



**CENTRE OF EXPERTISE FOR GOOD GOVERNANCE**

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**Policy advice  
on improvement of public ethics at local level in Ukraine**

This document was prepared by the Centre of Expertise for Good Governance, Council of Europe

## **Executive summary**

*The current Ukrainian legal framework on public ethics encompasses several acts which lay down rules of conduct and ethical values of various public officials at local level. However, they vary in terms of how detailed rules on expected conduct of public officials are, in some cases merely providing a set of values while in other clear rules. Furthermore, the acts do not take into account specificities of various groups of public officials and their status. Implementation of the legislative framework is insufficient also due to lack of preventative or educational tools (such as trainings, codes of conduct, guidance and confidential counselling) and clear mechanisms of supervision and enforcement. As a result, local authorities and officials lack clear and sufficient guidance as to conduct is expected from them. At the same time, they face public distrust as to appropriate performance of public duties.*

*Therefore, development and implementation of public ethics framework at local level in Ukraine is needed. The process should take into account specificities of particular groups of public officials and risks (for corruption and other unethical behaviour) pertaining to them. In order to enhance public trust by development and implementation of public ethics framework, the process itself should be inclusive, involving both public officials and the public at large. First because self-control and responsibility as regards complying with rules of conduct to be meaningful and effective must come from within; the latter because it should be understood that public ethics framework should not only help to strengthen general trust in public officials involved in local governance but should also inform the public about the expected conduct from all public officials and the means to achieve them.*

*Much emphasis should be put on including all relevant public ethics-related matters in the public ethics framework and to regularly evaluating and updating them, taking into account emerging trends and risks.*

*Raising awareness through various preventative tools is crucial for effective implementation of such framework; these tools should therefore become part of the framework.*

*Appropriate supervision allows detection of shortcomings of the public ethics framework and its implementation resulting in appropriate and timely response from those institutions entrusted with its development and/or implementation. Every component of the public ethics framework, be it a law or a training programme, should be accompanied with performance indicators.*

*The public ethics framework should not rely on the good will of those to whom it applies. An effective enforcement mechanism should be envisaged, including a set of sanctions that are effective, proportionate and dissuasive and institutions entrusted with enforcement powers to respond to breaches of the rules swiftly and appropriately.*

## **I. Introduction**

1. This policy advice comes in response to the request by the National Agency on Corruption Prevention of Ukraine (hereinafter – NACP) of 16 January 2023 and the supplementary inquiry of 14 September 2023. The document aims to assist the NACP in elaboration of the State Anti-Corruption Programme for the implementation of the Anti-Corruption Strategy for 2021-2025, endorsed by the law “On the Principles of the State Anti-Corruption Policy for 2021-2025”.
2. The policy advice was prepared by the [Centre of Expertise for Good Governance](#) (henceforth “the Centre of Expertise”), Council of Europe, based on contributions from its international consultant Ms Vita Habjan Barborič and national consultant Ms Vira Kozina within the framework of the Programme [“Strengthening Good Democratic Governance and Resilience in Ukraine”](#).
3. The document takes into account findings of the [Survey on application of rules of ethical behaviour by elected local officials and local councillors](#) conducted in June-October 2023 by the Centre of Expertise within the Programme mentioned above in partnership with the NACP and with the assistance of the Association of Ukrainian Cities and the Association of Amalgamated Territorial Communities<sup>1</sup>.
4. The policy advice contains an overview of the Ukrainian legal and institutional framework on public ethics and analysis of its shortcomings, an overview of European standards and practice in the area, as well as proposals for improvement of Ukraine’s legal and institutional framework.

## **II. Overview of the Ukrainian legal framework on public ethics and its shortcomings**

5. Ethical principles and rules of conduct of local officials and local councillors are scattered throughout various pieces of Ukraine’s legislation. The law “On Prevention of Corruption” is the main act which comprehensively lays out rules of conduct with regard to ethics, gifts and hospitality, accessory activities, use of position for private gain, management of conflicts of interest, financial declarations, transparency of public administration in local self-government, etc. Other laws regulate ethical principles and rules of conduct pertaining to a particular group of officials, namely local councillors (the law of 2002 “On the status of local councillors”) and elected and appointed officials of local authorities (the law of 2023 “On Service in Local Self-Government Bodies”, the General Rules of Ethical Behaviour of Public Servants and Local Self-Government Officials, approved by the order of the National Agency of Ukraine on Civil Service in August 2016, amended in April 2021).
6. However, important shortcomings have been identified with regard to these legal instruments, namely:
  - i. they lack clear guidance on what conduct is expected. For example, the General Rules require officials to avoid real and potential conflicts of interests in performing public duties while no further guidance with concrete cases is provided to them as to what is a real or potential conflict of interest, what conduct is expected from an individual when s/he finds her/himself in a situation of a conflict of interest, etc. Similarly, the law “On the status of local councillors” lays

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<sup>1</sup> The Survey was carried out using the Centre of Expertise’s Public Ethics Benchmarking toolkit for central and local authorities and the Recommendation CM/Rec(2023) 5 of the Committee of Ministers to member States on the principles of good democratic governance. 679 representatives of local communities, including 51 mayors and 137 executive chiefs, took part in the survey, representing nearly a third of their total number in Ukraine.

down 6 (six) ethical rules to be observed by local councillors not providing sufficient guidance as to how these values should be translated into practice;

