrate professionalism in serving citizens with competence and act in a manner which shows respect and courtesy towards everyone;
 - iii. exercise discretion, as appropriate, in the public communication of their private views, by whatever means such communication might be made;
 - iv. ensure that public resources are not used for a political party, or other political activity or campaigning, other than for what is provided for in legislation;
 - v. refrain from any political or other activities which could hinder the discharge of their function or impair the confidence of the public and their employers in their ability to undertake their duties impartially and loyally;
 - vi. comply with rules, regulations and legislation in connection with their political activities and views, membership or activity in a political party, and/or when taking up political activity.

F. The public ethics framework – Components

1. The components of a public ethics framework should have sufficient resources, in order to ensure effective implementation, and should include the following.

Strategy

2. There should be a national strategy for public ethics, which can be adapted as appropriate to regional and local levels. The judiciary and the legislature should maintain the necessary independence from plans which are put in place by the government.

Institutions

3. There should be an independent authority or authorities to provide objective scrutiny and promote transparency in public life. Such authorities should have an appropriate level of oversight on matters including but not limited to:
 - a. collecting and publishing declarations of interest;
 - b. gifts and hospitality rules and register;
 - c. providing advice and examples of good practice and preparing and publishing guidance on ethical matters;
 - d. giving permission, in certain circumstances, relating to post-employment and outside activities.

Legislation and regulations

4. There should be legislation and/or regulations which provide for:
 - a. requirements for codes of conduct for all public officials, providing for different codes for different categories of public officials;
 - b. requirements for all public organisations to ensure that there are robust risk-management processes in place to assess and identify current and emerging ethical risks to activities, for example when developing new models for the delivery of public services;
 - c. requirements in relation to public officials who are employed by a public organisation, or who are acting on behalf of a public organisation without having been elected, or appointed to a public mandate or function, namely:
 - i. an open and fair recruitment and selection process which will contribute to the advancement of equal opportunities; the processes for the selection of staff should address the core values required of candidates to work in public service;
 - ii. the mobility of employees, recognising that requirements or guidance about mobility can help prevent and reduce the risk of corruption;
 - d. requirements in relation to public officials who are elected, namely:
 - i. the conduct of elections and election campaigns, including the campaign information to be declared;
 - ii. the exercise of their mandate;

- iii. the obligation for public authorities to guarantee elected representatives the allocation of adequate resources to fulfil their mandates in a transparent manner.

Codes of conduct

5. Codes of conduct play a special role in ensuring the effectiveness of the public ethics framework with an emphasis on individuals' responsibility for their behaviour rather than reliance on an external body or other parties to supervise and regulate behaviour.
6. The standards of conduct for different categories of public officials should be set out in specific codes. These codes should:
 - a. address the key issues and risks relating to maintaining ethical standards in line with societal changes;
 - b. be complementary to professional standards;
 - c. be included in the statutes of public officials where relevant;
 - d. be drafted in a clear and concise manner, published and accessible to public officials and to citizens;
 - e. be regularly reviewed and updated as appropriate.
7. All codes of conduct should reflect the principles of public ethics and the standards of conduct described in these guidelines, and they should reflect Council of Europe standards in particular on lobbying, the protection of whistle-blowers and the prevention of hate speech and discrimination.
8. Codes of conduct for public officials who are employed by a public organisation, or who are acting on behalf of a public organisation without having been elected or appointed to a public mandate or function, should also reflect the model code set out by the Committee of Ministers in its Recommendation No. R (2000) 10 to member States on codes of conduct for public officials.
9. Codes of conduct applicable to elected representatives and holders of judicial office should reflect their necessary independence from government.

Guidance

10. There should be guidance to reinforce the requirements of legislation, regulations and codes of conduct. In addition, this guidance could cover:
 - a. the adoption by public organisations of mission and values statements which set out the expectations for the behaviour and conduct of their public officials;
 - b. the management of staff, with ethical conduct in particular being included as an important element of performance assessment;
 - c. the duty of all leaders in a public organisation to be role models of ethical behaviour in their decision making and behaviour;

- d. the provision of initial and continuous training and development for all public officials, to ensure the highest standards of conduct in the exercise of their public functions and mandates;
- e. issues of conduct for elected representatives and holders of judicial office who are independent of government – the preparation and adoption of any such guidance being undertaken in a way that is consistent with this independence.

G. Public ethics framework – Addressing shortcomings

- 1. There should be clear mechanisms and procedures to investigate and address possible breaches of ethical standards or other issues of concern about public ethics. These should include:
 - a. clear procedures for handling complaints and grievances from the public and from public officials where a breach of ethical standards is suspected;
 - b. protective measures for whistle-blowers to prevent direct or indirect retaliation by the public organisation to which they belong or belonged and by public officials of that public organisation. Such forms of retaliation might include dismissal, suspension, demotion, loss of promotion opportunities, punitive transfers, reductions in or deductions from wages, harassment or any other punitive or discriminatory treatment;
 - c. formal mechanisms for the independent investigation of alleged breaches of the code of conduct for elected public officials;
 - d. formal mechanisms for the independent investigation of alleged breaches of the code of conduct for the judiciary, provided for in statutes;
 - e. a formal mechanism for the independent investigation of alleged breaches of the code of conduct for members of national or regional legislatures – both that
 - f. appropriate and proportionate disciplinary and criminal sanctions to be established for each category of public official, with those responsible for imposing sanctions having adequate powers to do so.