

# The Congress of Local and Regional Authorities



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## Rights and duties of local and regional elected representatives: the risks of corruption

Bureau of the Congress  
Rapporteur: Dubravka SUICA, Croatia (L, EPP/CD)<sup>1</sup>

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### Summary

The implementation of local and regional self-government in Europe is an important asset for democracy. But self-government includes a considerable shift of responsibilities and duties to local and regional elected representatives. These last are required to act in the frame of acknowledged ethical values and according to the criteria of good governance.

Good governance implies a transparent fulfilment of public duties. Territorial administrations, while providing services to citizens, also manage significant public funds and are required to ensure a fair management of public expenditure and counteract any form of favouritism and corruption.

While dealing with public duties, corruption is a considerable risk. Some instruments and some compendia of good practices for counteracting corruption already exist. These instruments should be updated: recently, corruption mechanisms have evolved and new methods for by-passing the law are in use. The international conference held in Messina on 6 May 2010 analysed some new trends in the "corruption issue" and provided some indications on how to counteract it: the sharing of ethical values, prevention, good governance and public participation are considered key measures in this field.

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<sup>1</sup> L : Chamber of Local Authorities / R : Chamber of Regions  
ILDG : Independent and Liberal Democrat Group of the Congress  
EPP/CD : Group European People's Party – Christian Democrats of the Congress  
SOC : Socialist Group of the Congress  
NR : Member not belonging to a Political Group of the Congress



The Congress believes that the path to follow is to establish a new culture of transparency and to promote the respect of ethical values and legality.

The Congress was already aware of the need of exploring and developing initiatives on public ethics at local and regional level and in 1999 adopted the “Code of conduct for the political integrity of local and regional elected representatives”.

Today the Congress proposes to further investigate - in cooperation with the relevant bodies of the Council of Europe and the Committee of the Regions of the European Union – the guidelines of an ethical behaviour for local and regional politicians with a view to counteracting corruption and favouritism at local and regional level.

## **A. DRAFT RESOLUTION<sup>2</sup>**

1. The Congress reaffirms the importance of local and regional self-government and subsidiarity and expresses its satisfaction for the road accomplished so far in Europe in devolving power to local and regional administrators elected democratically.

2. Correspondingly the Congress is aware of the fact that new incumbencies and new powers involve new responsibilities and duties for local and regional politicians. In this respect the implementation of good methods of governance is of paramount importance for local and regional authorities, as they have to prove that they are ready to take-up the challenges of decentralised democracy.

3. At present municipalities in Europe manage an important part of public expenditure and also face serious problems related to economic crime. Nowadays regions, being more and more involved in the co-financing and management of European funds, are directly exposed to corruption too. Local and regional authorities should be aware of the new responsibilities they take after acquiring new competencies.

4. For its part, the Congress believes that if public affairs are managed at local and regional level, this may not necessarily lead to higher corruption levels. By contrast, the higher the level of public scrutiny, the less “hidden business” can grow. Proximity allows citizens to see how, where, and when public money is spent. It is necessary that European society remains healthy at grassroots level and that the rule of law is upheld in local communities.

5. Mayors and governors should enjoy a high level of public confidence; this trust should represent an engagement of commitment for municipal and regional representatives. Eliminating corruption is not only a legal duty but also a way of improving governance at local and regional level.

6. Consequently, it is essential to promote ethical standards shared by all local and regional elected representatives. Local and regional councillors should be informed and aware of the conduct to adopt in the performance of their public duties.

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<sup>2</sup> Preliminary draft resolution approved by the Bureau of the Congress on the 17 September 2010

Bureau members:

Y. Mildon, President of the Congress , *I. Micallef, President a.i of the Congress and President of the Chamber of Local Authorities, L. Sfirloaga, President of the Chamber of Regions, D. Suica, G. Krug, A. Knape, H. Zach, I. Borbely, J-C. Frécon, S. Orlova, F. Pellegrini, K. Andersen, E. Yeritsyan, I. Michas, O. Van Veldhuizen and N. Romanova*

N.B : The names of members who took part in the vote are in italics

Bureau Secretariat : D. Rios, Linette Taesch

7. Taking into account the results of the international conference on “Fighting corruption at local and regional level” (Messina, 6 May 2010), organised by the Congress, the Committee of the Regions of the European Union and the Municipality of Messina, the Congress believes that the key-elements for fighting corruption at local and regional level are the sharing of ethical values, the respect of the rule of law and of the public interest, transparency and the involvement of citizens in the management of public welfare.