- ii. they convey powers for adopting additional rules on ethical conduct to local authorities, thus allowing them to regulate similar situations/conduct of the same group of officials differently;
- iii. they do not take into account specificities of different groups of local officials. For example, the General Rules contain uniform rules for all local officials, thus not differentiating between those appointed and elected. The law “On Prevention of Corruption” enables that for specific categories of persons rules for resolving conflicts of interest may be further determined by the laws governing the status of such persons;
- iv. they do not regulate all relevant topics on public ethics, such as relations of officials (appointed and elected) and of local councillors with lobbyists and third parties, protection of whistleblowers, etc., which are relevant for strengthening transparency and integrity of public decision-making processes, and thus do not meet requirements stemming from relevant international anti-corruption instruments<sup>2</sup>;
- v. they lack sufficient focus on corruption prevention – minor emphasis is put on preventive tools and measures such as codes of ethics, advice, training, transparency of decision-making process, etc.;
- vi. they do not provide for an effective mechanism of supervision and enforcement, thus enabling completely different approaches to monitoring and recording cases of violations, as well as they lack a uniform law enforcement practice of responding to such violations and sanctions. For example, the law “On the status of local councillors” does not envisage any mechanism for supervision and enforcement of the rules – it is left to the discretion and willingness of local councils<sup>3</sup>. Similarly, the General Rules mandate heads of local authorities or their structural subdivisions with taking measures to stop violations of these General Rules while they do not envisage any mechanism of oversight and enforcement.

7. The Council of Europe’s monitoring mechanism Group of States against Corruption (hereinafter – GRECO) also noted several shortcomings of the law “On Prevention of Corruption” in its Evaluation Report on Ukraine<sup>4</sup> of June 2017, followed by its Compliance Report on Ukraine<sup>5</sup> (December 2019), Second Compliance Report on Ukraine<sup>6</sup> (December 2021) and Interim Compliance Report on Ukraine<sup>7</sup> (March 2023). Although they focus on corruption prevention in respect of parliamentarians, judges and prosecutors (topics covered in the Fourth Evaluation Round), legal framework applicable to them is applicable also to local officials and councillors.

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<sup>2</sup> See Recommendation of the Committee of Ministers to member States on the legal regulation of lobbying activities in the context of public decision-making, available at <https://rm.coe.int/0900001680700a40>, or Recommendation of the Committee of Ministers to member States on the protection of whistleblowers, available at <https://rm.coe.int/16807096c7>.

<sup>3</sup> The survey conducted by the Council of Europe’s CEGG Programme showed that only 47% of local authorities provide for the possibility of applying appropriate measures in their own internal documents. At the same time, 70% of those to whom such measures apply indicated that they are disciplinary in nature, 14.9% indicated that they do not know to which category such measures belong, 7.8% said that civil legal measures apply to councillors who commit relevant violations, 4.1% believe that measures are of a political nature, and 2.7% that they are financial.

<sup>4</sup> See at <https://rm.coe.int/grecoeval4rep-2016-9-fourth-evaluation-round-corruption-prevention-in-/1680737207>

<sup>5</sup> See at <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/16809d768c>

<sup>6</sup> See at <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680a64e60>

<sup>7</sup> See at <https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680aaa790>

8. To conclude, discrepancies in the legal framework and preventive measures could result in different and inconsistent practice and could add to both confusion of public officials as to what conduct is expected of them and to public mistrust. As regards codes of conduct as a set of rules applicable to a particular category of persons (for example, to local councillors) or to a specific professional situation (for example, ad hoc declaration of conflict of interest in a recruitment procedure), they are rarely developed in Ukraine by local authorities<sup>8</sup>. If codes of ethics exist, they usually provide only a set of principles and values and often lack further clarification and practical examples as to how these principles and values should be applied in real case scenarios. Elaboration of a code of conduct by local authorities is not very common in Ukraine, while they represent an important signal to the public about local authorities' commitment to achieving and maintaining high standards of integrity<sup>9</sup>.

### **III. Overview of the Ukrainian institutional framework on public ethics and its shortcomings**

9. Competence over the public ethics framework in Ukraine is shared among several bodies.

10. As regards setting the basic standards of ethical rules and principles, the competence lies with the legislator but is also entrusted with local authorities. For example, the law "On the status of local councillors" entrusts local councils to adopt additional rules on councillor ethics. Similarly, law "On Service in Local Self-Government Bodies" empowers them to adopt general rules of ethical conduct.

11. The NACP is entrusted with an advisory role as regards to compliance of public officials' and elected officials' conduct (at the national and local level) with the provision of the law "On Prevention of Corruption" (namely on asset declarations, gifts). The National Anti-Corruption Bureau (hereinafter NABU) is also competent for prevention of corruption offences committed by senior officials.

12. As regards supervisory and enforcement role over public officials' and elected officials' conduct (at national and local level), NACP only supervises compliance of their conduct with the provisions of the law "On Prevention of Corruption" (namely on asset declarations, gifts), while other laws either remain silent on this matter or entrust the role as regards compliance of local officials' conduct with relevant provisions of the law to various authorised bodies at their place of work. As regards local councillors, a decision on disciplinary proceeding against a local councillor is at the discretion of a local council and depends on the relations between the local council and its member or other bodies. For example, in some cases, drawing up of administrative protocols on corruption offenses is entrusted to the NACP or the National Police, while investigation is carried out by different bodies, depending on the volume of the subject of the offense, the person who committed the offense, or the person against whom the offense was committed.

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<sup>8</sup> The survey conducted by the Council of Europe CEGG within the Programme mentioned above in June - October 2023 demonstrated that slightly more than 15% of respondents confirmed the presence of both codes. 29.9% of respondents have a code of ethics (or apply General Rules adapted to the needs of a specific local self-government) while only 3.13% have rules (clear regulations) of ethical behaviour.

<sup>9</sup> More than half of the respondents (57.2%) indicated that they were prompted to adopt the relevant acts precisely by the requirements of the legislation, and 26% responded that it had been done at their own initiative.

13. The National Agency on Civil Service is in charge of providing clarifications relating to the laws “On Civil Service”, “On Service in Local Self-Government Bodies” and other acts in the field. It can also assist local authorities in developing relevant codes and rules.

14. Entrusting various bodies with enforcement role while at the same time not ensuring coordination among them resulted in different approaches to respond to such violations.

15. To conclude, lack of regulatory, institutional and operational measures have multi-dimensional effect on developing and strengthening public ethics framework in Ukraine. First, it prevents detection and punishment of violations of the public ethics rules in practice or allows different approaches to respond to such violations. Secondly, insufficient information (also statistical) on violations (types, numbers) hinders development and implementation of preventative tools on public ethics that would address the needs of those whom they should apply to<sup>10</sup>.

#### **IV. Overview of the Council of Europe standards and European practice**

16. Since the adoption of its Programme of Action against Corruption in November 1996, the Council of Europe has been pursuing a comprehensive approach against corruption by setting standards in the form of conventions and other instruments (recommendations and resolutions), and by monitoring their compliance with Council of Europe and global standards through its monitoring mechanism GRECO.

17. In 1999, the Committee of Ministers of the Council of Europe adopted Resolution (97) 24 on the twenty guiding principles for the fight against corruption<sup>11</sup> in which it addressed main principles to be taken into account for the fight against corruption. Some of them are relevant also for strengthening public ethics at local level, namely on taking effective measures for the prevention of corruption, including raising public awareness and promoting ethical behaviour, ensuring that rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures; promoting further specification of the behaviour expected from public officials by appropriate means, such as codes of conduct and ensuring that the media have freedom to receive and impart information on corruption matters, subject only to limitations or restrictions which are necessary in a democratic society.

18. The European Code of Conduct for all Persons involved in Local and Regional Governance (hereinafter – European code) was adopted by the Congress of Local and Regional Authorities of the Council of Europe on 7 November 2018<sup>12</sup>. Its purpose is to set out at the European level the ethical principles and standards approved by the elected representatives of local and regional authorities of the Council of Europe member States<sup>13</sup>. As such, it sets minimum standards and thus offers the actors to either adopt this Model code without amendment or to draw up their own code of conduct on the basis of this code. It also emphasises that it cannot cover all possible situations of ethical

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<sup>11</sup> Available at <https://rm.coe.int/16806cc17c>

<sup>12</sup> This code revises and updates the 1999 Code of conduct for political integrity of local and regional elected representatives and shall apply now to all persons involved in local and regional governance.

<sup>13</sup> Available at <https://rm.coe.int/1680718fbf>

challenges, thus allows expanding and applying it in a manner that it covers also new problems and situations as they arise.

19. The European Code performs multiple functions, including providing all actors involved in local and regional governance with instructions on their conduct when performing public duties, informing general public about the expected conduct from all actors involved in local and regional governance and the means to achieve them, helping to strengthen public trust in all actors involved, advising those who are tasked with ensuring the respect of those principles, and enhancing ethical standards.

20. As regards its scope, the European Code applies to elected, appointed and contracted personnel irrespective of whether those actors are governed by public or private law, or whether they are involved in defining, delivering or reviewing public goods or services.

21. The European Code lays down general principles of performance of public duties, specific obligations related to corruption and fraud, public procurement and contracting and avoidance taking any measure to grant themselves a personal and/or professional advantage once they have left their functions.

22. Recommendation of the Committee of Ministers of the Council of Europe No. R (2000) 10 on codes of conduct for public officials, including a Model code of conduct for public officials<sup>14</sup>. The Model code contains a set of principles on how public officials are required to carry out their duties.

23. This Model code is to be issued under the authority of the minister or the head of the public service and should be regularly reviewed. Its provisions form part of the terms of employment of a public official and apply to him/her from the moment s/he certifies that s/he has been informed about them. Any breach of these provision may result in a disciplinary action. The public official who supervises or manages public officials has the responsibility to oversee that they observe the Model code and to take or propose appropriate disciplinary action for breaches of it.

24. Although the Model code does not apply to elected representatives, it contains most of the major elements that have made their way into legislative instruments in various member States.

25. If, on the one hand, there are numerous examples of codes of conduct or codes of ethics adopted at the national level, applicable to elected members of national parliaments, there are only a handful of examples of such codes at local/regional level, i.e. for local/regional officials or elected representatives. A few examples are<sup>15</sup>:

- the “Seven principles of public life” (or Nolan Principles) from 1995 which were followed by enactment of a model code of conduct for local authorities by the Department for Communities and Local Government of the United Kingdom in 2007.
- In England, the Localism Act (2011)<sup>14</sup> specifies that councils must adopt a code dealing with the conduct that is expected of members and co-opted members of the authority when they are acting in that capacity”. This applies in particular to county councils in England, district councils, parish councils, the Greater London Authority and the

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<sup>14</sup> Available at

<https://rm.coe.int/16806cc1ec#:~:text=The%20public%20official%20should%20not%20allow%20himself%20or%20herself%20to,th e%20improper%20influence%20of%20others.>

<sup>15</sup> Available at <https://rm.coe.int/1680718fbf>, pg. 27-29.

Metropolitan Police Authority. The Localism Act specifies that the code should be consistent with the Nolan Principles and should contain a number of detailed provisions on register of interests, disclosure of pecuniary interests, sensitive interests, and offences.