8. The Congress believes it important to increase publicity with regard to all decisions concerning the performances of municipalities and regions. If the guiding principle in exercising public duties is transparency, this should mean that all decisions concerning the fulfilment of public duties should be made public.

9. The action of local and regional authorities should mainly be focused on preventive measures – designed to prevent any private interest in public duties - and on the introduction of efficient monitoring mechanisms. Public authorities have recently made significant inroads into the fight against financial crime and corruption: practical instruments, which have proved to be successful, should be used and extended to all areas exposed to a high risk of corruption.

10. The Congress supports the initiatives undertaken to eliminate the conditions that make corruption grow, such as the revision of public procurement procedures, the introduction of new systems for monitoring the decision making processes, the introduction of “integrity pacts” (applicable to local communities) and the creation of anti-corruption agencies at local and regional level. In addition, preventive measures, such as the possibility of submitting information about corruption anonymously, compulsory staff mobility on sensitive posts and risk analysis mechanisms, should be introduced at local and regional level.

11. Since the adoption of its code of conduct for the political integrity of local and regional elected representatives, in 1999, the Congress was aware of the need for ethical guidelines capable of setting out standards of conduct for local and regional politicians. These guidelines are also beneficial to citizens, who should be aware of the conduct they can expect from their elected representatives.

12. Recently, violations of ethical principles and corruption practices evolved: new mechanisms for bypassing the law are practised by both those who instigate the corruption and those who are seduced by it. Consequently, the Congress wishes to promote a culture based on ethical values and new paths for guaranteeing the integrity of local and regional administrators with a view to counteract corruption.

13. *In the light of the above, the Congress decides to:*

a. investigate ways of promoting the ethical behaviour and integrity of local and regional politicians, in cooperation with the intergovernmental bodies of the Council of Europe dealing with the matter at national level and the Committee of the Regions of the European Union;

b. launch activities (i.e. seminars, training sessions and focus groups) for raising awareness, within local communities and regions, on the importance of this ethical behaviour, thus helping local communities to counteract corruption and favouritism;

c. invite the Committee of the Regions of the European Union to work in synergy with Congress on these crucial issues, with a view to reinforcing the capacity of local and regional authorities to fulfil their mandate efficiently and transparently;

d. invite European local and regional authorities and their associations to give full support to the Congress' initiative and take part in the steps to come.

## B. EXPLANATORY MEMORANDUM

1. Since its creation, the Congress has been striving for decentralisation, devolution and direct participation of local and regional elected representatives in charge of public affairs. By means of the European Charter of Local Government, the Congress has highlighted the advantages of decentralised elective democracy and has made sure that regional authorities benefit from autonomy, new incumbencies and resources.

2. Nevertheless, this transfer of powers does not come without a price: it means that obligations and responsibilities linked to the regional mandate need be taken in to account and likewise, representatives are obliged to adopt an unimpeachable code of behaviour with regards to the citizens whose values and needs they represent. Moreover, the local and regional representatives find themselves in a position of weakness, where they are required to become faultless managers of regional or local public affairs.

3. Going beyond texts, laws and regulations, there is a far more human side to the taking on of a locally elected mandate: metaphorically speaking, the local and regional representatives have to sign a moral pact of confidence with the citizens who they represent on a daily basis. It is therefore essential that those who are elected at local and regional level conduct themselves in an irreproachably ethical manner and, likewise, this is a prerequisite to taking on the challenge of "putting in place an effective local and regional democracy". The Congress was already aware of this necessity when, in 1999, it adopted the "Code of Conduct for the Political Integrity of Local and Regional Elected Representatives" and chose to investigate the crucial aspect of what it means to take on the mandate of local and regional representative.

4. A key element, which is high on the agenda of the debate on local and regional representatives' obligations and responsibilities, is the fight against corruption and favouritism. For this reason, the Congress and the Committee of Regions of the European Union chose to develop this aspect of the debate. On 7 May 2010, following an initiative of the Contact Group Congress / Committee of the Regions (CoR), strongly supported by the Presidents of the two institutions, the Congress and the CoR organised in Messina (Italy) an international conference on the fight against corruption at local and regional level.