- In Scotland, a Code of Conduct for the Councillors of all 32 local authorities in Scotland has been in force since May 2003. In 2003 the Scottish Parliament also approved a Model Code of Conduct for Members of Devolved Public Bodies and following a public consultation in 2013 a Model Code was renewed and approved by the Scottish Parliament and published in February 2014.
- The Local Government Association of the United Kingdom which comprises 315 of 317 councils in England and includes districts, country, metropolitan and unitary authorities adopted the Model Councillor Code of Conduct<sup>16</sup> in 2020. It was developed in association with key stakeholders, after an extensive consultation. It is formed as a template for councils to adopt in whole and/or with local amendments. All councils are required to have a code of conduct. The Code sets out general principles of a councillor's conduct, standards of conduct and the application of the Code. The Local Government Association undertakes an annual review of the Code to ensure it fits the purpose and it can offer support and training to councils and councillors in the application of the Code. On its website it provides a training pack<sup>17</sup> on the Code which are particularly useful for monitoring offices. An e-learning platform<sup>18</sup> has been developed for councillors.
- The city councillors of Bad Vöslau (Austria) adopted a code of conduct<sup>19</sup> on the basis of principles of state chancellor's code. The code of conduct lays down their duties (such as impartiality, corruption prevention, gifts, etc.) and what measures they should undertake when in situation of conflict of interest, obligation to report on accessory activities, etc.
- codes of conduct at local level have been adopted in several member States (sometimes erroneously entitled "codes of ethics"). In Montenegro and in Republika Srpska of Bosnia and Herzegovina, codes lay down standards of conduct for local civil servants. However, when such codes are in place, they often lack an effective monitoring mechanism or clear sanctioning regulations.

26. CM/Rec(2022)2 of the Committee of Ministers of the Council of Europe on democratic accountability of elected representatives and elected bodies at local and regional level<sup>20</sup> of February 2022 recommends that the governments of member States or the competent public authorities entrusted with such role establish and maintain an accountability framework (comprising legislation, institutions, procedures, practices, and norms of conduct) for elected representatives and elected bodies at local and regional level, that the provisions of the framework complement the judicial, political and administrative systems of the member State, and that measures adopted are periodically evaluated and, if needed, legislative reforms undertaken to improve the effectiveness of the accountability mechanisms.

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<sup>16</sup> Available at <https://www.local.gov.uk/publications/local-government-association-model-councillor-code-conduct-2020>

<sup>17</sup> Available at <https://www.local.gov.uk/our-support/guidance-and-resources/civility-public-life-resources-councillors/councillor-conduct>

<sup>18</sup> Available at <https://www.local.gov.uk/our-support/leadership-workforce-and-communications/councillor-development/councillor-e-learning>

<sup>19</sup> Available at <https://www.badvoeslau.at/de/rathaus/politik/gemeinderat/verhaltenskodex/>

<sup>20</sup> Available at [https://search.coe.int/cm/pages/result\\_details.aspx?objectid=0900001680a57739](https://search.coe.int/cm/pages/result_details.aspx?objectid=0900001680a57739)



27. The appendix to the Recommendation provides for relevant definitions and consequences regarding established accountability, also as regards early termination of a mandate which should be exceptional, and strictly and precisely regulated by law. The legislation should define the procedural guarantees of transparency, legitimacy and legality of the recall process, clearly identify those involved in the process, and set the thresholds for launching the procedure and for validating the recall. In particular, popular recall should only complement other mechanisms available, should be subject to legal limitations (i.e., in respect of timing, the number of signatures required, the quorum, etc.), should be possible only for those elected to local and regional government functions by direct suffrage and prohibited for individual members of elected councils, and in principle, local and regional assemblies should have no authority to dismiss mayors and other heads of local authorities who are elected directly unless the dismissal is an unavoidable consequence of a collective resignation of the assembly or results in the dissolution of the assembly itself. The early termination of a mandate should allow, if necessary, for new elections to be held without delay and avoid the need to appoint a manager where the rules or the situation do not allow an elected substitute or deputy to carry out required functions.

28. 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<sup>21</sup> recommends that governments of member States either establish or further strengthen a framework for the legal regulation of lobbying activities in the context of public decision-making, in accordance with the guiding principles, taking into account also their own national circumstances, and to translate the recommendation and disseminate it as widely as possible, especially among lobbying groups, business, trade unions, industry confederations, public bodies, regulatory authorities, civil society NGOs, politicians, academics.

29. CM/Rec(2014)7 of the Committee of Ministers to member States on the Protection of Whistleblowers<sup>22</sup> was adopted in April 2014 and recommends that member States have in place a normative, institutional and judicial framework to protect individuals who, in the context of their workbased relationship, report or disclose information on threats or harm to the public interest.

30. In March 2020, Guidelines of the Committee of Ministers of the Council of Europe on public ethics<sup>23</sup> were adopted, consolidating in one single document Council of Europe core principles, standards and recommendations in this field. The Guidelines aim to help member States to establish a comprehensive and effective public ethics framework, in order to promote an ethical culture in public organisations and sustain the confidence and trust of citizens in public officials and institutions.

31. The Guidelines provide various definitions, such as of public ethics, a public organisation, a conflict of interest and of connected persons. They have a broad personal and material scope, covering all categories of public officials and addressing pressing challenges such as whistleblowers protection, use of social media and the prevention of sexism, hate speech and discrimination. They also list principles of public ethics on the basis of which a public ethics framework should be founded and provide standards and obligations for public officials and organisations. These standards and

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<sup>21</sup> Available at <https://rm.coe.int/legal-regulation-of-lobbying-activities/168073ed69>

<sup>22</sup> Available at <https://rm.coe.int/16807096c7>

<sup>23</sup> Available at [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectId=09000016809a59e7](https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016809a59e7)

obligations should cover various areas, such as public official's individual interest and that of his/her connected persons, his/her accessory activities and declaration of these activities, his/her post-employment activities, gifts, favours and hospitalities, etc.

32. As outlined by the Guidelines, the public ethics framework should have the following components:

- strategy: a national strategy for public ethics should be adopted and adapted to regional and local levels;
- institutions: an independent authority(ies) should exist to provide objective scrutiny and promote transparency in public life;
- legislation and regulations: legislation and regulation should provide for requirements for codes of conduct, for a robust risk management processes within public organisations for identifying ethical risks, requirements in relation to public officials regarding recruitment, selection process and mobility of employees which would prevent and reduce risks of corruption, requirements in relation to elected public officials;
- codes of conduct: their role, that they should reflect the principles of public ethics and the standards of conduct described in the Guidelines, should be applicable to elected representatives to reflect their necessary independence, the need for a code of conduct applicable to public officials who are employed by a public organisation to reflect also 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 (see above);
- guidance: guidance should be available to reinforce the requirements set out in the legislation, regulations and codes of conduct.

For easier implementation of public ethics in public organisations the Guidelines are complemented by a Practical guide<sup>24</sup>.

33. Recommendation CM/Rec(2023) 5 of the Committee of Ministers to member States on the principles of good democratic governance<sup>25</sup> and its explanatory memorandum<sup>26</sup> sets out the four fundamentals of good democratic governance framed by 12 key principles. The second fundamental covers the observance of the highest standards of public ethics and integrity in the exercise of power and public responsibilities. It sets the subject of public ethics and integrity at the heart of good democratic governance, regrouping 3 key principles: public ethics, accountability and openness and transparency. The Recommendation expands on the principles to guide the actions of decision-makers and public institutions at all levels, and to make clear to all the standards expected from those who are trusted to manage public affairs, whereby the public good is placed before private interests.

34. The GRECO was established to monitor compliance of member States with convention and other instruments (recommendations and resolutions) on anti-corruption. It monitors all its members on an equal basis, through a dynamic process of mutual evaluation and peer pressure. It works in cycles, each evaluation rounds covering specific themes.

35. The 6<sup>th</sup> Evaluation Round will be launched in January 2024 and will address prevention of corruption and promotion of integrity at sub-national level. Although the work of the Working Party

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<sup>24</sup> Available at <https://rm.coe.int/cddg-2019-9e-rev-guide-public-ethics-/16809a4ae7>

<sup>25</sup> Available at [https://search.coe.int/cm/pages/result\\_details.aspx?objectId=0900001680abeb87](https://search.coe.int/cm/pages/result_details.aspx?objectId=0900001680abeb87)

<sup>26</sup> Available at [https://search.coe.int/cm/Pages/result\\_details.aspx?objectId=0900001680ac77e4#\\_Toc115179303](https://search.coe.int/cm/Pages/result_details.aspx?objectId=0900001680ac77e4#_Toc115179303)

has only commenced, GRECO member States have agreed to cover the same topics as in its 4<sup>th</sup> and 5<sup>th</sup> Evaluation Rounds. Since the 6<sup>th</sup> Evaluation Round will cover both the legislative and the executive at the sub-national level, it is possible to expect some uniformity as regards GRECO's recommendations, based on concrete findings, since the same international anti-corruption standards apply (as regards ethical standards for public officials on lobbying, conflicts of interest, gifts, etc.). For example, in cases where a particular group of public officials (for example, local councillors) has not yet developed and adopted their code of conduct GRECO might recommend adoption of the code of conduct as it did in relation to members of the national parliament, of the national government, of the judiciary and of the prosecutors.

36. Therefore, an analysis of GRECO's recommendations, both in respect of all member States within a particular Evaluation Round as well as in respect of Ukraine, should help determining next steps in strengthening integrity framework of local authorities in Ukraine.

37. The findings in respect of GRECO's member States evaluated in the 4<sup>th</sup> Evaluation Round (on members of parliament) until June 2017 include<sup>27</sup>:

- Frameworks, tools and mechanisms for promoting integrity in Parliament: 67% of the recommendations addressed to parliamentarians and issued under the category of ethical principles and rules of conduct ask member states to adopt a code/rules of conduct. Moreover, parliamentarians should have more formalised training and should have more developed institutionalised integrity systems.
- Conflicts of interest: recommendations included extending parliamentarians' reporting of financial and outside interests, establishing or enhancing the range of activities that could be considered to conflict with parliamentarians' decision-making processes, and emphasising the importance of parliamentarians' duty to self-regulate. 54% of the recommendations issued under conflicts of interest ask member States to introduce a system that allows for ad-hoc disclosure of conflicts of interests.
- Declarations of assets and other interests: recommendations included expanding the scope of information to benefits such as gifts, travel, and unpaid directorships (i.e. non pecuniary interests); including all assets, income and liabilities above a certain threshold or indeed lowering the threshold to capture more relevant information; and increasing the level of detail required with respect to significant assets, including shareholdings, as well as parliamentarians' liabilities, to consider extending declaration requirements to parliamentarians' spouses and close family members.
- Gifts and other benefits of parliamentary service: a significant number of member states received recommendations to specifically develop, clarify or adopt rules on the acceptance of gifts and other benefits such as in-kind travel or hospitality, or to address these topics in MPs' codes of conduct.
- Interactions with lobbyists and other third parties: a number of recommendations were issued for the development of guidelines for parliamentarians on how they are meant to interact with lobbyists and other third parties.
- Accessory activities, prohibitions and post-employment restrictions: while in most countries there is a well-developed system of declaration, rules on accessory activities are clear, strict and well understood, in the small number of countries significant problems in these areas were

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<sup>27</sup> See GRECO publication "Corruption Prevention – Members of Parliament, Judges and Prosecutors – Conclusions and trends", 2017, pg. 10, available at <https://rm.coe.int/corruption-prevention-members-of-parliament-judges-and-prosecutors-con/16807638e7>

found (for example, lack of enforcement of current restrictions on accessory activities, lack of restrictions) and GRECO recommended to amend or enforce the rules on such activities. Also, in most countries few, if any, restrictions apply to parliamentarians' employment or other activities after leaving parliament. GRECO reports describe serious concerns in many countries about the influence of business on national legislative and regulatory agendas and of parliamentarians moving into positions in private sector entities.