5. Actually, corruption is a relevant danger in the political life of local and regional elected representatives. It is a complex phenomenon: the debate on its origins is still ongoing. On the one hand, no unique explanation has been given for the reasons that make corruption grow (even though inefficiency is usually considered as one important cause of it). On the other hand, the consequences of the phenomenon are clear: it destroys trust between citizens and their political leaders - which is one of the foundations of representative democracy - and has a severe impact on the economy. Its negative impact on society is undeniable: corruption undermines the values of democracy and equality, facilitates the violation of human rights and undermines trust in public and private institutions. In economic terms, it scares away investment, reduces innovation, ruins markets by distorting competition and unbalancing an equal allocation of resources, harms competitiveness, reduces social capital and greases the wheels of organised crime. Corruption is often linked to mafias: money-laundering and mafias infiltrating the public sphere are the most visible sides of corruption, especially in the case of the poorest of states.

6. The Messina conference represented also an opportunity to analyse the role of civil society, the existing initiatives and the structures in place to prevent corruption (i.e. the best practices at local and regional level) and the legal instruments adopted by the Council of Europe and the European Union. The conference provided the participants with several good practices on how corruption can be addressed in local and regional administrations. Local and regional authorities, in fact, manage significant public expenditure and are, amongst others, directly responsible for public works, issuing building permits and inspecting businesses. All these areas are especially exposed to corruption risks. Currently a large amount of economic resources are lost because of corruption.

7. Today, we are facing “the 3rd millennium corruption”: recently its mechanisms evolved; mafias and corruptors decided to go underground, to keep a low profile and create wide, deep and hidden networks for increasing illicit gains. Conventional areas are changing and corruption is also entering the domains of environmental financing and alternative energy sourcing - which are typical fields of action of local and regional authorities. Public-private partnerships brought the creation of new consolidated centres of power made up of people in business who work hand in hand with local and regional public authorities. Finally, corruption has recently increased in parallel with the increase in natural disasters: in a state of emergency, in fact, practical action must be taken quickly and therefore, control is minimal.

### **The European framework**

8. At European level, several institutions are engaged in the fight against corruption and multiple political and legal instruments have been adopted. The Council of Europe pioneered the battle, from the civil and criminal law perspective, via the 20 Guiding Principles for the Fight Against Corruption, contained in Resolution 24 adopted by the Committee of Ministers of the Council of Europe in 1997. This text already fixed some measures for evaluating corruption within the monitoring mechanism created by the Criminal Law Convention. In addition, since 1999, the “Partial Agreement Group of States against Corruption of the Council of Europe (GRECO)” monitored the implementation of international legal instruments and pursued an action programme against corruption.

9. Action has also been taken by the OECD and the European Union: the OECD dealt with payment of kickbacks within international transactions <sup>3</sup> and the EU tackled the problem of corruption of EU public officials via the European Anti-Fraud Office (OLAF). Also the European Parliament recently approved a written Declaration against corruption, containing some important guidelines for action to be taken: the emphasis is particularly put on confiscation and seizure of property and the use of confiscated goods.

10. Despite these initiatives, there is little interplay between these international institutions. Currently, the real problem is not necessarily the lack of effective legal instruments at European level to combat corruption, but rather their enforcement: it is important to focus on the monitoring of the enforcement of these instruments.

11. At EU level, for instance, the Court of Justice and the European Commission do not have the powers to oversee the implementation of anti-corruption measures. One possibility could be to adopt the EU provisions on corruption under the form of directives: this would put the European Commission in a position to check their compliance. Another option is to further develop the European Anti-Fraud Office for improving prevention and introducing sanctioning mechanisms at European level. There is also the possibility, planned in the Lisbon Treaty, of setting up a European Attorney Office responsible for fighting serious forms of transnational crime.

12. Finally, in addition to the European framework, the existence of a sound national anti-corruption legal framework is of great importance. Such framework should define and specify the different forms and aspects of corruption, consider effective legal provisions, guarantee fair investigation, establish efficient anti-corruption bodies, conceive effective codes of conduct and ensure coordination among different authorities.

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<sup>3</sup> On 23 April 1998 the OECD Council adopted the Recommendation on Improving Ethical Conduct in the Public Service Including the 12 Principles for Managing Ethics in the Public Service.

**Experiences and measures at local and regional level: the civil society and the private sector.**

13. Everywhere in Europe the role and competencies of local and regional authorities are increasing; it is the increase in their economic and financial capacity, which itself brings a higher risk of corruption at local and regional level.

14. In public opinion, mayors and local elected representatives should enjoy a high level of confidence. In this respect, local politicians are required not to betray people's confidence. The prescription may seem to be simple: better laws are needed and these laws have to be put under one umbrella system. Laws have to be simple and clear and sanctions against those who infringe them have to be strict. Those who betray ethical principles or are engaged in corruption must be threatened with a real risk of sanctions. Finally, more transparency is needed within local and regional public administrations. The possibility of eradicating corruption at local and regional level and building healthy territorial administrations does exist.