- Codes of conduct, awareness and advice: the vast majority of member States received a recommendation with respect to adopting, elaborating or implementing a code of conduct for parliamentarians. 50% of the recommendations issued under training and awareness are asking member States to establish dedicated confidential counselling.
- Transparency: recommendations primarily address failures to implement existing rules in a way that fulfils their intended purpose (for example, draft laws are regularly posted, but not before the first reading, or not posted early enough to allow experts and the public to contribute in a meaningful way from an early stage; the speed at which draft laws are finalised and late amendments adopted makes it virtually impossible for the public to participate).

38. Supervision, monitoring, enforcement: GRECO reports revealed weak implementation of many of the valuable and important corruption prevention measures member states have already adopted. Main findings in respect of GRECO's member States evaluated in the 5<sup>th</sup> Evaluation Round on central governments – persons entrusted with top executive functions (hereinafter – PTEFs) – until December 2021 and which could be useful for improving public ethics at local level, include<sup>28</sup>:

- Anticorruption and integrity policy, regulatory and institutional framework: PTEFs need to be included in existing integrity policy by analysing and mitigating the risks PTEFs are exposed to and to build monitoring and compliance measures to help them achieve and be seen to achieve better progress in preventing corruption and instilling integrity.
- Most of the countries evaluated so far were asked to adopt codes of conduct for PTEFs or to revise them.
- Particular emphasis was put on the enforcement of such codes, with effective mechanisms of supervision (with possible sanctions), coupled with confidential counselling and regular and compulsory training.
- Many of them were advised to adopt or consolidate in a single document policies or standards, providing clear guidance on conflicts of interest and other integrity related matters.
- GRECO has paid particular attention to political advisors, because of their political role and possible influence in decision-making processes. GRECO has underlined that it is essential that the transparency and integrity requirements for political advisors be adapted to the nature of their mandate and their specific responsibilities, equivalent to those applied to other political appointees with top executive functions.
- Many countries have received recommendations relating to the absence of rules or guidance on how PTEFs should engage with lobbyists, or third parties seeking to influence the public decision-making process or were advised to ensure transparency in this area and asked to require disclosure of such contacts and sufficient details of the subject matters discussed.
- Transparency and oversight of executive activities of central government: as regards access to information and transparency of the law-making process GRECO has recalled the overall principle of transparency of public documents and that this should be guaranteed in practice.

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<sup>28</sup> See GRECO General Activity Report 2021, pg. 11, available at <https://rm.coe.int/greco-general-activity-report-2021/1680a6bb79>

Any exceptions to the rule of public disclosure should be limited to a minimum and outcomes of public participation procedures should be public information. Public scrutiny is also key when it comes to public procurement, in particular concerning large public contracts.

- As regards issues of information and transparency of the law-making process it would appear that there is still a broad margin of discretion for determining what is in the public domain and whether to exclude a certain document from free access. GRECO was concerned that some members were restrictive in the application of Freedom of Information Acts (hereinafter – FoIA) requirements. Some agencies showed a certain reluctance to disclose information, preferring rather to apply exceptions in order to withhold all or parts of information. Inconsistency across government entities as regards application of FoIA was also identified. GRECO suggested to develop targeted training to create a more common understanding and application of laws.
- Conflicts of interest: for a majority of the countries evaluated so far, GRECO has recommended improving the management of conflicts of interest, including those arising on an *ad hoc* basis, in particular by clearly defining the rules and procedures. It has recommended that a requirement of *ad hoc* disclosure should be introduced in respect of PTEFs in situations of conflict between their private interests and official functions when they occur. Rules about conflicts of interest should also cover political advisors.
- As regards conflicts of interest advisory, monitoring and compliance mechanisms, GRECO recommended that the system for managing conflicts of interest should be supplemented with clear provisions and guidance regarding (i) a requirement for PTEFs to disclose conflicts *ad hoc*, and (ii) clear procedures, responsibilities and deadlines for solving situations of conflict of interest, including following complaints by the public or by other institutions.
- Prohibition or restriction of certain activities: GRECO assessed incompatibilities, gifts, misuse of confidential information and restriction of post-employment activities. In relation to gifts and other benefits, GRECO reiterated the importance of strict limitations, highlighting the risk of “favours” exchanged in situations where there is excessive “cosiness” between politicians and business community. Many of the countries evaluated also were advised to improve the situation with regard to the mobility of PTEFs from the public to the private sector (so-called “revolving-doors”), and vice-versa. It also paid attention to cooling-off periods and their adequacy.
- Declarations of assets, income, liabilities and interests: a number of deficiencies were identified with regard to the scope of persons covered by the requirement to disclose financial interests, the timely publication of declarations and with regard to their scope and independent and systematic monitoring. Enforceable sanctions should be applied for failing to file, or knowingly making false statements in the disclosure reports.
- Accountability and enforcement mechanisms: PTEFs should lead by example in matters of integrity. GRECO does not consider political responsibility in the form of “naming and shaming” as the most effective sanction is enough in itself and thus called for the development of additional controls and sanctions in order to ensure that ethical misconduct is detected and addressed even without media scrutiny and public or political pressure. GRECO reiterated recommendations given during the 1st Evaluation Round with regard to making it possible for law enforcement, subject to judicial authorisation, to use special investigative techniques.

## **V. Proposals for improvement of the existing shortcomings in the legal and institutional framework as well as for practical approach**

39. Shortcomings identified and proposals for improvement:

i. Lack of strategic framework on public ethics at local level.

Proposal: in order **to adopt a national legal framework on public ethics at local level in Ukraine**, be it a national strategy on public ethics or a dedicated chapter/section of the State Anticorruption Strategy, it is necessary to obtain and analyse relevant information on main shortcomings with regard to the current legal and institutional framework as well as practical measures in this area. Various sources of information should be used for this purpose, such as the survey conducted in 2023 by the Council of Europe Programme at the request of NACP mentioned above, GRECO findings from the 4<sup>th</sup> and 5<sup>th</sup> Evaluation Round reports, including the reports on Ukraine, etc. A risk analysis<sup>29</sup> (or information obtained from risk management tools applied by local authorities) would provide a valuable insight especially into which risks for ethical conduct and corruption may be identified in practice and how they are managed.