15. The two main paths followed in the fight against corruption are punishment and prevention. As far as punishment is concerned, local and regional authorities do not dispose of legal competencies; as a consequence, their action has to be concentrated on prevention. In this respect we do believe that the key instruments for local and regional politicians are the respect of ethical principles, good governance and citizens' participation.

16. At local and regional level some concrete actions have already been implemented. Protocols for enterprises which intend to invest money (namely in environmental projects) have been established. Codes of ethics to fight corruption and mafias have been developed and disseminated in schools. Specific instruments to check administrative actions have been used. The involvement of the general public, civil society, families, schools and businesses in the fight against corruption has been promoted.

17. Examples of anti-corruption measures at local and regional level can be found in different countries. An interesting project has been developed by the city of Martin (Slovakia): a complex package of anti-corruption measures was launched. The main objective of the project was to increase transparency in the decision-making processes and increase public engagement in good governance. The key instrument has been the increase in the flow of information to citizens. This has minimized the potential for corruption. The information has been directed to ensure better public access to policy making in the town. Another very effective tool, while issuing the invitation to tenders and choosing proposals, was the online auction. This increased controls on supplier and town employees responsible for purchasing and allowed the purchase of goods and services at actual market prices. The online auction system also allowed savings in procurement costs, decreased expenses for the purchasing procedure, and shortened the time between the tender announcing and purchasing and restricted the potential for corruption to a minimum.

18. An important achievement in the prevention of corruption has been the establishment of Integrity Pacts. These pacts set up neutral contractual rights and obligations between public and private actors, with a view to reducing the high cost and distorting effects of corruption in public contracting. They define contractual intentions between the suppliers and clients in the light of transparency and integrity. As a complement to the pacts, penalties, such as the exclusion of vendors from vendor lists, have been introduced.

19. In the fight against corruption and favouritism, the role of civil society and associations has been of great importance. Associations encourage joint efforts, they support the creation of mafia-free societies through up-front prevention campaigns based on education and on the strong belief that civil society must support the state in its necessary repression of crime. The work done by NGOs and associations on educating the general public, on encouraging the correct dissemination of information and on converting confiscated mafia assets into social projects, has been remarkable.

20. Business associations have been in the front line too. In several countries business associations launched initiatives to counteract corruption and favouritism. In particular they set up specific rules for entrepreneurs not reporting corruption (who were sanctioned with exclusion from the business confederation). This measure could be put into practice within the local and regional administrations: civil servants, who do not report to the authorities that they have been approached by criminal organisations for corruption purposes, should be subject to sanctions.

21. We live in an era characterised by violations of ethical standards which can lead to an organised crime able to infiltrate and condition all decision making levels. It is necessary to break with the past and make entrepreneurs work together with public authorities in order to eliminate corruption practices. A transparent interaction between business and public local and regional administration is strongly needed.

22. However, transparency is not only a matter of auditing but also of acceptance by the elected representatives to perform their functions with diligence, openness and willingness to account for their decisions. It is also a matter of overseeing and directly controlling the projects before decisions are taken and implemented.

### **Conclusions**

23. In the present economic and social context, reinforcing the principle of the rule of law and counteracting corruption in local and regional administrations is a priority. It is important not only to recover the large amount of public money lost because of corruption, but also to reduce the "mistrust gap" that exists between citizens and politicians.

24. One main challenge for local and regional elected representatives is the risk of corruption. Recently, corruption practices have evolved: new mechanisms for by-passing the law are in place. In this respect, it is necessary to set out standards of conduct required to local and regional politicians in their day-to-day decision-making processes. Citizens, for their part, need to be aware of the standard of behaviour they should expect from their local and regional political representatives. Ethical behaviour, prevention, good governance and participation of the general public represent the key elements of the challenge.

25. Since the adoption of the European "Code of conduct for the political integrity of local and regional elected representatives" the Congress was aware of the need for promoting an ethical behaviour and guaranteeing the integrity of local and regional politicians. It is now important to reinforce the existing guidelines and promote the acceptance of ethical standards common to all local and regional elected representatives.

26. The Congress of the Council of Europe and the Committee of the Regions of the European Union could work in synergy on these issues thus reinforcing the capacity of elected politicians to fulfil their mandate with effectiveness and transparency.