The process of identifying shortcomings in the public ethics framework and addressing them through a national strategic document on public ethics for local level should be inclusive, which means that various stakeholders should take part in the process: local authorities and their representatives with different background and status, associations of local authorities, representatives of anti-corruption bodies, relevant ministries and governmental agencies whose portfolio includes also public ethics and corruption prevention topics, civil society representatives, media, academia, the public.

The national strategic framework on public ethics for local level should envisage necessary steps/phases, institutions responsible for their implementation, performance indicators and deadlines for preserving and strengthening public ethics. These steps/phases could include preparation of legislation, regulation, codes of conduct, guidelines, training and raising awareness materials, establishing bodies competent to provide advice and guidance with regard to ethical dilemmas, etc.

ii. Ethical principles and rules of conduct of local public officials and councillors are scattered throughout various pieces of legislation. Laws do not differentiate sufficiently between their various groups as regards rules of conduct applicable to them, thus making the legal framework difficult to implement in practice.

Proposal: the law “On Prevention of Corruption” is *lex specialis* regulating measures and tools for corruption prevention. **Laws regulating status of particular groups of public officials (for example, local councillors) should build on the existing general provisions of the law “On Prevention of Corruption”** regarding particular corruption prevention and integrity-related matters such as gifts, accessory activities, incompatibilities, by providing complementary rules that would take into account specificities of a particular groups of public officials.

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<sup>29</sup> In respect of Sweden, GRECO recommended developing and implementing a strategy, based on risk analysis, to promote integrity and improve prevention and management of conflicts of interest and corruption among persons entrusted with top executive functions (see GRECO Evaluation Report on Sweden in its 5th Evaluation Round). In respect of North Macedonia, GRECO similarly recommended that integrity risk assessment is systematically carried out in central government covering all functionaries and personal advisers and external associates, as appropriate (see GRECO Evaluation Report on North Macedonia in its 5th Evaluation Round).

In order to identify corruption risks and risks for ethics pertaining to a particular group of public officials, risk management tools could be of good use. It is important to understand which risks exist pertaining to different categories of public officials to develop and adopt different standards of conduct applicable to them.

Given the above, it is recommended **to improve the national legal framework relating to public ethics at local level. Aligning the law on the status of local councillors with the law “On Prevention of Corruption” should be prioritised.**

iii. Codes of conduct for local public officials and councillors are non-existent or are not sufficient.

Proposal: national stakeholders should take the initiative **to develop model codes of conduct applicable to specific groups of public officials at local level.** Where a governmental agency takes such an initiative, it must be done in due consultation with local authorities and their associations. These model codes should take into account rules of conduct laid down in law “On Prevention of Corruption” and in specific laws regulating statuses of specific groups of public officials. It is important to note that the added value of a code of conduct is to provide additional guidance to the already existing rules. It is therefore important that the existing rules of conduct are properly set first. Furthermore, it is important that the codes of conduct cover all integrity-related issues.

Once model codes of conduct are developed, they should be presented to local authorities, various groups of public officials at local level and requested that they are either further developed to respond to a concrete local environment or merely adopted as they are. This would ensure that all codes of conduct applicable to a particular group of public officials in various local authorities contain the same minimum standards of conduct.

iv. Codes of conduct should be coupled with awareness raising, training and confidential counselling.

Proposal: **every public official to whom a particular code of conduct applies should be made aware of it** (and of rules of conduct laid down in laws and regulations) once employed/upon entering office and at regular intervals thereafter.

**Awareness raising** may be done in a form of short briefings (as a part of regular sessions of local councils, for example), informational package regularly circulated to every public official<sup>30</sup>, electronic reminders of a particular topic, etc.

The same applies to training. Every public official should undergo a training on all integrity-related topics. **Trainings should take place once a public official enters his/her office and at regular intervals thereafter**<sup>31</sup>.

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<sup>30</sup> In Slovenia, every newly elected public official received a letter inviting him/her to read the informational package prepared by the Commission for the Prevention of Corruption on his/her obligations stemming from the Integrity and Corruption Prevention Act. The informational package is also published on the Commission's website (<https://www.kpk-rs.si/za-zavezance/katalog-obveznosti-funkcionarjev/>)

<sup>31</sup> In the United States of America, the Office of Government Ethics (available at <https://www.oge.gov/>) requires all agencies in the executive branch to establish effective ethics and integrity education programmes for their employees, as well as annual ethics trainings for specified categories of employees occupying sensitive positions. The Office ensures that all agencies provide an uniform ethics education. Furthermore, they set up a library of ethics training resources which is available to all federal employees and is also accessible to the public.

Similarly, in Estonia ministers and their advisers upon entering office should preferably complete the comprehensive online course on conflicts of interest prepared by the Ministry of Justice. See para. 25, GRECO Compliance Report on Estonia, available at <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a1f0ed>



**Confidential counselling should also be provided** to public officials when ethical dilemmas arise<sup>32</sup>. Practice shows that most often public officials prefer resolving the matter within their organisation. It is therefore worth considering entrusting a trained and willing employee or a public official within the local authority with this important task.

It is also recommended to consider establishment, with the engagement of the NACP and associations of local authorities, of a dedicated platform for training and peer exchange.

Participation in awareness raising and training activities should be duly recorded, for purposes of measuring effectiveness of such activities and for choosing and determining sanctions in case a public official has violated rules of conduct.

**v. Codes of conduct should be coupled with a mechanism of supervision and enforcement.**

Such a mechanism should be permanent<sup>33</sup>, responsive to detected breaches of codes of conduct and transparency of its work should be ensured<sup>34</sup>.

**Proposal:** **a mechanism of supervision and enforcement should be set up** that would be competent for addressing breaches of a code of conduct. It should be able to act upon its own initiative as well as on the basis of a report made with regard to breaches of conduct. The mechanism should be permanent and could be comprised of members of a particular group of public officials to whom the code of conduct applies<sup>35</sup>, or of representatives of various groups of professionals who enjoy reputation and are knowledgeable in public ethics topics<sup>36</sup>.

Procedural rules should guarantee sufficient level of transparency of the work of such a mechanism, especially ensuring that the outcome of procedures undertaken in respect of public officials should be made known to the public. Information on the work of such bodies should be also made available to the public so that it can assess efficiency and credibility of such mechanisms.

**vi. Sanctions for violations of codes of conduct should be effective, proportionate and dissuasive.**

As GRECO often pointed out, an enforcement mechanism should not merely rely on “naming and shaming” as the most effective sanction and called for the development of additional controls and sanctions to ensure that ethical misconduct is detected and addressed.

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<sup>32</sup> In Estonia, “Assistant to the Minister” guidelines have been developed. It covers various topics relevant to ministers, but also provide that ministers and their advisers contact the State Chancellery (Government Office) and the contact person for preventing corruption at their ministry to receive confidential advice on the prevention of conflicts of interest and ethics. See GRECO Compliance Report on Estonia, para. 25, available at <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680a1f0ed>

<sup>33</sup> In Luxemburg, an ad hoc Ethics Committee is to be set up as per provisions of the Code of conduct for members of the government, consisting of three individuals chosen from among former members of the government, members of parliament, judges, members of the Council of State or senior civil servants. They are appointed by the Government for non-renewable five-years terms, ending at different times. They supervise compliance with the provisions of the code and may look into matters at its own initiative and may even act on reports made by third parties. The Ethics Committee also has a warning function and is able to issue reminders, through written explanations. It may also officially note an issue and alert the person concerned, giving them a deadline by which to remedy the situation where there is still possible. (See GRECO Compliance Report on Luxemburg, para. 77-87).

<sup>34</sup> When it is found that there has been a breach of the Code, the Government is bound to make the Ethics Committee’s opinion public (see para. 46 of the GRECO Evaluation Report on Luxemburg, available at <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/16808b7252>).

<sup>35</sup> Such is the case in Slovenia where five judges are members of the Commission for Ethics and Integrity which is an independent body established at the Judicial Council, competent for issuing principled opinions in cases of breaches of judicial codes of conduct, as well as recommendations and guidelines on judicial ethics- and integrity-related matters.

<sup>36</sup> In case of Luxemburg’s Ethics Committee, as described above.



As regards national legislation allowing early termination of an elected mandate by a popular recall, only a few examples may be found in Europe, namely in Swiss cantons, in Croatia, Germany, Poland, Romania and Slovakia<sup>37</sup>.

**Proposal:** a set of **sanctions should be envisaged** in cases of a violation of a code, thus ensuring that a sanction proportionate to the violation may be applied in practice. The set of sanctions should complement other sanctions (administrative, criminal, etc.) foreseen by other enforcement mechanisms. Sanctions should be dissuasive in order to ensure that violations of codes of conduct are not repeated. It should be ensured that every violation of a code of conduct is appropriately addressed. Transparency of detected violations and sanctions applied is crucial for effectiveness of the enforcement regime. For example, sanctions available for violations of the Code of Conduct under the Local Government Act 2000 in Wales include suspension of a member from the authority concerned for up to 12 months, disqualification of a member from being, or becoming a member of the authority concerned or any other relevant authority to which the code applies for a maximum of 5 years, or censure (a formal record of severe and public disapproval of the member of the authority concerned made by the body deciding on the sanction)<sup>38</sup>. Similarly, in Scotland sanctions for breaches of the Councillors' Code of Conduct may be censure, suspension, or disqualification<sup>39</sup>.

**vii.** Institutions lack clear mandate as regards awareness raising, supervision and enforcement of rules of conduct.

**Proposal:** **various institutions should be entrusted with various mandates** as regards implementation of public ethics framework. Some should be entrusted with a mandate to raise awareness through trainings, providing advice, etc. Other should be entrusted with sanctioning powers. They should all have an appropriate level of oversight on public ethics matters in order to ensure uniformity of application of rules of conduct and safeguard the principles of local autonomy.

### Summary of proposals

- 1) **Improve the national legal framework on public ethics at local level in Ukraine,**
- 2) **Secondary legislation regarding particular groups should build on the existing general provisions of the law "On Prevention of Corruption",**
- 3) **Align the law on the status of local councillors with the law "On Prevention of Corruption",**
- 4) **Model codes of ethics as well as codes of conduct applicable to specific groups of public officials at local level to be developed by national stakeholders,**
- 5) **Awareness raising and trainings organised for public officials on codes of ethics and codes of conduct,**
- 6) **Confidential counselling should be provided,**
- 7) **Supervision and enforcement mechanism to be established and a set of sanctions for violation established,**
- 8) **Clear distribution of mandates should be in place among institutions involved.**

<sup>37</sup> See the Venice Commission Report on the recall of mayors and local elected representatives, 2019, available at [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2019\)011rev-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2019)011rev-e)

<sup>38</sup> See Sanctions Guidance issued by the President of the Adjudication Panel for Wales, available at <https://adjudicationpanel.gov.wales/sites/adjudicationpanel/files/2019-08/apw04-en.pdf>

<sup>39</sup> Code of Conduct for Councillors issued on the basis of the Ethical standards in Public Life Act 2000, applicable to every elected member of a local authority in Scotland, available at <https://www.gov.scot/binaries/content/documents/govscot/publications/regulation-directive-order/2021/12/code-conduct-councillors-2/documents/code-conduct-councillors/code-conduct-councillors/govscot%3Adocument/code-conduct-councillors.pdf?forceDownload=true>